

the integrity of Government in the exercise of their offices and New South Wales to the exclusion of to the Parliament. Their ultimate duty is to the people of New South Wales to whom they have pledged their loyalty under section 35CA of the Constitution Act 1902.

I·C·A·C

INDEPENDENT COMMISSION
AGAINST CORRUPTION
NEW SOUTH WALES

Appendix NSW Ministerial Code of Conduct

Preamble

- 1 It is essential to the maintenance of public confidence in the integrity of Government that Ministers exhibit and be seen to exhibit the highest standards of probity in the exercise of their offices and that they pursue and be seen to pursue the best interests of the people of New South Wales to the exclusion of any other interest.
- 2 Ministers are individually and collectively responsible to the Parliament. Their ultimate responsibility is to the people of New South Wales, to whom they have pledged their loyalty under section 35CA of the *Constitution Act 1902*.
- 3 Ministers have a responsibility to maintain the public trust that has been placed in them by performing their duties with honesty and integrity, in compliance with the rule of law, and to advance the common good of the people of New South Wales.

INVESTIGATION INTO THE CONDUCT OF THE THEN MEMBER OF PARLIAMENT FOR WAGGA WAGGA AND THEN PREMIER AND OTHERS (OPERATION KEPPEL)

VOLUME 1

ICAC REPORT
JUNE 2023



ICAC

INDEPENDENT COMMISSION
AGAINST CORRUPTION
NEW SOUTH WALES

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Mr President
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In accordance with s 74 of the *Independent Commission Against Corruption Act 1988* (the ICAC Act) I am pleased to present the Commission's report on its investigation into the conduct of the then member of Parliament for Wagga Wagga and then Premier and others (Operation Keppel).

Assistant Commissioner, the Hon Ruth McColl AO SC, presided at the two public inquiries held in aid of this investigation.

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

Yours sincerely

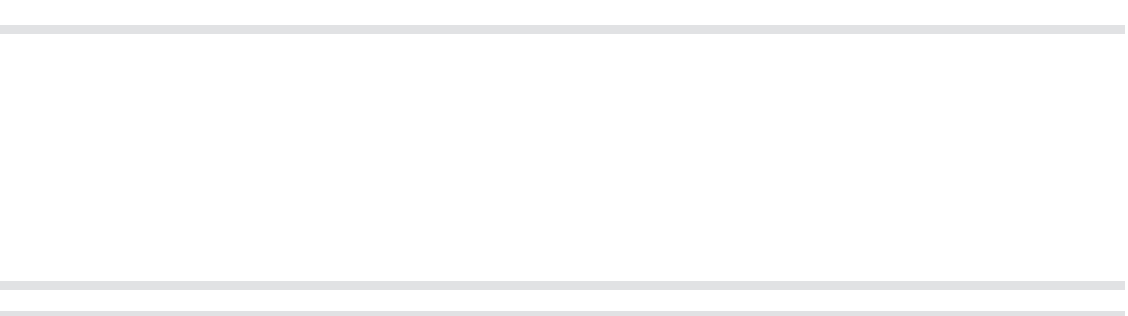


The Hon John Hatzistergos AM
Chief Commissioner



**INVESTIGATION INTO THE
CONDUCT OF THE THEN
MEMBER OF PARLIAMENT
FOR WAGGA WAGGA
AND THEN PREMIER AND
OTHERS
(OPERATION KEPPEL)**

VOLUME 1





This report is presented in two volumes. Volume 1 focuses on matters concerning the former member for Wagga Wagga, Daryl Maguire. Chapters 4 to 9 in this volume concern Mr Maguire’s conduct between 2012 and August 2018 involving the misuse of his public office as a member of Parliament with a view to advancing his own private financial interests and those of his associates. It is recommended that it be read in conjunction with volume 2 of the report.

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Note on the text

This note explains why certain people and countries have been de-identified in the text of the report.

In Special Report 2021/03, *Report concerning circumstances surrounding the Independent Commission Against Corruption's use of certain telephone intercept material during Operation Keppel*, the Inspector of the NSW Independent Commission Against Corruption ("the Commission") recommended that the Commission consult with the Department of Foreign Affairs and Trade (DFAT) concerning how the Commission deals with material that involves matters of public international law, including but not limited to, the *Vienna Convention on Diplomatic Relations of 1961* (VCDR) and the *Vienna Convention on Consular Relations of 1963* (VCCR).

The VCDR provides a framework for the performance of the functions of diplomatic missions representing States. It has the force of law in Australia by virtue of s 7 of the *Diplomatic Privileges and Immunities Act 1967* (Cth). The VCCR provides a framework for the performance of functions of consular posts on behalf of States. It has the force of law in Australia pursuant to s 5 of the *Consular Privileges and Immunities Act 1972* (Cth). Among other things, the VCCR provides for inviolability of consular premises, freedom of communication on the part of consular posts, and the protection of consular officers.

One of the matters investigated as part of the public inquiry, and which therefore must be reported on, is whether Daryl Maguire misused his position as chair of the NSW Parliament Asia Pacific Friendship Group ("the APFG"), including by using the network of consular and foreign government official contacts it provided him, to advance private business interests.

In preparing this report, the Commission communicated with DFAT concerning the potential for foreign diplomats, consular officials, foreign government officials or foreign nationals to be identified in the report in connection with the activities of Mr Maguire. DFAT expressed concern that identifying specific officials or specific countries whose officials were approached by Mr Maguire "has significant potential to negatively impact Australia's international relations" and may be inconsistent with Australia's obligations under the VCDR and VCCR. In those circumstances, DFAT requested the Commission "de-identify" the countries involved and refer generically to "foreign officials". DFAT also advised it did not have a particular view on the identification of foreign national businesspeople but did question whether it was necessary to include references to roles certain people held with a foreign political party.

After carefully considering the advice of DFAT, the Commission decided that, while it is necessary to make mention of the evidence concerning Mr Maguire's use of consular and other foreign government contacts, the names of these contacts and the countries involved should be de-identified in accordance with the DFAT request.

The Commission did not consider it necessary to de-identify the various businesspeople of foreign nationality with whom Mr Maguire dealt.



The Commission decided to include in the report references to roles certain people held with a foreign political party. This was done on the basis that inclusion in the report of such references is not contrary to any of the provisions of the VCDR or VCCR. The fact that persons mentioned in the report held such positions is relevant to considering the nature and extent of Mr Maguire’s conduct. It is clear from the context in which they are mentioned that there was nothing untoward in their conduct.

Chapter 1: Summary of investigation and outcomes

- 1.1. This investigation was conducted pursuant to s 20(1) of the *Independent Commission Against Corruption Act 1988* (“the ICAC Act”) on the own initiative of the NSW Independent Commission Against Corruption (“the Commission”) arising from evidence obtained in its Operation Dasha investigation. Initially, the investigation concerned the conduct of Daryl Maguire, then a member of the NSW Parliament. During the investigation, the Commission determined that the scope should be expanded to include conduct of Gladys Berejiklian, then premier of NSW.
- 1.2. The following allegations were investigated and were the subject of two public inquiries conducted by the Commission:
 1. Whether between 2012 and August 2018, Daryl Maguire MP engaged in conduct that involved a breach of public trust by using his public office, involving his duties as a member of the NSW Parliament and the use of parliamentary resources, to improperly gain a benefit for himself, G8wayInternational Pty Ltd and associated persons (“the Maguire allegation”).
 2. Whether, between 2012 and 2018, the Hon Gladys Berejiklian MP engaged in:
 - a. conduct that constituted or involved a breach of public trust by exercising public functions in circumstances where she was in a position of conflict between her public duties and her private interest as a person who was in a personal relationship with Daryl Maguire in connection with:
 - i. grant funding promised and/or awarded to the Australian Clay Target Association Inc in 2016/2017
 - ii. grant funding promised and/or awarded to the Riverina Conservatorium of Music in Wagga Wagga in 2018
 - and/or
 - b. conduct that constituted or involved the partial exercise of any of her official functions, in connection with:
 - i. grant funding promised and/or awarded to the Australian Clay Target Association Inc in 2016/2017
 - ii. grant funding promised and/or awarded to the Riverina Conservatorium of Music in Wagga Wagga in 2018



and/or

- c. conduct that constituted or involved the dishonest or partial exercise of any of her official functions and/or a breach of public trust by refusing to exercise her duty pursuant to s 11 of the ICAC Act to report any matter that she suspected on reasonable grounds concerned or may concern corrupt conduct in relation to the conduct of Daryl Maguire

and/or

- d. conduct that was liable to allow or encourage the occurrence of corrupt conduct by Daryl Maguire (“the Berejiklian allegations”).

Corrupt conduct findings

- 1.3. The Commission’s approach to making findings of corrupt conduct is set out in Appendix 2 to this report.

Mr Maguire

- 1.4. The Commission finds that Mr Maguire engaged in serious corrupt conduct by, between 2012 and August 2018:
 - 1.4.1. improperly using his office and the resources to which he had access as a member of Parliament to benefit G8wayInternational, a company of which he was in substance a director and in respect of whose profits he had an arrangement to share, by:
 - 1.4.1.1. monetising his position as a member of Parliament in order to promote his own pecuniary interests and those of persons close to him, in breach of his duties and obligations as a member of Parliament to act only in accord with what he believed to be in the public interest and the interests of the electorate
 - 1.4.1.2. misusing his position and taxpayer-funded resources to which he had access as a member of Parliament to benefit G8wayInternational, a company of which he was in substance a director and in respect of whose profits he had an arrangement to share personally

- 1.4.1.3. deliberately choosing not to comply with his obligations under the Constitution (Disclosures by Members) Regulation 1983 (“the Disclosure Regulation”) in relation to his position in G8wayInternational, and pecuniary benefits received from or in connection with G8wayInternational’s activities
- 1.4.1.4. misusing his office as a member of Parliament by seeking, and receiving, a fee for introducing the party secretary of Liaoning Province and the Liaoning delegation to then premier the Hon Barry O’Farrell at Parliament House on 30 November 2012 with a view to gaining benefits for G8wayInternational and thus, ultimately, for Mr Maguire himself (chapter 4)
- 1.4.2. signing and lodging (or authorising the lodgement of) ordinary and supplementary ordinary returns under the Disclosure Regulation, in which he deliberately failed to disclose his interest and position in G8wayInternational and/or all the sources of his income (chapter 5)
- 1.4.3. misusing his role as a member of Parliament to advance his own financial interests, as well as the commercial interests of his associates, in connection with an immigration scheme that he advanced to his constituents and others connected with his electoral district (chapter 6)
- 1.4.4. misusing his role as a member of Parliament and chair of the NSW Parliament Asia Pacific Friendship Group (“the APFG”) to advance his own financial interests, as well as the commercial interests of his associates, including members of Shenzhen Asia Pacific Commercial Development Association (chapter 7)
- 1.4.5. misusing his office as a member of Parliament with a view to advancing his own private financial interests and/or those of persons associated with him in connection with the sale and/or development of land in NSW by:
 - 1.4.5.1. agreeing with Michael Hawatt that in exchange for Mr Hawatt introducing property developers who would pay a commission the men could share for being introduced to potential purchasers, or financiers, of their properties who were Mr Maguire’s clients, Mr Maguire would make representations to government officials who could assist the property developers in relation to planning issues
 - 1.4.5.2. agreeing with William Luong that in exchange for Mr Maguire introducing Mr Luong to property developers, such as Charbel Demian, who would pay a commission the men could share for being introduced to financiers of his property development, such as Country Garden who were Mr Maguire’s clients, Mr Maguire would make representations to government officials who could assist Mr Demian in relation to planning issues without disclosing to those government officials his hope and expectation of receiving a personal pecuniary benefit from Mr Demian’s property development at Camellia
 - 1.4.5.3. making representations to the minister for planning, Rob Stokes, and the minister for roads, Anthony Roberts MP, government officials and ministerial staff to secure meetings for Mr Demian with planning and roads departmental officials without disclosing to those ministers, government officials and ministerial staff his hope and expectation of receiving a personal pecuniary benefit from Mr Demian’s property development at Camellia

- 1.4.5.4. making representations to ministerial staff and government officials on behalf of Louise Waterhouse in relation to the sale, or financing, of her Smartwest.Sydney property development at Badgerys Creek without disclosing his expectation of receiving a personal pecuniary benefit from the possibility of a commission or other payment to be paid to him by Mr Luong in the event that the sale of the land or investment in it was successful
- 1.4.5.5. attempting to thwart the potential appointment of persons to Independent Hearing and Assessment Panels (IHAPs) at Joe Alha's behest and for Mr Alha's commercial benefit without disclosing his personal relationship with Mr Alha
- 1.4.5.6. facilitating Mr Alha's access to senior figures within the NSW Government in circumstances in which there would be no formal records of such meetings to advance Mr Alha's commercial interests without disclosing his personal relationship with Mr Alha
- 1.4.5.7. obtaining information from another member of Parliament, regarding the proposed location of the M9 Outer Sydney Orbital, and supplying it to Mr Luong, appreciating that it may be of commercial benefit to him in the hope and expectation of obtaining a commission or other payment from Mr Luong for having done so (chapter 8)
- 1.4.5.8. misusing his office as a member of Parliament to assist Jimmy Liu, United World Enterprises Pty Ltd (UWE) and UWE Hay, informed by his own private pecuniary interest in the possibility of being appointed to the board of UWE (chapter 9).

Ms Berejikian

- 1.5. The Commission finds that Ms Berejikian engaged in serious corrupt conduct by:
 - 1.5.1. in 2016 and 2017, breaching public trust by exercising her official functions in relation to funding promised and/or awarded to the Australian Clay Target Association (ACTA) without disclosing her close personal relationship with Mr Maguire when she was in a position of a conflict of interest between her public duty and her private interest which could objectively have the potential to influence the performance of her public duty. Her conduct comprised:
 - 1.5.1.1. causing the ACTA proposal to be included on the agenda for the Expenditure Review Committee (ERC) meeting of 14 December 2016
 - 1.5.1.2. supporting the ACTA proposal in the ERC meeting of 14 December 2016
 - 1.5.1.3. communicating her support for and interest in the ACTA proposal to NSW Treasury staff, at least one ministerial colleague (John Barilaro) and staff within her office
 - 1.5.1.4. causing steps to be taken by staff from her office to follow up on the progress of the ACTA proposal following the ERC ACTA decision, including by communicating a request that the initial benefit cost ratio calculation of 0.88 by the Department of Premier and Cabinet Investment Appraisal Unit be revisited

- 1.5.2. in 2016 and 2017, partially exercising her official functions in connection with funding promised and awarded to ACTA by exercising her official functions influenced by the existence of her close personal relationship with Mr Maguire and by a desire on her part to maintain or advance that relationship (chapter 11)
- 1.5.3. in 2018, breaching public trust by exercising her official functions in relation to decisions concerning the Riverina Conservatorium of Music (“the RCM”) proposal which she knew was advanced by Mr Maguire in:
 - 1.5.3.1. participating in the 12 April 2018 ERC decision concerning RCM Stage 1 in relation to the transfer of land at 1 Simmons Street, Wagga Wagga, to provide a site for the RCM
 - 1.5.3.2. participating in the 24 April 2018 ERC decision concerning RCM Stage 1 in relation to the funding granted to RCM Stage 1
 - 1.5.3.3. determining to make a funding reservation of \$20 million in relation to RCM Stage 2
 - 1.5.3.4. approving the letter arranging for that funding reservation to be made without disclosing her close personal relationship with Mr Maguire, when she was in a position of a conflict of interest between her public duty and her private interest in maintaining or advancing her close personal relationship with Mr Maguire, which could objectively have the potential to influence the performance of her public duty
- 1.5.4. in 2018, in connection with funding promised and awarded to RCM Stage 2 engaging in conduct constituting or involving the partial exercise of her official functions influenced by the existence of her close personal relationship with Mr Maguire, or by a desire on her part to maintain or advance that relationship (chapter 12)
- 1.5.5. refusing to discharge her duty under s 11 of the ICAC Act to notify the Commission of her suspicion that Mr Maguire had engaged in activities which concerned, or might have concerned, corrupt conduct (chapter 13).

Section 74A(2) statements

- 1.6. Statements are made in this report pursuant to s 74A(2) of the ICAC Act that the Commission is of the opinion that consideration should be given to obtaining the advice of the Director of Public Prosecutions (DPP) with respect to the prosecution of the following persons.

Daryl Maguire

- 1.7. Daryl Maguire for:
 - 1.7.1. misconduct in public office in relation to his activities in respect to G8wayInternational (chapter 4)
 - 1.7.2. misconduct in public office in relation to his activities in respect of the Immigration Scheme (chapter 6)

- 1.7.3. misconduct in public office in respect of the misuse of his role as a member of Parliament and chair of the APFG to advance his own financial interests, as well as the commercial interests of his associates (chapter 7)
- 1.7.4. offences under s 88(2) of the ICAC Act, in connection with his conduct in deleting his own emails and as an accessory in relation to Phillip Elliott and Maggie Wang's destruction of records (chapter 7)
- 1.7.5. misconduct in public office in respect of the misuse of his role as a member of Parliament with a view to advancing his personal pecuniary interests and/or those of persons associated with him in connection with the sale and/or development of land in NSW (chapter 8)
- 1.7.6. misconduct in public office in relation to his activities in connection with UWE (chapter 9).

Maggie Wang

- 1.8. Maggie Wang for:
 - 1.8.1. offences under s 87(1) and s 88(2) of the ICAC Act (chapter 6).

Phillip Elliott

- 1.9. Phillip Elliott for:
 - 1.9.1. offences under s 87(1) and s 88(2) of the ICAC Act and for one or more offences of misconduct in public office (whether as a principal in the second degree, as a participant in a joint criminal enterprise or in some other accessorial liability) (chapter 7).

Corruption prevention recommendations

- 1.10. Chapter 14 of this report sets out the Commission's review of the corruption risks identified during the course of the investigation.
- 1.11. The following recommendations are made:

Recommendation 1

- 1.12. That the Code of Conduct for Members and the NSW Ministerial Code of Conduct be amended to provide for a set of principles of conduct and guiding values addressing the:
 - seven general principles of conduct which underpin public life developed by the United Kingdom's Committee on Standards in Public Life (and the 2021 descriptors to those principles)
 - three guiding values of public trust, public interest and public duty.

Recommendation 2

- 1.13. That the NSW Parliament, in consultation with the Commission, develops a comprehensive framework applicable to members that addresses the avoidance, disclosure and management of conflicts of interest. The framework should provide members with practical guidance about how to avoid, disclose and manage common conflicts of interest.

Recommendation 3

- 1.14. That the NSW Parliament's designated committees review and amend the Code of Conduct for Members and the *Members' Entitlements Handbook* (1 July 2022) in relation to the use of public resources, to clarify the limited circumstances in which it is acceptable to intermingle parliamentary duties with personal or private activities. In particular, this review should address the use of:
- parliamentary staff
 - parliamentary offices
 - stationery
 - allowances relating to travel.

Recommendation 4

- 1.15. That the relevant parliamentary department reviews and amends the Code of Conduct for Members' Staff, in relation to the use of public resources, to clarify the limited circumstances in which it is acceptable to intermingle parliamentary duties with personal or private activities. In particular, this review should address the use of:
- parliamentary staff
 - parliamentary offices
 - stationery
 - allowances relating to travel.

Recommendation 5

- 1.16. That the Presiding Officers and Department of Parliamentary Services ensure that relevant guidance material clarifies that the parliamentary crest and coat of arms, including on official letterheads and business cards, must only be used for parliamentary duties, and in accordance with established practices and conventions.

Recommendation 6

- 1.17. That the Presiding Officers review the Parliamentary Friendship Groups Policy and amend it to include a requirement that, in an active and timely manner, members keep each other informed of all activities involving a parliamentary friendship group, including:
- travel on behalf of the parliamentary friendship group
 - sending invitations
 - offering hospitality
 - offering assistance
 - hosting events and visitors
 - making representations on behalf of the friendship group.

Recommendation 7

- 1.18. To further clarify that the Code of Conduct for Members applies to parliamentary friendship groups, it is recommended:
- that the Presiding Officers strengthen the Parliamentary Friendship Groups Policy to specify that all activities undertaken by members under the auspices of a parliamentary friendship group must be in accordance with the Code of Conduct for Members and related guidelines and procedures
 - that the NSW Parliament's designated committees consider amending the Code of Conduct for Members to specifically mention that its application extends to activities involving parliamentary friendship groups.

Recommendation 8

- 1.19. That the NSW Government considers amending s 111E of the *Independent Commission Against Corruption Act 1988* to set requirements for the premier on behalf of the NSW Government and Presiding Officers of each House of Parliament to respond to the corruption prevention recommendations of the Commission.

Recommendation 9

- 1.20. That the NSW Government reviews the wording of clause 23 of the Constitution (Disclosures by Members) Regulation 1983 to ensure consistency with section 14A of the *Constitution Act 1902* (NSW).

Recommendation 10

- 1.21. That the Presiding Officers, NSW Parliament's designated committees and the relevant parliamentary departments devise a permanent ongoing professional education program for members.

Recommendation 11

- 1.22. That the Presiding Officers, NSW Parliament's designated committees and the relevant parliamentary departments ensure that the existing induction program and the ongoing education development program for members address the obligations and duties of elected public officials, including (but not limited to):
- a) principles and values that guide members in performing their public role
 - b) disclosing interests via registration
 - c) how to avoid, resolve and manage a conflict of interest
 - d) guidance on secondary employment or outside business interests
 - e) disclosing gifts and benefits
 - f) the prohibition on improper influence
 - g) guidance on the use of public resources
 - h) guidance on the proper use of confidential information

- i) enforcement mechanisms
- j) risks and processes relating to lobbying
- k) restrictions on post-parliamentary careers
- l) procedures for reporting suspected corrupt conduct.

Recommendation 12

- 1.23. That the NSW Parliament should incentivise participation in education, for example, by developing standards and publishing attendance records.

Recommendation 13

- 1.24. That letters and forms by the Clerk of the Legislative Assembly and the Clerk of the Legislative Council provided to members about their disclosure obligations contain clear warnings about potential consequences for non-compliance under the *Constitution Act 1902* (NSW), the Constitution (Disclosures by Members) Regulation 1983 and the *Independent Commission Against Corruption Act 1988*.

Recommendation 14

- 1.25. That the Presiding Officers and the relevant parliamentary departments review the training program for members' staff to ensure its content includes:
- the limits of the terms of their employment as outlined in the *Members of Parliament Staff Act 2013*, which stipulates that the role of a member of Parliament's staff is limited to assisting the member in exercising their functions as a member of Parliament
 - the content of the Code of Conduct for Members' Staff
 - the content of the Code of Conduct for Members
 - who to contact internally and externally for confidential advice about working for a member
 - the processes relating to making a public interest disclosure, both internally and externally under the *Public Interest Disclosures Act 1994* (and the *Public Interest Disclosures Act 2022*, once it is in force)
 - minimum or recommended training standards.

Recommendation 15

- 1.26. That the Presiding Officers and the relevant parliamentary departments ensure induction and regular ongoing training for members' staff (conducted at least every two years) and make such training mandatory.

Recommendation 16

- 1.27. That the Presiding Officers and the relevant parliamentary departments review and strengthen guidance for parliamentary and electorate staff with a view to minimising the risk of staff being asked by a member to support private activities or other misuse of their public office. Position descriptions should be reviewed accordingly. The *Electorate Office Guide* should be reviewed to ensure it includes guidance about:

- the role of electorate and/or parliamentary staff, including more detailed advice concerning what is acceptable assistance and what is not
- the *Members of Parliament Staff Act 2013*
- seeking advice and lodging a complaint.

Recommendation 17

- 1.28. That the NSW Government develops and publishes guidelines for the preparation and funding of business cases by government in respect of applications for grants by non-government entities.

Recommendation 18

- 1.29. That the NSW Government, the Presiding Officers, NSW Parliament's designated committees and the relevant parliamentary departments ensure that the induction and ongoing education programs for ministers and members address the management of political interests when exercising public power. For example, members should be aware that public power to appoint to a public office must be exercised for a public purpose, not for a private or a political purpose. Further, a public power cannot be exercised in relation to the location of a public facility because it will assist the re-election of a party member, rather than it being the proper place for it.
- 1.30. These recommendations are made pursuant to s 13(3)(b) of the ICAC Act and will be furnished to the NSW Government and/or the premier, the NSW Department of Premier and Cabinet (DPC),¹ the NSW Parliament's Legislative Assembly Standing Committee on Parliamentary Privilege and Ethics, the NSW Parliament's Legislative Council Privileges Committee (referred to above as NSW Parliament's designated committees), the Speaker of the Legislative Assembly, the President of the Legislative Council (referred to above as the Presiding Officers) and the relevant parliamentary departments.
- 1.31. As required by s 111E(2) of the ICAC Act, each of those recipients who is a public authority 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.
- 1.32. In the event a plan of action is prepared, each public authority 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.
- 1.33. 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.

Recommendation this report be made public

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

¹ The NSW Premier has announced that the DPC will be dissolved from 1 July 2023. It will be replaced by the Cabinet Office and a new separate Premier's Department.

Chapter 2: Background

- 2.1. This chapter sets out some background information on how the investigation conducted by the Commission came about, why the Commission decided to conduct two public inquiries, and how they were conducted.

How the investigation came about

- 2.2. This investigation commenced after the Commission lawfully intercepted telephone calls in May 2016 between Mr Maguire and Michael Hawatt, then an affected person in the Commission's Operation Dasha investigation.
- 2.3. In Operation Dasha, the Commission was investigating the conduct of council officers from the former Canterbury City Council, including whether certain public officials dishonestly and/or partially exercised their official functions in relation to planning proposals and/or applications concerning properties in the Canterbury City Council local area.² Mr Hawatt was then a councillor at Canterbury City Council until 12 May 2016, when that council was amalgamated with Bankstown Council.
- 2.4. In telephone calls between Mr Hawatt and Mr Maguire, they discussed potential property deals. Mr Maguire told Mr Hawatt that he had a "mega big" client who wanted 30 properties with approved development applications. Mr Hawatt nominated a property in the Canterbury area owned by a friend, and they discussed how much Mr Hawatt's friend might be prepared to pay Mr Hawatt for a sale. References in the telephone calls suggested that Mr Maguire was looking to share in that payment. In his evidence to the Commission in Operation Dasha, Mr Maguire accepted that was the case.
- 2.5. It became apparent that the "client" to which Mr Maguire was referring was Country Garden Australia Pty Ltd ("Country Garden"), the Australian arm of a Chinese development company.
- 2.6. At the time these calls were intercepted, Mr Maguire was a Liberal Party member of the NSW Legislative Assembly, representing the state seat of Wagga Wagga.
- 2.7. Records obtained by the Commission indicated that a Country Garden representative had communicated with Mr Maguire using the email address "g8waydaryl@gmail.com". The Commission also identified that there were references in Mr Maguire's parliamentary email account to investment opportunities with Country Garden, and records which suggested that

² The Operation Dasha report, *Investigation into the conduct of councillors of the former Canterbury City Council and others*, was published on 22 March 2021.



Mr Maguire had an active role and a financial interest in G8wayInternational Pty Ltd, a company which purported to facilitate deals between Chinese and Australian businesses. The Commission determined that no such association was disclosed in Mr Maguire's returns under the Constitution (Disclosures by Members) Regulation 1983 ("the Disclosure Regulation").

- 2.8. The Commission also identified examples where Mr Maguire had written letters using his parliamentary letterhead in support of people who appeared to be his business associates. There also appeared to be instances where Mr Maguire had, in his capacity as a member of Parliament and/or chair of the NSW Parliament Asia Pacific Friendship Group ("the APFG"), introduced the G8wayInternational director, Phillip Elliott, to potential business opportunities.

Why the Commission investigated

- 2.9. One of the Commission's principal functions, as specified in s 13(1)(a) of the ICAC Act, is to investigate any allegation or complaint that, or any circumstances which in the Commission's opinion imply that:
- (i) *corrupt conduct, or*
 - (ii) *conduct liable to allow, encourage or cause the occurrence of corrupt conduct, or*
 - (iii) *conduct connected with corrupt conduct,*
- may have occurred, may be occurring or may be about to occur.*
- 2.10. The role of the Commission is explained in more detail in Appendix 1, while Appendix 2 sets out the definition of corrupt conduct under the ICAC Act and explains how the Commission approaches the exercise of making corrupt conduct findings.
- 2.11. The conduct that the Commission identified in Operation Dasha gave rise to questions about whether Mr Maguire had misused his public office to progress business opportunities for his own personal benefit. These were circumstances which, in the Commission's opinion, implied that corrupt conduct may be occurring.
- 2.12. Because the conduct concerning Mr Maguire was not sufficiently related to the matters under investigation in Operation Dasha, the Commission determined that it should be investigated separately. On 9 February 2017, the Commission commenced a preliminary investigation.

Among other matters, the Commission's initial inquiries suggested that Mr Maguire had used his parliamentary staff to conduct G8wayInternational activities over a sustained period.

- 2.13. On 5 May 2017, the Commission determined that the matter should proceed to a full investigation. As the investigation progressed, the Commission identified new lines of inquiry, including in respect of Mr Maguire's participation in a scheme to introduce Chinese nationals to Wagga Wagga businesses for the purpose of assisting those nationals to obtain visas to live and work in Australia. The Commission formed the view that the conduct it identified Mr Maguire as having engaged in could constitute serious corrupt conduct within the meaning of the ICAC Act.

The First Public Inquiry

- 2.14. In December 2019, after considering each of the matters referred to in s 31(2) of the ICAC Act, the Commission determined pursuant to s 31 of the ICAC Act that it was in the public interest to conduct a public inquiry into the allegation concerning Mr Maguire. The commencement of the public inquiry was then delayed by the start of the COVID-19 pandemic.
- 2.15. The public inquiry into the allegation concerning Mr Maguire commenced on 21 September 2020 and concluded on 16 October 2020 ("the First Public Inquiry") and was held over 19 days. Assistant Commissioner, the Hon Ruth McColl AO SC, presided. Scott Robertson and Alex Brown appeared as Counsel Assisting the Commission. Evidence was taken from 26 witnesses.
- 2.16. Ms Berejiklian was one of 26 witnesses called to give evidence in the First Public Inquiry. In the course of the First Public Inquiry, both Ms Berejiklian and Mr Maguire gave evidence that they were in a "close personal relationship", a relationship which continued on their evidence until 13 September 2020, six days before the commencement of the First Public Inquiry.

Further investigations

- 2.17. Following the First Public Inquiry, the Commission became aware of further allegations concerning grants of public monies made to two Wagga Wagga institutions: in 2016 to the Australian Clay Target Association (ACTA) and on two occasions in 2018 to the Riverina Conservatorium of Music ("the RCM"). In both cases, Mr Maguire had been an enthusiastic advocate for the grants and Ms Berejiklian had presided over and/or been a member of Expenditure Review Committee (ERC) meetings which had approved them. The Commission became aware that she had not disclosed her close personal relationship with Mr Maguire in exercising her public official functions as treasurer and premier respectively regarding their approval.
- 2.18. In addition, during its investigation of Mr Maguire, the Commission had become aware of the relationship between Mr Maguire and Ms Berejiklian. The investigation revealed them discussing aspects of Mr Maguire's conduct that the Commission was investigating and Ms Berejiklian's participation in grant decisions favouring projects in his electorate. As the investigation progressed, it was apparent to the Commission that, having regard to Ms Berejiklian's senior positions in the government at the time of these decisions (treasurer, then premier) and the obligations attaching to those roles, her acts and omissions gave rise to questions as to whether she had: seriously misused her public offices; breached the NSW Ministerial Code of Conduct ("the ministerial code"); failed to exercise her duty under s 11 of the ICAC Act to report any matter that she suspected on reasonable grounds concerned, or may concern, corrupt conduct in relation to the conduct of Mr Maguire; and engaged in conduct that was liable to allow or encourage the occurrence of corrupt conduct by Mr Maguire such as could constitute serious corrupt conduct within the meaning of the ICAC Act.

The Second Public Inquiry

- 2.19. After conducting these further investigations and after considering each of the matters referred to in s 31(2) of the ICAC Act, the Commission determined on 30 September 2021, pursuant to s 31 of the ICAC Act, that it was in the public interest to conduct a further public inquiry for the purpose of investigating the Berejiklian allegations (“the Second Public Inquiry”).
- 2.20. The Second Public Inquiry was held over 11 days, commencing on 18 October 2021 and concluding on 1 November 2021. It continued the investigation into the Maguire allegation as well as investigating the Berejiklian allegations. Once again, Assistant Commissioner, the Hon Ruth McColl AO SC, presided. Scott Robertson and Alex Brown appeared as Counsel Assisting. Evidence was taken from 14 witnesses at the Second Public Inquiry.
- 2.21. Following the close of evidence, a timetable was set for the filing of written submissions by Counsel Assisting and submissions in response on behalf of affected persons. All submissions in response to the submissions of Counsel Assisting were to be provided to the Commission by 28 March 2022. Some parties requested and were granted an extension of time in which to make their submissions. Those submissions in response were received on 9 May 2022. Additional submissions were provided by the Commission to selected parties on discrete issues on 27 April 2022 and 6 October 2022. Respective responses were received on 4 May 2022 and 18 October 2022.
- 2.22. The preparation of this report concerned complex matters of law and fact. There were two public inquiries conducted over 30 days, more than 8,630 pages of transcripts, 708 exhibits and 957 pages of submissions to be considered.

Principal persons of interest

- 2.23. The principal persons of interest for Operation Keppel were Daryl Maguire and Gladys Berejiklian.
- 2.24. It is uncontroversial that at all relevant times in relation to the matters under investigation, each was a “public official” for the purposes of the ICAC Act by reason of their positions as members of Parliament.³

Daryl Maguire

- 2.25. Daryl Maguire was elected as a Liberal Party member of the NSW Legislative Assembly, representing the electorate of Wagga Wagga, on 27 March 1999. He resigned from Parliament on 3 August 2018. As the member for Wagga Wagga, a member of the Legislative Assembly and a parliamentary secretary, Mr Maguire was a “public official” within the meaning of that term in s 3(1) of the ICAC Act during the period in which he held those offices.
- 2.26. Mr Maguire was in opposition for his first 11 years in Parliament. On 7 April 2003, he was appointed as opposition whip, a position he held for seven years, 11 months and 24 days. Following the state election in March of 2011, when a Liberal–National Coalition led by the Hon Barry O’Farrell was elected to govern the state, Mr Maguire was appointed as government whip, a position he held for two years, 10 months and 27 days.
- 2.27. On 24 February 2014, Mr Maguire was appointed by then premier Mr O’Farrell as a parliamentary secretary to the premier for rural and regional affairs. Parliamentary secretaries

³ Section 3(1), ICAC Act.

assist the premier and/or ministers in the exercise of their functions and, in particular, their parliamentary ones (as the title “parliamentary secretary” suggests).⁴

- 2.28. A person holding office as parliamentary secretary ceases to hold that office, relevantly, “if the person by whom he was appointed as such ceases to be Premier” (s 38D(b), *Constitution Act 1902*).
- 2.29. Mr O’Farrell stood down as premier on 17 April 2014. Michael (Mike) Baird became premier on 17 April 2014. Accordingly, Mr Maguire’s appointment as parliamentary secretary by Mr O’Farrell ceased. On 6 May 2014, Mr Baird appointed Mr Maguire as parliamentary secretary to the premier for rural and regional affairs. On 24 April 2015, Mr Baird appointed Mr Maguire parliamentary secretary for veterans and the centenary of ANZAC, a position he held for four months and three days. On 26 August 2015, Mr Baird appointed him parliamentary secretary for corrections, emergency services, veterans and the centenary of ANZAC, a position he held until 23 January 2017, when Mr Baird ceased being premier.
- 2.30. Ms Berejiklian became premier on 23 January 2017. On 1 February 2017, Ms Berejiklian appointed Mr Maguire parliamentary secretary for the centenary of ANZAC, counter terrorism, corrections and veterans, a position he held until 13 July 2018 when he resigned from his then role as a parliamentary secretary and from the parliamentary Liberal Party after he gave evidence in Operation Dasha and moved to the crossbench.
- 2.31. Mr Maguire received additional remuneration and expense allowances in respect of the positions he held as whip (both in opposition and in government) and as parliamentary secretary (*Parliamentary Remuneration Act 1989* (NSW), s 3, s 6, Schedule 1).
- 2.32. Mr Maguire was also the chair of the APFG from 21 June 2011 until his resignation from Parliament on 3 August 2018.
- 2.33. The examination of Mr Maguire’s conduct in this report should be understood in the context of Mr Maguire’s acceptance that he was aware throughout the time he was a member of Parliament that:
- 2.33.1. he had an obligation not to use his position to promote his own pecuniary interests or those of persons close to him in circumstances where there was a conflict or a real or substantial possibility of conflict between those interests and his duty to the public
 - 2.33.2. he had an obligation not to use his influence as a member of Parliament to seek to affect a decision by a public official to further his private interests or those of an associate
 - 2.33.3. he was bound by the Code of Conduct for Members (“the members’ code”), which imposed responsibilities on him:
 - 2.33.3.1. to maintain the public trust placed in him by performing his duties with honesty and integrity, respecting the law and the institution of Parliament and using his influence to advance the common good of the people of NSW
 - 2.33.3.2. to declare any gifts and benefits
 - 2.33.3.3. to ensure that public resources were only deployed in accordance with relevant guidelines and rules

⁴ For a brief outline of the office of parliamentary secretary in NSW, see A Twomey, *The Constitution of New South Wales*, Federation Press, Sydney, 2004, 708–709; see also Department of Premier and Cabinet (NSW), *Ministers’ Office Administration Handbook*, August 2013, section 7.

- 2.33.4. he had obligations to make disclosures under the Disclosure Regulation, including to disclose all sources of income, the receipt of any gifts, contributions made to his travel expenses, and any engagement to provide any service that involved the use of his parliamentary position to assist a client
- 2.33.5. he could make discretionary disclosures under the Disclosure Regulation, even if there was not a technical duty to disclose in a particular area.
- 2.34. Further, from 20 September 2014, when the ministerial code came into force, parts of which applied to Mr Maguire in his various capacities as a parliamentary secretary, Mr Maguire was aware of his obligations under that code to:
- 2.34.1. not act dishonestly, to act only in accordance with what he considered to be the public interest, and not to act improperly for his private benefit or the private benefit of any other person in the exercise or performance of his official functions
- 2.34.2. not knowingly conceal a conflict of interest from the premier
- 2.34.3. not improperly use public property, services or facilities for the private benefit of himself or any other person
- 2.34.4. provide to the premier a copy of his returns under the Disclosure Regulation, as well as to provide continuous disclosure and continuous updating of any events that would ultimately be required to be disclosed under that regulation as soon as practicable.

Gladys Berejiklian

- 2.35. Ms Berejiklian was elected as a Liberal Party member of the NSW Legislative Assembly, representing the electorate of Willoughby, on 22 March 2003. In 2013, Ms Berejiklian was minister for transport, a position to which she was appointed by then premier Mr O'Farrell in 2011. She held that position for four years, until 2 April 2015. In 2014, she was also appointed minister for the Hunter, a position she also held until 2 April 2015. On 2 April 2015, she was appointed treasurer and minister for industrial relations. On 23 January 2017, she became premier of NSW and relinquished her positions as treasurer and minister for industrial relations. She resigned as premier on 5 October 2021, and from Parliament on 20 December 2021.

Conduct of the investigation

- 2.36. During the investigation, the Commission:
- obtained documents and information from various sources by issuing 184 notices and summonses under s 21, s 22 and s 35 of the ICAC Act requiring the production of documents
 - executed four search warrants under s 40 of the ICAC Act
 - conducted 50 compulsory examinations by issuing summonses pursuant to s 35 of the ICAC Act
 - interviewed and/or took statements from numerous potential witnesses.

Witness credibility

- 2.37. During this investigation, the Commission heard evidence from a large number of witnesses, some of whom gave evidence on more than one occasion. Aside from independent or objective evidence against which the credibility of witnesses may be assessed, including contemporaneous notes or other records – such as lawfully intercepted telephone calls, emails and text messages, evidence given by disinterested witnesses, the incontrovertible facts and the probabilities involved – the Commission adopts assessments made by the presiding Assistant Commissioner, the Hon Ruth McColl AO SC, who has had regard to other factors in determining the credibility of a witness and the evidence they gave. These factors include the responsiveness or otherwise of answers, a reluctance or otherwise to make appropriate concessions, whether the evidence given was direct or obfuscatory, and whether the witness was cooperative or argumentative.
- 2.38. Assessments as to witness credibility and reliability are important factors for the Commission to consider in properly weighing the evidence and making findings of fact that are available on that evidence. Witness assessments are included in the relevant chapters of this report.

Chapter 3: The regulatory context

- 3.1. The conduct of members of Parliament is regulated by statute, the common law and codes of conduct.

The Constitution Act 1902 (NSW)

- 3.2. In NSW, the premier and other ministers of the Crown are appointed by the governor from among the members of the Executive Council and hold office during the governor's pleasure – see s 35E of the *Constitution Act 1902* (NSW) (“the Constitution Act”).
- 3.3. The premier may, from time to time, appoint a member or members of either House of Parliament to hold office as parliamentary secretary (s 38B, Constitution Act). A parliamentary secretary shall have and may perform such functions as the premier may, from time to time, determine in respect of that person (s 38C, Constitution Act). A person holding office as parliamentary secretary ceases to hold that office, among other matters, if the person by whom the parliamentary secretary was appointed as such ceases to be premier or upon the day appointed for the taking of the poll for the general election of members of the Legislative Assembly next following the parliamentary secretary's appointment to hold that office (s 38D(1)(b) and (f), Constitution Act).⁵
- 3.4. As already stated, Mr Maguire held a position as a parliamentary secretary in various capacities from 2014 until 13 July 2018.

Section 14(A) of the Constitution Act

- 3.5. One way of seeking to regulate potential conflicts of interest is the creation of registers of members' interests, which now exist in NSW, at federal level and in all other states and territories, variously described as such or as codes of conduct. As Professor Graeme Orr, of the University of Queensland Law School, has observed, “registers of members' interests adapt an idea, common to the law of trusts and fiduciary duties, that a person in a fiduciary position should reveal their personal interests. Such disclosure also encourages divestment of interests that don't pass the smell-test. The primary purpose of MPs' registers is thus publicisation of interests to inform public scrutiny and debate. They rely on informed questioning by the media and political rivals. Usually, the focus is on potential conflicts of interest and duty, especially regarding financial and business dealings, roles and obligations.”⁶

⁵ See generally *Ministers' Office Administration Handbook*.

⁶ G Orr, “Parliamentary Disqualification for Financial Conflicts” (2019) 47:4 *Federal Law Review* 583 at 597.

3.6. Section 14(A) of the Constitution Act has at all times relevant to Mr Maguire provided:

14A Disclosure of pecuniary interests and other matters by Members

(1) The Governor may, subject to subsections (4) and (5), make regulations for or with respect to—

(a) the disclosure by Members of either House of Parliament of all or any of the following pecuniary interests or other matters—

(i) real or personal property,

(ii) income,

(iii) gifts,

(iv) financial or other contributions to any travel,

(v) shareholdings or other beneficial interests in corporations,

(vi) partnerships,

(vii) trusts,

(viii) positions (whether remunerated or not) held in, or membership of, corporations, trade unions, professional associations or other organisations or associations,

(ix) occupations, trades, professions or vocations,

(x) debts,

(xi) payments of money or transfers of property to relatives or other persons by, or under arrangements made by, Members,

(xii) any other direct or indirect benefits, advantages or liabilities, whether pecuniary or not, of a kind specified in the regulations,

(b) prescribing the manner in which, and the times at which, pecuniary interests or other matters shall be disclosed and providing for the verification by statutory declaration or otherwise of any such disclosure, and

(c) the compilation and maintenance of registers of pecuniary interests or other matters disclosed by Members of either House of Parliament and the inspection and publication of any such register.

(2) If a Member of either House of Parliament wilfully contravenes any regulation made under subsection (1), that House may, in accordance with subsection (3), declare his seat vacant and the seat of the Member shall thereupon become vacant.

(3) A declaration under subsection (2) shall—

(a) specify the circumstances that constitute the contravention,

(b) declare that the House is of the opinion that the contravention is of such a nature as to warrant the seat of the Member being declared vacant, and

(c) be made in accordance with such Standing Rules and Orders of the House as may regulate the making of the declaration.

(4) A regulation shall not be made under subsection (1) for or with respect to the disclosure by Members of either House of Parliament of pecuniary interests or other matters unless it applies in the same way to the disclosure by Members of the other House of Parliament of pecuniary interests or other matters.

(5) The Governor shall, before making a regulation under subsection (1)—

(a) afford any committee of either House of Parliament established for the purpose an opportunity of considering and making representations with respect to the proposed regulation, and

(b) take into account any such representations.

(6) Notwithstanding anything to the contrary in the Interpretation Act 1987 or any other Act, a regulation made under subsection (1), or any part thereof, shall not cease to have effect upon its disallowance by either House of Parliament unless it has previously been disallowed by the other House of Parliament.

(7) The publication, pursuant to any regulation made under subsection (1), of a register of pecuniary interests or other matters disclosed by Members of either House of Parliament shall, for the purposes of the Parliamentary Papers (Supplementary Provisions) Act 1975, be deemed to have been authorised by that House.

- 3.7. Section 14A(1) “was inserted into the Constitution Act as a result of a referendum held on 19 September 1981 which received overwhelming public support”.⁷ According to then premier Neville Wran (who introduced the Bill that became the Act which inserted s 14A into the Constitution Act), that provision was inserted to enable “[t]he establishment of a scheme whereby members of Parliament can be seen to be above reproach”.⁸

Constitution (Disclosures by Members) Regulation 1983

- 3.8. In exercise of the power under s 14A(1) of the Constitution Act, the governor made the Disclosure Regulation. The 2010 *Legislative Assembly Handbook* described the scheme established by the Disclosure Regulation as “a key mechanism to address any potential conflict of interest between a Member’s public and private interests”.
- 3.9. Part 2 of the Disclosure Regulation deals with the lodgement of returns by members. On joining Parliament, a new member must lodge a primary return within three months after the date on which he or she takes the pledge of loyalty required by s 12 of the Constitution Act (clause 4). Thereafter, clause 6 of the Disclosure Regulation requires a member to lodge an ordinary return before 1 October each year or such other date set by the regulation.
- 3.10. Commencing from calendar year 2008, clause 6A required a member to lodge a supplementary ordinary return on or before 31 March each year or such other date set by the regulation, if the Member had lodged either of the following returns (a previous return) being (a) an ordinary return in respect of the ordinary return period ending on 30 June of the previous year, or (b) a primary return for which the primary return date was after 30 April but before 1 October of the previous year. For the purposes of making disclosures in a supplementary ordinary return, the disclosure provisions in Part 3 of the Disclosure Regulation apply, suitably modified to reflect the fact that

⁷ A Twomey, *The Constitution of New South Wales*, The Federation Press, 2004, at 445.

⁸ NSW Parliament, *Parliamentary Debates*, 13 April 1981, 5710 (Premier Neville Wran).

they are being used in relation to a supplementary ordinary return (clause 6A(4)). A member can also make a disclosure by lodging a discretionary return at any time (clause 6B). The Disclosure Regulation requires members to submit disclosure forms twice a year, even if the member had no interests to disclose (clause 22).

- 3.11. Part 3 of the Disclosure Regulation sets out the disclosure requirements in relation to pecuniary interests.
- 3.12. Clause 9 deals with the disclosure of sources of any income which exceeds \$500 (clause 9(3)). A member is required to disclose in a primary return each source of income that the member receives, or is reasonably expected to receive, in the period commencing on the primary return date and ending on the next succeeding 30 June, and in an ordinary return each source of income received by the member at any time during the ordinary return period (clause 9(1)). Such income was required to be disclosed if it was income from being an employee of another person (including an employee of a corporation) (clause 9(2)(a)), income from being the holder of another office (including the holder of an office in a corporation or other body) (clause 9(2)(b)), income from a partnership the member had entered into with other persons (clause 9(2)(c)), income for a service provided under any other kind of contract, agreement or arrangement (clause 9(2)(d)), income from a trust (clause 9(2)(e)) and any other income (clause 9(2)(f)). In the case of each source of income received, or reasonably expected to be received, the member is required to provide particulars of how and from whom the income was, or was reasonably expected to be, received.
- 3.13. Without limiting clause 9(2), if the source of income is, or is reasonably expected to be, received from the member's employer (including where the employer is a corporation), or for an office held by a member in a body (including where the body is a corporation), or under a contract or any other agreement, and the member knows that the source of income is, or is reasonably expected to be, received for the provision by the member of any service involving the use of the member's parliamentary position, the disclosure required by clause 9(1) in relation to that source of income is required to include a description reasonably sufficient to identify the business carried on by the employer, body or other party to the contract or agreement (as the case may be) (clause 9(2A)).
- 3.14. Members' disclosures are recorded in a "Register of Disclosures by Members" compiled and maintained by the clerk of each House pursuant to Part 4 of the Disclosure Regulation (clauses 17 and 18).
- 3.15. A Register of Disclosures by Members is open to public inspection at the office of the clerk required to compile and maintain the register between the hours of 10.00 am and 4.00 pm on any day except Saturday, Sunday or a day which is a public holiday throughout NSW (clause 20(1)). It is open to inspection by members at the office of the clerk of the respective Houses required to compile and maintain the register at any time the register is open for public inspection under subclause (1) and, in the case of each House, at any time that House is sitting (clause 20(2)).
- 3.16. In the case of each House, the clerk is required to furnish to the Presiding Officer for tabling a copy of the Register of Disclosures by Members, within 21 sitting days after the last day for lodgement of primary returns under clause 4, and, within 21 sitting days after the last day for lodgement of ordinary returns under clause 6, a copy of that part of the Register of Disclosures by Members not previously tabled (clause 21(2)). A register tabled in either House is required to be published as a parliamentary paper by the government printer (clause 21(4)).
- 3.17. Clause 23 of the Disclosure Regulation provides that "A contravention of this Regulation shall not attract any criminal or civil liability, except to the extent expressly provided by section 14A of the [Constitution] Act". Clause 23 has not been amended since it was gazetted on 6 May 1983. Its efficacy is discussed later in this chapter under the heading "Jurisdiction".

Common law

Duty of parliamentarians

- 3.18. Both Mr Maguire and Ms Berejiklian were members of the Legislative Assembly. As such, as Kiefel CJ, Bell and Edelman JJ explained in *Re Day [No 2]*, they had “a duty as a representative of others to act in the public interest”. In their Honours’ view, this duty is an aspect of representative parliamentary democracy and includes “an obligation to act according to good conscience, uninfluenced by other considerations, especially personal financial considerations”.⁹ Much earlier, in *R v Boston*, which concerned the conduct of a member of the NSW Legislative Assembly, Isaacs and Rich JJ wrote that the “general duty of a member of the Legislative Assembly has been described as being ‘to serve and, in serving, to act with fidelity and with a singlemindedness for the welfare of the community’”.¹⁰ Their Honours also described a parliamentarian’s duties as being “...of a transcendent nature and involve the greatest responsibility, for they include the supreme power of moulding the laws to meet the necessities of the people, and **the function of vigilantly controlling and faithfully guarding the public finances**” (emphasis added).¹¹
- 3.19. Professor Paul Finn has described the duty in a passage relied upon in Ms Berejiklian’s submissions, as a “fiduciary duty of loyalty,”¹² while in *Obeid v R*, the NSW Court of Criminal Appeal referred to it as a duty “analogous to that of a fiduciary”.¹³
- 3.20. Discussion of the genesis of these observations concerning the obligations members of Parliament owe to the public often commences with a trilogy of cases decided early in the 20th century: *Wilkinson v Osborne*,¹⁴ *Horne v Barber*¹⁵ and *The King v Boston*.¹⁶ The first two cases were civil cases, but in *R v Boston* three persons were charged with unlawfully conspiring to give money corruptly to a member of the NSW Legislative Assembly, to use his position as such member to place “pressure” on a minister to enter into certain land acquisition agreements.
- 3.21. Meagher JA summarised the effect of these cases in *Sneddon v State of New South Wales* as follows:

[218] *The general duty of a member of the Legislative Assembly has been described as being “to serve and, in serving, to act with fidelity and with a single-mindedness for the welfare of*

⁹ (2017) 263 CLR 201; [2017] HCA 14 (at [49]).

¹⁰ *R v Boston* (1923) 33 CLR 386 at 400; [1923] HCA 59 per Isaacs and Rich JJ, cited by Meagher JA in *Sneddon v State of New South Wales* [2012] NSWCA 351 (at [218]); in *Re Day [No 2]*, Kiefel CJ, Bell and Edelman JJ referred with approval to Isaacs and Rich JJ’s statement in *R v Boston* concerning a “parliamentarian having a ‘single-mindedness for the welfare of the community’”; see also Keane J (at [179]) and Nettle and Gordon JJ (at [269]).

¹¹ *R v Boston* (at 401).

¹² PD Finn, *Abuse of Official Trust Conflict of Interest and Related Matters*, Integrity in Government Project, 2nd Report, Australian National University, Canberra, 1993, 3.

¹³ (2015) 91 NSWLR 226; [2015] NSWCCA 309 at [148] (*Obeid v R 2015*) per Bathurst CJ; Beazley P; Leeming JA, special leave refused: *Obeid v R* [2016] HCA 86.

¹⁴ (1915) 21 CLR 89; [1915] HCA 92.

¹⁵ (1920) 27 CLR 494; [1920] HCA 33.

¹⁶ (1923) 33 CLR 386; [1923] HCA 59.

the community”: per Isaacs and Rich JJ in *The King v Boston* [1923] HCA 59; 33 CLR 386 at 400. That service involves a duty to attend and vote and includes participation in the constitutional and parliamentary functions described above. From the member’s perspective those functions were described by Isaacs and Rich JJ in *The King v Boston* (at 401) as “moulding the laws to meet the necessities of the people, and the function of vigilantly controlling and faithfully guarding the public finances”; and by Isaacs J in *Horne v Barber* [1920] HCA 33; 27 CLR 494 at 500 as “watching on behalf of the general community the conduct of the Executive, of criticising it, and, if necessary, of calling it to account in the constitutional way by censure from his place in parliament”. Each of those functions is required to be performed by a judgment and conscience “uninfluenced, as far as possible, by other considerations, and least of all by those of a pecuniary nature”: per Lord Lyndhurst in *Egerton v Brownlow* (1853) 4 HLC 1 at 161; 10 ER 359 at 423 cited in *Wilkinson v Osborne* [1915] HCA 92; 21 CLR 89 at 94, 98; and in *Horne v Barber* at 499.¹⁷

- 3.22. A like statement as to parliamentarians’ duty to “act according to what they believe to be in the public interest and the interests of the electorate and . . . not use their position for the purpose of promoting their own pecuniary interests” was articulated by Beech-Jones J in *R v Obeid (No 2)*¹⁸ and approved on appeal in *Obeid v R 2015* where the Court of Criminal Appeal said “the duty enunciated by the primary judge substantially conformed with what had been said by Meagher JA in *Sneddon* at [218]”.¹⁹
- 3.23. Other relevant observations from these seminal cases include the following:
- 3.23.1 In *Wilkinson v Osborne*, Griffiths CJ also adopted Lord Lyndhurst’s statement in *Egerton v Brownlow* after the words Meagher JA cited, “. . . it follows that any application or disposition of property which has a tendency to interfere with the proper discharge of these duties must be at variance with the public good, and consequently illegal and void”.²⁰
- 3.23.2 In *Wilkinson v Osborne*,²¹ Isaacs J described members of Parliament who agreed for pecuniary consideration to use the weight and influence they possessed by virtue of their positions to put pressure on the government of which they were supporters to purchase certain lands as becoming the “sappers and miners” of the Constitution, instead of acting as “sentinels of the public welfare”. Isaacs and Rich JJ applied that passage in *R v Boston*.²²
- 3.23.3 In *Horne v Barber*, Knox CJ and Gavin Duffy J observed “[w]e think it unnecessary to determine whether Mr Deany undertook to use his position as a member of Parliament for the purpose of procuring a sale of the defendant’s land. So long as he remained a member of Parliament he could not, in our opinion, effectively divest himself of that

¹⁷ [2012] NSWCA 351.

¹⁸ [2015] NSWSC 1380 at [75].

¹⁹ At [148]–[149].

²⁰ (1853) 4 HLC 1 at 161; 10 ER 359 at 423 cited at (1915) 21 CLR 89 at 94, 98.

²¹ *Wilkinson v Osborne* (at 105).

²² *R v Boston* (at 403).

character in dealing with the Minister and the Board, and he in fact made no attempt to do so;”²³ Isaacs J wrote in like terms in *Horne v Barber*, when he said, “[w]hen a man becomes a member of Parliament, he undertakes high public duties. Those duties are inseparable from the position: he cannot retain the honour and divest himself of the duties.”²⁴

3.23.4 Also in *Horne v Barber*, Knox CJ and Gavin Duffy J approved both Lord Truro and Lord Brougham’s statements in *Egerton v Brownlow*, to the effect that “the law in such a case looks not to the probability of public mischief occurring in the particular instance, but to the general tendency of the transaction”.²⁵ This proposition finds reflection in Chan ACJ’s statement in *HKSAR v Ho Hung Kwan Michael*, that “[i]n cases where corruption, dishonesty or other illegal practices are involved, it is not necessary to specifically consider the consequences of the misconduct in deciding whether it is serious enough as to constitute the offence of misconduct in public office. The misconduct speaks for itself: the seriousness of the consequences of such corrupt, dishonest or illegal practices will be obvious”.²⁶

3.23.5 In *R v Boston*, Knox CJ made it clear that it did not matter whether the member of Parliament alleged to have acted corruptly so acted outside Parliament, rather than by using their position “by vote or speech in the Assembly”.²⁷ Beech-Jones J found to like effect in *R v Obeid (No 2)* (at [72]) as discussed further below.

3.24. In *Hocking v Director-General of the National Archives of Australia*, having observed that “[h]olders of high public offices ... have been described as ‘trustees of the public’” and that “[p]ublic powers to act in the performance of duties are said to be conferred ‘as it were upon trust’”, Edelman J observed “[t]hese **loose references to trusteeship** are expressions of the duty of loyalty owed by holders of public offices created ‘for the benefit of the State’. Like all implied duties of loyalty, the content of the duty falls to be determined against a background of general expectations, based upon custom, convention and practice, which impose upon the public officer ‘**an inescapable obligation to serve the public with the highest fidelity**’. **Thus, a member of Parliament has a duty to ‘act with fidelity and with a single-mindedness for the welfare of the community’**” (emphasis added).²⁸

3.25. Thus, while the invocation of the notion of “public trust” carries connotations of private trust law, as Edelman J made clear, such references do not mean private trust concepts should be uncritically applied in other contexts. Rather, the “public trust” concept, while related, is of a different character. As Counsel Assisting submitted, and as is evident from the foregoing and following discussion, a public trust is one in which public officers are entrusted with functions that may affect both the pecuniary and the non-pecuniary interests of members of the public.

²³ *Horne v Barber* (at 499).

²⁴ *Horne v Barber* (at 500); see also *R v Boston* (at 403) per Isaacs and Rich JJ.

²⁵ *Horne v Barber* (499 – 500); (footnotes omitted).

²⁶ (2013) 16 HKSAR 525 (at [29]), Mr Justice Ribeiro PJ, Mr Justice Tang PJ, Mr Justice Mortimer NPJ and Sir Thomas Gault NPJ agreeing; referred to with approval in *R v Obeid (No 2)* at [119].

²⁷ *R v Boston* (at 392–393).

²⁸ [2020] HCA 19; (2020) 94 ALJR 395 at [243].

That being so, non-pecuniary interests of public officials should be regarded as capable of creating conflicts that a public official might be required to avoid or manage. That is consistent with the High Court's acceptance in *Wilkinson v Osborne*, *Horne v Barber* and *Re Day [No 2]* of the obligation which devolves upon parliamentarians "to act according to good conscience, **uninfluenced by other considerations**, especially personal financial consideration" (emphasis added).²⁹

Section 8(1)(c), ICAC Act: breach of public trust

- 3.26. For the purposes of the ICAC Act, "corrupt conduct is any conduct which falls within the description of corrupt conduct in section 8, but which is not excluded by section 9" (s 7(1), ICAC Act).
- 3.27. For the purposes of this report, it is sufficient to refer first to s 8(1)(c) of the ICAC Act, which provides that "[c]orrupt conduct is ... any conduct of a public official or former public official that constitutes or involves a breach of public trust".
- 3.28. Accordingly, as Counsel Assisting submitted, it will be a "breach of public trust" for a public officer to breach their duty of loyalty by misusing or abusing their office. For example, it is a breach of public trust for a public official such as a member of Parliament to use, for private purposes, taxpayer-funded resources to which he or she is given access to perform public duties.³⁰ That is because such use falls beyond the purpose for which those resources were made available to the public official – they were made available for the benefit of the state, not for the benefit of the individual.
- 3.29. It should be noted, however, that there can be a breach of public trust, and accordingly, an offence of misconduct in public office (assuming other elements of the offence are satisfied), whether or not a parliamentarian (or other public official) benefits financially.³¹
- 3.30. This is because, "[o]fficial misconduct is not concerned primarily with the abuse of official position for pecuniary gain, with corruption in the popular sense. **Its object is simply to ensure that an official does not, by any wilful act or omission, act contrary to the duties of his office, does not abuse intentionally the trust reposed in him**" (emphasis added).³²
- 3.31. Thus, a "breach of public trust" for the purposes of s 8(1)(c) of the ICAC Act will also be committed where a public official breaches their duty of loyalty by exercising public functions in circumstances where there is a real possibility of conflict between the public official's public duties and her or his private interest.³³ This is consistent with the obligation of a member of Parliament being, as earlier explained, analogous to that of a fiduciary.

²⁹ *Wilkinson v Osborne* (at 94) per Griffith CJ; (at 98) per Isaacs J; *Horne v Barber* (at 499, 500) per Knox CJ and Gavan Duffy J; *Re Day [No 2]* (at [49]) per Kiefel CJ, Bell and Edelman JJ.

³⁰ See, for example, *State v Gleitsmann* 161 A.2d 747 (1960) in which the Superior Court of New Jersey, Appellate Division, held that use by a police officer of an official police car for his personal affairs was capable of constituting criminal misconduct in office, referred to in PD Finn's "Official Misconduct" (1978) 2 *Criminal Law Journal* 307 at 314.

³¹ See *Question of Law Reserved* (No 2 of 1996) (1996) 88 A Crim R 417, 418 per Doyle CJ, referring to Finn, above (at 308).

³² PD Finn, "Official Misconduct" (1978) 2 *Criminal Law Journal* 307 (at 308), approved in *Question of Law Reserved* (No. 2 of 1996) 88 A Crim R 417 (at 418) per Doyle CJ and by Sir Anthony Mason NPJ (with whom all members of the Court agreed) in *Shum Kwok Sher v Hong Kong Special Administrative Region* (2002) 5 HKCFAR 480; [2002] HKCFA 30 at [80].

³³ P Hall, *Investigating Corruption and Misconduct in Public Office: Commissions of Inquiry – Powers and Procedures* (2nd ed, 2019) ("Investigating Corruption") at [1.75].

- 3.32. In this respect, one of the fundamental duties of a private trustee (as it is of other private law fiduciaries) is the “no conflict” duty or “conflict” rule which requires a private trustee not to “place himself [or herself] in a position where his [or her] duty and interest may conflict”.³⁴
- 3.33. If the public official acts dishonestly, corruptly or in a partial manner in exercising an official power for a purpose other than that for which the power was granted, then there is a breach of public trust, **regardless of “whether the act done might, upon full and mature investigation, be found strictly right”** (emphasis added).³⁵ This is because official misconduct does not concern “the correctness or otherwise of the decision as an exercise of official power, but is, rather, the state of mind which informed the decision ... the ‘motive’ will always be offensive when the official wilfully deviates from a proper exercise of power and a proper discharge of duty in order to pursue some unauthorised end”.³⁶
- 3.34. It is “misconduct” for the purposes of the offence of misconduct in public office for parliamentarians to fail to comply with their “duty as a representative of others to act in the public interest ... uninfluenced by other considerations, especially personal financial considerations.”³⁷ Such conduct is engaged in “wilfully” where the accused knew or was reckless as to whether their conduct was “misconduct” but engaged in it in any event.³⁸ In considering the issue of wilfulness, it is relevant to take into consideration the standing and experience of the member of Parliament.³⁹

Misconduct in public office

- 3.35. A breach of public trust can constitute the offence of misconduct in public office for the purposes of s 9(1)(a) of the ICAC Act.
- 3.36. The object of the offence of misconduct in public office is to prevent public officers (in the case of misfeasance) from exercising their power in a corrupt and partial manner.⁴⁰ Its rationale and scope were summarised by Lord Millett NPJ in *Hong Kong Special Administrative Region v Wong Lin Kay*⁴¹ in the following passage:

³⁴ *Boardman v Phipps* [1967] 2 AC 46 at 123 per Lord Upjohn.

³⁵ *R v Borron* (1820) 3 B & Ald 433, 434; 106 ER 721, 721 per Abbott CJ.

³⁶ PD Finn, “Official Misconduct”, above, at 319.

³⁷ *Re Day [No 2]* at [49], referring to *Wilkinson v Osborne* at 98–99.

³⁸ See *Shum Kwok Sher v Hong Kong Special Administrative Region* (2005) 8 HKCFAR 192 at [46] per Mason NPJ with whom the remainder of the Court agreed; *Obeid v R 2017* at [31], [194].

³⁹ *Obeid v R 2017* where, in determining (at [194]) that “it was open to the jury ... to reach the conclusion beyond reasonable doubt that Mr Obeid knew his conduct was unlawful or he foresaw that that was a possibility”, Bathurst CJ observed (at [196]) that “Mr Obeid at the relevant time was a parliamentarian of 16 years standing and had been a Minister for four of those years. It is inconceivable that a politician of that standing and experience did not know that his duty was to serve the public interest and that he was not elected to use his position to advance his own or his family’s pecuniary interests. Whilst it would not be enough for the jury to be satisfied that he knew what he did was morally and ethically wrong, it does seem to me that the jury was entitled to conclude that he knew what he was doing was wrong in law, or at least recognised the risk that it was unlawful and proceeded in any event.”

⁴⁰ *Obeid v R* (2017) 96 NSWLR 155; [2017] NSWCCA 221 (*Obeid v R 2017*) at [68] per Bathurst CJ (at [79]); Leeming JA, R A Hulme, Hamill and N Adams JJ agreeing.

⁴¹ (2012) 15 HKCFAR 185; [2012] 2 HKLRD 898.

[45] Every such power, duty, discretion or responsibility is granted for the benefit of the public and for a public purpose. For the person having such a power, duty or responsibility to exercise it or refrain from exercising it for his or her own private purposes, whether out of malice, revenge, friendship or hostility, or for pecuniary advantage is an abuse of power and amounts to the offence of misconduct in public office.

[46] The expression “misconduct in public office” is a compound one. It is a mistake to treat it as involving two distinct questions: (i) was the accused the holder of a public office and (ii) did the conduct of which he or she stands accused consist of misconduct in the performance of that office? **There is in reality only one question: did the conduct with which the accused is charged consist of an abuse of a power, duty or responsibility entrusted to him or her and exercisable for the public good?** Splitting the question into two gives rise to two dangers; (i) that the question whether the accused was the holder of a public office may be directed to the status of the accused when it should be directed to his or her functions; and (ii) that it may overlook the fact that the misconduct with which the accused is charged must consist of an abuse of the powers, duties and responsibilities involved in the performance of those functions.⁴² (Emphasis added)

- 3.37. The nature and scope of the offence of misconduct in public office have been considered in several recent cases concerning Edward Obeid Sr, formerly a member of the Legislative Council of NSW, who was charged with that offence: *R v Obeid (No 2)*⁴³ (a decision at first instance of Beech-Jones J), *Obeid v R 2015* (a decision of the Court of Criminal Appeal on appeal from *R v Obeid (No 2)*) and in 2017, *Obeid v R* (a decision of the Court of Criminal Appeal on Mr Obeid’s appeal from his conviction).⁴⁴

Obeid 2015 – challenge to the indictment

- 3.38. Mr Obeid sought to have set aside, stayed or quashed an indictment charging him with misconduct in public office as follows:

Between 1 August 2007 and 30 November 2007 in Sydney in the State of New South Wales, then holding public office as a Member of the Legislative Council of New South Wales [he] did in the course of or connected to his public office wilfully misconduct himself by making representations to Stephen Paul Dunn, the Deputy Chief Executive Officer and General Manager, Maritime Property Division of the Maritime Authority of New South Wales, with the intention of securing an outcome from the said Maritime Authority favourable to Circular Quay Restaurants Pty Ltd in respect of its tenancies of properties at Circular Quay knowing at the time he made the representations that he had a commercial and/or beneficial and/or family and/or personal interest in the said tenancies which he did not disclose to Stephen Paul Dunn.

- 3.39. One of Mr Obeid’s challenges to the indictment was to question whether the scope of his functions as a parliamentarian extended to his dealings with the executive outside of Parliament and the nature and content of any duty that he may have breached.⁴⁵

⁴² Paragraph [46] of Lord Millett’s reasons was cited with approval by Bathurst CJ in *Obeid v R 2017* (at [71]).

⁴³ [2015] NSWSC 1380 (*Obeid (No 2)*).

⁴⁴ *Obeid v R* (2017) 96 NSWLR 155; [2017] NSWCCA 221 (*Obeid v R 2017*).

⁴⁵ *Obeid (No 2)* at [63].

In this respect, Beech-Jones J considered *Wilkinson, Horne and Boston*. His Honour noted the “direct analogy” Rich J drew in *Horne* between the position of a member of Parliament and the duties of a trustee (“the responsibility of the trust towards the public implied by the position of the representative of the people” (at 501)) and Isaacs and Rich JJ’s judgment in *Boston* referring to “the ‘fundamental obligation’ of members of Parliament being the duty to serve and, in serving, to act with *fidelity* and with a single-mindedness for the welfare of the community”.⁴⁶ He held that these cases established that the scope of a parliamentarian’s functions and responsibilities extended beyond attending and participating in Parliament and its proceedings, and that the parliamentarian would be held to have acted as such save in circumstances where it was plain the member of Parliament was dealing with the executive in a purely personal capacity, such as in relation to their taxation or licences.⁴⁷

- 3.40. Insofar as a parliamentarian’s duties in exercising these functions were concerned, Beech-Jones noted that the language and analysis of *Wilkinson, Horne and Boston* was “analogous to that applied to fiduciaries”. His Honour then said:

[75] Just as with the duties of a fiduciary, the various statements in Wilkinson, Horne and Boston as to the nature and scope of a parliamentarian’s duty reduce to a negative obligation not to use their position to promote their own pecuniary interests (or those of their families or entities close to them) in circumstances in which there is a conflict, or a real or substantial possibility of a conflict, between those interests and their duty to the public.

[76] On this approach, and subject to hearing from the parties in this case, the jury would be instructed that the functions of MLCs [members of the Legislative Council] extend to scrutinising the executive government of this State including the actions of Maritime. They would also be instructed that, unless it is self-evident that an MLC is only dealing with the executive in their personal capacity, an MLC’s functions extend to communicating with government Departments. Further, the jury would be instructed that, in so dealing, MLCs must not promote their own pecuniary interests (or those of their families or entities close to them) in circumstances in which there is a conflict, or a real or substantial possibility of a conflict, between those interests and their duty to the public. It would also follow that the jury would have to be instructed that, to conclude that Mr Obeid wilfully misconducted himself, they would have to be satisfied that in the circumstances he knew or was reckless that he was precluded from using his position to make representations to the Executive or its employees for the purpose of financially benefiting himself or members of his family or entities closely associated with himself or members of his family, but nevertheless chose to do so.⁴⁸

- 3.41. Mr Obeid appealed his Honour’s decision.⁴⁹ The first issue on that appeal was the NSW Supreme Court’s jurisdiction to hear and determine the charge. How the Court of Criminal Appeal resolved that issue is dealt with below in the context of Mr Maguire raising the issue of the jurisdiction of the Commission to investigate contraventions of the Disclosure Regulation.

⁴⁶ *Obeid (No 2)* at [68], [70].

⁴⁷ *Obeid (No 2)* at [72], [79].

⁴⁸ *Obeid (No 2)* at [79].

⁴⁹ *Obeid v R 2015*.

- 3.42. Relevantly for present purposes, Mr Obeid challenged Beech-Jones J's application of *R v Quach* as correctly identifying the elements of the offence of misconduct in public office,⁵⁰ and also contended that Beech-Jones J had erred in formulating the duty owed by Mr Obeid.⁵¹
- 3.43. The *R v Quach* formulation of the elements of the offence of misconduct in public office are as follows:
- 3.43.1. *a public official;*
 - 3.43.2. *in the course of or connected to his public office;*
 - 3.43.3. *wilfully misconducts himself; by act or omission, for example, by wilfully neglecting or failing to perform his duty;*
 - 3.43.4. *without reasonable excuse or justification; and*
 - 3.43.5. *where such misconduct is serious and meriting criminal punishment having regard to the responsibilities of the office and the officeholder, the importance of the public objects which they serve and the nature and extent of the departure from those objects.*⁵²
- 3.44. Mr Obeid submitted that having regard to other paragraphs in the judgment in *R v Quach* the formulation in [46] could not be accepted at face value. The Court rejected that submission, observing that “it is difficult to see how the judgment could have been clearer”.⁵³
- 3.45. The indictment did not identify a duty owed by Mr Obeid, nor did the statement of the Crown case. However, in answer to a request for particulars from Mr Obeid, the Crown stated that it asserted a breach of duty by Mr Obeid as amounting to his wilful misconduct.⁵⁴
- 3.46. Mr Obeid also challenged Beech-Jones J's formulation of the duty at [75]–[76] set out above on the basis that “[S]o far as it is a duty owed by a fiduciary, only fiduciaries owe duties of that kind and we have submitted that a parliamentarian is not a fiduciary within that realm of discourse.”⁵⁵ He did not take issue with Beech-Jones J's description of a fiduciary's duties as a “negative obligation”.
- 3.47. The Court of Criminal Appeal also rejected this ground of appeal. It observed that Beech-Jones J had not found that members of Parliament were fiduciaries but, rather, had gone “out of his way to state that the duty encapsulated by him was merely analogous to that of a fiduciary”. Their Honours added that “[t]he duty enunciated by the primary judge substantially conformed with what had been said by Meagher JA in *Sneddon* at [218]”. Finally on this point, the Court observed, “...there was not on any fair reading of the reasons a finding that a member of Parliament was a fiduciary in the strict private law sense on which Mr Obeid's submissions rested”.⁵⁶

⁵⁰ *Obeid v R (No 2)* at [86]–[98].

⁵¹ *Obeid v R (No 2)* at [63]–85].

⁵² (2010) 27 VR 310; [2010] VSCA 106 (at [46]) per Redlich JA (Ashley JA and Hansen AJA agreeing).

⁵³ *Obeid v R 2015* at [136].

⁵⁴ *Obeid v R 2015* at [143].

⁵⁵ *Obeid v R 2015* at [146].

⁵⁶ *Obeid v R 2015* at [148].

Their Honours did not expressly adopt Beech-Jones J's description of a fiduciary's duty. To the extent they aligned Beech-Jones J's reasons with those of Meagher JA in *Sneddon*,⁵⁷ where there is no reference to a confined "negative obligation", it is apparent they did not endorse such a proposition indirectly either.

3.48. The Court dismissed the appeal.

Obeid 2017– challenge to conviction

3.49. Mr Obeid was convicted at a trial before a jury over which Beech-Jones J presided. He appealed against his conviction and sentence. The issues on the conviction appeal were (a) whether the duty said to have been breached by the applicant was bad in law; (b) whether the charge was within the exclusive cognisance of the Parliament of NSW; (c) whether there was a misdirection on the element of "wilfulness"; (d) whether the finding on "wilfulness" was unreasonable or unsupported by the evidence; and (e) whether there was a misdirection on the element of "seriousness".

3.50. The question of how the Court of Criminal Appeal resolved the exclusive cognisance issue is dealt with below in the context of Mr Maguire raising the issue of the jurisdiction of the Commission to investigate contraventions of the Disclosure Regulation.

3.51. On the issue of whether the duty said to have been breached by the applicant was bad in law, Bathurst CJ observed that "the essence of Mr Obeid's argument was that even accepting that the offence can apply to a Member of the Legislative Council, engaging in conduct of the nature of that alleged in the indictment could not constitute such an offence". Of this submission, his Honour said:

*Members of parliament are appointed to serve the people of the state, including their constituents, and it would seem that a serious breach of the trust imposed on [Members of Parliament] by using their power and authority to advance their own position or family interests, rather than the interests of the constituents whom they are elected to serve, could constitute an offence of [misconduct in public office].*⁵⁸ (Emphasis added)

3.52. Bathurst CJ also rejected a submission by Mr Obeid that "the duty as encapsulated in the summing-up of the trial judge was a twofold or double duty". In his Honour's view, Beech-Jones J's formulation of the duty as being one to "act only according to what they believe to be in the public interest and the interests of the electorate and ... not use their position for the purpose of promoting their own pecuniary interests", accurately identified the issue involved in *Obeid v R 2017*. That issue was whether Mr Obeid, rather than acting in the interests of the public and the electorate, spoke to Mr Dunn for the purpose of advancing his or his family's pecuniary interests. His Honour accepted the Crown's submission that in the particular circumstances of the case, the manner in which the duty was formulated merely reflected its positive and negative elements.⁵⁹

3.53. Bathurst CJ next addressed a submission by Mr Obeid that the duty imposed on a parliamentarian was a matter of conscience and not subject to legal sanction.⁶⁰

⁵⁷ *Sneddon* at [218].

⁵⁸ *Obeid v R 2017* at [62], Leeming JA, R A Hulme, Hamill and N Adams JJ agreeing.

⁵⁹ *Obeid v R 2017* at [79].

⁶⁰ *Obeid v R 2017* at [63].

- 3.54. His Honour considered *Wilkinson* and *Horne v Barber*, observing that neither case involved criminal prosecutions, but that “in each of them the justices explained the high public duty imposed upon Members of Parliament and that the law would intervene when a breach occurred”. He observed that “[a]lthough each case only involved civil actions, nothing that was said indicated that in an appropriate case criminal sanctions could not apply”.⁶¹
- 3.55. Bathurst CJ then referred to *Obeid v R 2015*, and the references in that decision to Isaac and Rich JJ’s reasons in *R v Boston* (at 400) to the “fundamental obligation, which is the key to this case, [being] the duty to serve and, in serving, to act with fidelity and with a single-mindedness for the welfare of the community”. He also referred with approval to their Honours’ longer discussion (at 402–403) of the situation where an “intervention by a public representative [is] impelled by motives of personal gain”.⁶² His Honour noted the approval of those passages by the High Court in *McCloy v State of NSW*,⁶³ and in *Re Day*.⁶⁴
- 3.56. His Honour adopted McLachlin CJ’s reasons in *R v Boulanger* in which, writing for the Supreme Court of Canada and of s 122 of the Canadian Criminal Code which reflected the common law misdemeanour of misfeasance in public office, her Honour said (relevantly):
- The purpose of the offence of misfeasance in public office ... can be traced back to the early authorities that recognize that **public officers are entrusted with powers and duties for the public benefit. The public is entitled to expect that public officials entrusted with these powers and responsibilities exercise them for the public benefit. Public officials are therefore made answerable to the public in a way that private actors may not be.***⁶⁵ (Emphasis added)
- 3.57. Having referred to these authorities, Bathurst CJ held that “conduct such as that alleged in the indictment amounting to a breach of the duty of trust owed by a public officer, is capable of amounting to the offence of misconduct in public office provided the elements of wilfulness and seriousness referred to in *Quach* supra are made out”.⁶⁶
- 3.58. Later in his reasons, when considering Mr Obeid’s submission that Beech-Jones J had made a wrong decision on a question of law in respect of his directions on seriousness for the purposes of the fifth element in the offence of misconduct in public office, Bathurst CJ observed that a jury having found that Mr Obeid used his position solely for the purpose of advancing his or his family’s pecuniary interests and in breach of public trust, would inevitably conclude that it was a departure from acceptable standards.⁶⁷

⁶¹ *Obeid v R 2017* at [67].

⁶² *Obeid v R 2017* at [68].

⁶³ (2015) 257 CLR 178; [2015] HCA 34, per Gageler J (at [169]-[171]).

⁶⁴ (At [49]-[50]) per Kiefel CJ, Bell and Edelman JJ; also by Keane J and Nettle and Gordon JJ as to the fundamental obligations of a member of Parliament.

⁶⁵ *Obeid v R 2017* (at [70]); *R v Boulanger* [2006] 2 SCR 49 (at [52]); Bathurst CJ also repeated (at [70]) his reference to Meagher JA’s judgment in *Sneddon v State of NSW* (at [218]) and also referred with approval (at [71]) to the description of the offence by Lord Millett NPJ in *Hong Kong Special Administrative Region v Wong Lin Kay* (2012) 15 HKCFAR 185 at [46] and (at [72]) to the formulation of the duty in a direction by O’Byrne J in *The Queen v Clarke* (1954) 61 ALR 312 at 313.

⁶⁶ *Obeid v R 2017* at [73].

⁶⁷ See *Obeid v R 2017* at [230].

Section 8(1)(c), ICAC Act: proscriptive obligations

Ms Berejiklian's submissions

- 3.59. Ms Berejiklian submitted that properly understood, breach of public trust in s 8(1)(c) of the ICAC Act reduces to a negative obligation proscribing self-interested conduct, the correlative argument being that the submissions of Counsel Assisting contend for findings which are beyond the jurisdiction and institutional competence of the Commission.
- 3.60. To support her submission, Ms Berejiklian drew extensively on a series of publications written by Professor Paul Finn concerning the concept of "The Public Trust" in the late 1980s and early 1990s.⁶⁸ She contended that the concept of breach of public trust in s 8(1)(c) had been publicly acknowledged to have been inspired by the writings of Professor Finn,⁶⁹ and, thus, that his writings provide a useful and reliable guide to its meaning.
- 3.61. The public acknowledgment Ms Berejiklian cited was a reference to an article in the *Sydney Morning Herald* of 16 April 2014, entitled "ICAC Architect Gary Sturgess Should be a Household Name".⁷⁰ In that article, Mr Sturgess is identified as having been the head of the Cabinet Office at the time the Greiner government was seeking to establish a "standing anti-corruption body". He is said to have been "influenced" at law school by "Paul Finn, who went on to become a Federal Court judge, then a lecturer in equity [and] who had a special interest in 'public trust'". The author of the article then wrote, "You can see Finn's presence in one of the essential provisions of the ICAC legislation, section 8 dealing with what constitutes 'corrupt conduct': any conduct of a public official that 'constitutes or involves a breach of public trust'". That statement is not attributed to Mr Sturgess but appears to be the author's opinion. However broad the categories of extrinsic materials to which regard can be had in interpreting s 8(1)(c) of the ICAC Act,⁷¹ the Commission does not regard the newspaper article to which Ms Berejiklian referred, or Mr Sturgess' legal education, as assisting that process.
- 3.62. Ms Berejiklian placed heavy reliance on Professor Finn's assimilation of the role of the public official with that of the fiduciary, and the fiduciary duty of loyalty as foreclosing the opportunity to use official power and position to serve interests other than the public's interests.⁷² She also analysed *Wilkinson v Osborne*, *Horne v Barber* and *R v Boston* (see above), then focused on Beech-Jones J's judgment in *Obeid (No 2)*, in particular paragraph [75] of that judgment and the Court of Criminal Appeal's observation that what his Honour said "substantially conformed with what had been said by Meagher JA in *Sneddon*".
- 3.63. However, it must be noted that in *Obeid v R 2015*, in rejecting Mr Obeid's criticism of the duty formulated by Beech-Jones J, and as said above, the Court of Criminal Appeal was careful

⁶⁸ PD Finn, "The Forgotten 'Trust': The People and the State" in Cope (ed), *Equity: Issues and Trends*, Federation Press, 1995 (Counsel Assisting also referred to this essay); PD Finn, *Abuse of Official Trust: Conflict of Interest and Related Matters*, Integrity in Government Project, 2nd Report, Australian National University, 1993 ("Finn Report") in particular Appendix II: "Official Trust: The Criminal and Civil Law"; PD Finn, "Integrity in Government" (1992) 3 *Public Law Review* 243.

⁶⁹ Referring to S Gageler, "The Equitable Duty of Loyalty in Office", in T Bonyhady (ed), *Finn's Law: An Australian Justice*, The Federation Press, 2016, at 133.

⁷⁰ R Ackland, "[ICAC - it really ought not to exist](#)", *Sydney Morning Herald*, 24 May 2013, (smh.com.au).

⁷¹ See s 34, *Interpretation Act 1987* (NSW).

⁷² Finn Report at 3.

to point out that his Honour “did not find that members of Parliament were fiduciaries ... [rather his Honour] went out of his way to state that the duty encapsulated by him was merely analogous to that of a fiduciary ... [and] there was not on any fair reading of the reasons a finding that a member of Parliament was a fiduciary in the strict private law sense on which Mr Obeid’s submissions rested”.⁷³ Further, there was nothing in paragraph [218] of Meagher JA’s reasons in *Sneddon* which espoused a negative (or proscriptive) obligation in the sense for which Ms Berejiklian contends.

- 3.64. Ms Berejiklian also referred to *Howard v Commissioner of Taxation*,⁷⁴ a case concerning the question whether the appellant was liable to income tax on equitable compensation received in satisfaction of a judgment. The appellant alleged he was not so liable because he received the amount of equitable compensation as constructive trustee for a company of which he was a director. In their reasons rejecting that contention, and in the passage on which Ms Berejiklian relies for the reference to “proscriptive” duties, Hayne and Crennan JJ said, “As a director, the appellant was bound not to obtain any unauthorised benefit from the relationship and not to be in a position of conflict. **These obligations are peculiar to fiduciaries.** The obligations are proscriptive, not prescriptive. They are not quasi-tortious duties to act solely in the best interests of the principal” (emphasis added).⁷⁵
- 3.65. The Commission does not regard the reference to *Howard* as apt. First, their Honours were speaking of fiduciaries in the strict sense of the word. In the context of members of Parliament, the Court of Criminal Appeal has described their duty as “analogous to that of a fiduciary”.⁷⁶ Secondly, unlike the restriction on the scope of the director’s duty to which their Honours referred, Ms Berejiklian had “a duty as a representative of others to act in the public interest”, with “a singlemindedness for the welfare of the community”.⁷⁷ Embedded in the notion of acting in the public interest is the proposition that to do otherwise is a breach of public trust.
- 3.66. The utility of a proscriptive/prescriptive approach in relation to fiduciary duties was specifically rejected by Basten JA in *Duncan v ICAC*.⁷⁸ That case concerned, among other issues, whether certain of the appellant directors could be found to have violated their duties as company directors, in contravention of s 184(1) of the *Corporations Act 2001* (Cth), for the purposes of s 8(2)(s) of the ICAC Act. The primary judge had found that “[n]o doubt, there may be situations where, to observe the proscriptive obligations imposed on fiduciaries, it may be necessary for a fiduciary to perform some positive act. But that does not mean that there is a prescriptive element to the fiduciary duty. It means that, to avoid a conflict of interest (or to avoid profiting at the expense of the beneficiary), it is necessary for the fiduciary to take some positive step.”⁷⁹

⁷³ *Obeid v R 2015* at [148].

⁷⁴ (2014) 253 CLR 83; [2014] HCA 21 (at [56]).

⁷⁵ *Howard* at [56].

⁷⁶ *Obeid v R 2015* at [148].

⁷⁷ *Re Day [No 2]* (at [49]); *R v Boston* (at 400) per Isaacs and Rich JJ.

⁷⁸ [2016] NSWCA 143.

⁷⁹ *Duncan v ICAC, McGuigan v ICAC, Kinghorn v ICAC, Cascade Coal v ICAC* [2014] NSWSC 1018 (at [205]) per McDougall J.

3.67. Basten JA observed:

To address the issues raised by characterising the obligation sought to be imposed on the appellants as “proscriptive” rather than “prescriptive” is unlikely to be determinative and, if treated as conclusive, may lead to error. It is clear that the Corporations Act (in terms reflective of general law principle) imposes affirmative obligations on company directors.⁸⁰ (Emphasis added)

3.68. In support of his first proposition, Basten JA referred to J D Heydon, M J Leeming and P G Turner’s *Equity – Doctrines and Remedies*.⁸¹ In those passages, the learned authors opined that “[t]here is no doubt that fiduciary duties in many of their standard operations are negative and proscriptive in character. The question is whether they can in some instances, perhaps quite infrequently, also have a prescriptive character.”⁸² They cited numerous writings to support that proposition including that “[t]here are ... reasons for suspecting the rigidity of the proscriptive/prescriptive distinction”, authorities in which distinguished jurists have treated people as fiduciaries even where they owed positive duties, and “other positive duties which it would be strange to call non-fiduciary”.⁸³ They noted that “[n]either in *Breen v Williams* nor in any later case nor in any scholarly writing has there been any citation of prior authority explicitly discussing and formulating the proscriptive/prescriptive distinction. Nor was any scholarly writing directly in point cited by the High Court in *Breen v Williams*, except for an article by Finn.”⁸⁴

3.69. In addition to the observations in *Doctrines and Remedies*, other commentators have cast doubt on the utility of the concept of proscriptive and prescriptive duties. Writing extra-judicially, Justice Gageler noted that Professor Finn’s work, “The Forgotten Trust”, “inspire[d] what has become an entire field of interdisciplinary academic endeavour in North America”, which came to be known as “fiduciary political theory”. Having noted a variety of areas devised in pursuit of that theory, his Honour wryly observed that “Those engaged in it appear generally to acknowledge that their work remains at the theoretical end of the academic spectrum, and some have suggested that ‘[s]ome modesty is essential in this research project going forward’.” He added, “[l]eaving theoretical difficulties entirely to one side, much more would need to occur for the project to result in principles capable of being translated into concrete applications”.⁸⁵

⁸⁰ [2016] NSWCA 143 (at [623]); in *Duncan*, Bathurst CJ did not directly address the proscriptive obligation theory in terms. His Honour referred (at [146]) to the primary judge’s acceptance that “there may be some circumstances where, to observe the proscriptive obligations imposed on fiduciaries, it may be necessary for the fiduciary to perform some positive act”, (at [389]) to the Commission’s submission that it was not correct that s 184 only imposed proscriptive obligations, and (at [413]) to Mr Kinghorn’s submission to the contrary. It was unnecessary for his Honour to resolve this debate in circumstances where Mr Kinghorn acknowledged that proactive steps may be required to avoid a conflict. His Honour applied (at [438]) “the principle that in the circumstances of a transaction between a person and one to whom he or she owes fiduciary obligations, what is required to avoid a conflict is fully informed consent on the part of the beneficiary of the fiduciary obligation”. He concluded (at [440]–[443]) that the primary judge had failed to take into account considerations relevant to the Commission forming the view it was satisfied for the purpose of s 13(3A) of the ICAC Act, that the directors had contravened s 184 of the Corporations Act.

⁸¹ LexisNexis, (5th ed, 2015) (*Doctrines and Remedies*) at [5-380]–[5-385] of the *Corporations Ac*.

⁸² *Doctrines and Remedies* at [5-380].

⁸³ *Doctrines and Remedies* at [5-385].

⁸⁴ *Doctrines and Remedies* at [5-385]; the article referred to was PD Finn, “The Fiduciary Principle” in Youdan (ed), *Equity, Fiduciaries and Trusts*, 1989, 1.

⁸⁵ “The Equitable Duty of Loyalty in Public Office”, published in T Bonyhady (ed), *Finn’s Law: An Australian Justice*, The Federation Press, 2016, 126 at 133–134; see also Justice Fabian Gleeson, *Proscriptive and prescriptive duties: is the distinction helpful and sustainable, and if so, what are the practical consequences?*, Supreme Court Corporate and Commercial Law Conference, 15 November 2017: 2017_Gleeson_JA.pdf (nsw.gov.au)

Construction of s 8(1)(c), ICAC Act

- 3.70. The Commission does not accept Ms Berejiklian’s submission that s 8(1)(c) of the ICAC Act reduces to a negative obligation proscribing self-interested conduct. The submission seeks to read words of limitation into s 8(1)(c), an approach which cannot be justified.
- 3.71. The construction of s 8(1)(c) must commence with the text and have regard to its context and purpose.⁸⁶ It should be applied according to its terms,⁸⁷ which do not support any confined reading.
- 3.72. Section 8(1)(c) directs attention to “**any conduct** of a public official or former public official that constitutes or involves a breach of public trust” (emphasis added). These are not words of limitation but direct attention to a broad range of potential corrupt conduct as capable of constituting a breach of public trust. It is one of the “three categories of misconduct [in s 8(1) that] thereby define the nature of improbity of public officials in the exercise of official functions which the ICAC Act conceives to be anathema to integrity in public administration”.⁸⁸ As Gleeson CJ observed in *Greiner v ICAC* in relation to s 9,⁸⁹ the language of s 8(1) is “unconfined”.
- 3.73. The context in which s 8(1)(c) must be read is that “the [ICAC] Act is directed towards promoting the integrity and accountability of public administration in the sense of maintaining probity in the exercise of official functions”.⁹⁰
- 3.74. In this context, too, there is force in the proposition that a provision such as s 8(1)(c), which plays a key role in the system the legislature has established to promote the integrity and accountability of public administration in NSW (s 2A, ICAC Act), should not be given a limited operation.⁹¹
- 3.75. Writing extra-judicially, Justice Gageler said of s 8(1)(c) that “plainly it refers, in context, to a category of misconduct and not simply to conduct which might result in the grant of some equitable remedy were it to be engaged in by a private trustee”.⁹²
- 3.76. There has been no decision of a superior court which supports the interpretation of s 8(1)(c) for which Ms Berejiklian contends. As noted, although Beech-Jones J’s decision in *R v Obeid (No 2)* might be thought to have gone some way towards the proposition, the Court of Criminal Appeal in *Obeid v R 2015* made it clear that the duties imposed on Mr Obeid were “analogous” to those of a fiduciary. While aligning, to an extent, Beech-Jones J’s description of the duty in *R v Obeid (No 2)* to that of Meagher JA in *Sneddon* (at [218]), in the latter case, Meagher JA made no reference to proscriptive obligations.
- 3.77. Further, the duties of parliamentarians identified in *Wilkinson v Osborne*, *Horne*, *The King v Boston*, *Re Day [No 2]* and *Hocking v Director-General of the National Archives* were all expressed in terms

⁸⁶ *ICAC v Cunneen* (2015) 256 CLR 1; [2015] HCA 14 (*ICAC v Cunneen*) (at [31]) per French CJ, Hayne, Kiefel and Nettle JJ.

⁸⁷ *Re Day [No 2]* (at [53]) per Kiefel CJ, Bell and Edelman JJ.

⁸⁸ *ICAC v Cunneen* (at [46]).

⁸⁹ At 142.

⁹⁰ *ICAC v Cunneen* (at [59]).

⁹¹ See *Re Day [No 2]* (at [72]) per Kiefel CJ, Bell and Edelman JJ; (at [97]) per Gageler J writing of s 4(v) of the Constitution.

⁹² *The Equitable Duty of Loyalty in Public Office*, (at 133).

of positive, not negative, obligations. Nevertheless, implicit in each such duty was what Bathurst CJ described in *Obeid v R 2017* as the “negative element” of Mr Obeid’s duty, expressed in that case as an obligation for members of Parliament “not [to] use their position for the purpose of promoting their own pecuniary interests”.⁹³

- 3.78. Finally, it should be noted that some 30 or so years after the then Professor Finn wrote the numerous publications on which Ms Berejikian relied, Justice Finn, by then a justice of the Federal Court of Australia of some 15 years’ standing, revisited some of the views he had expressed in his earlier writings. His Honour wrote, “in statutory settings we should be slow to embrace expansively principles drawn from the law of trusts and from fiduciary law so as to channel and control official decision making”.⁹⁴
- 3.79. Contrary to what he had written in his 1995 essay, “The Forgotten ‘Trust’: The People and the State”,⁹⁵ in 2010 Finn J considered it “unlikely” that “the characterisation of the State as a trustee of its powers of government for the people — a trust founded upon the proposition that ‘the powers of government belong to, and are derived from ... the people’ — will provide workable criteria upon which to found judicial review of official decision making, save perhaps in bleak, almost unthinkable circumstances. It is too abstract for everyday use.”⁹⁶ He did not, however, resile from his view that the “characterisation of the State as a trustee of its powers of government for the people” was a fundamental principle of the common law.
- 3.80. Later in his 2010 essay, in summarising his then views about the utility of the “public trust” / “public fiduciary” idea, Finn J wrote:

*[S]ave where a public trust or public fiduciary relationship arises on orthodox grounds, the use of the “public trust” or “fiduciary power” concept to describe how public functions should be exercised for the purposes of judicial review proceedings, while explicable, tends to be an unnecessary distraction — and made the more so by my fourth conclusion. It is that we should recognise, much more than we do, that we now live in an age of statutes and not of the common law. If we are properly to regulate the discharge of public functions in light of interests and values that the common law considers should be acknowledged and protected, the appropriate modern vehicles for this are through our rules of statutory interpretation and our grounds of judicial review of statutory powers and discretions.*⁹⁷ (Emphasis added)

Section 8(1)(c), ICAC Act: mental element

- 3.81. In *Greiner v ICAC*, Gleeson CJ observed that there is “room for argument as to the necessary mental element required to bring conduct within some of the provisions of s 8 of [the ICAC Act]”.⁹⁸

⁹³ *Obeid v R 2017* (at [79]).

⁹⁴ PD Finn, “Public Trusts, Public Fiduciaries” (2010) 38 *Federal Law Review* 335.

⁹⁵ Published in Malcolm Cope (ed), *Equity: Issues and Trends* (1995) chapter 5.

⁹⁶ *Public Trusts, Public Fiduciaries* at 336.

⁹⁷ *Public Trusts, Public Fiduciaries* at 350.

⁹⁸ At 144.

- 3.82. Having noted that observation, Counsel Assisting submitted that in the case of private trustees, liability for breach of trust or fiduciary duty is ordinarily strict so that a private trustee can breach their fiduciary duty even when acting in good faith. They contended that there was a good argument that no lesser duty should be regarded as being imposed on a person holding an office of public trust. On the other hand, they suggested it could be argued that, given the potential serious consequences to a person of describing his or her conduct as “corrupt conduct”, each of the categories of conduct falling within the description of corrupt conduct in s 8 should be regarded as carrying with it, by implication, a requirement that the public official knows (at least) the facts constituting the ingredients necessary to constitute a breach of public trust.
- 3.83. Counsel Assisting also argued that in Operation Keppel, nothing ultimately turned on this issue. They submitted that as conduct does not constitute “corrupt conduct” for the purposes of the ICAC Act unless it is not excluded by s 9 of that Act, and that that section imports a mental element in relation to the conduct analysed in relation to the current investigation as to whether corrupt conduct constitutes a breach of public trust. This is because, before that finding can conclusively be made, the Commission must, among other matters, find that a public official’s conduct could constitute or involve one of the categories of conduct set out in s 9(1). Wilfulness is an element of the offence of misconduct in public office which falls within s 9(1)(a).
- 3.84. Ms Berejiklian submitted that breach of public trust cannot arise from mere inadvertence or neglect on the part of the public officer; there must be an element of wilfulness or disloyalty in fact.⁹⁹ She also contended that the concept of wilfulness “signifies knowledge or advertence to the consequences, as well as intent to do an act or refrain from doing an act”. Breach of public trust therefore involves bad faith. If what is done in carrying out an office is done honestly and in good faith, there can be no breach of public trust. In other words, honesty and good faith negate breach of public trust as the term is used in the ICAC Act.
- 3.85. Ms Berejiklian’s submissions accord with the Commission’s approach as explained in the following reports.
- 3.86. In its 1995 *Report on Investigation into Circumstances Surrounding the Payment of Parliamentary Pension to Mr PM Smiles*, the Commission said that:
- ...the over-arching principle required for breach of public trust is bad faith ... Fraud, bribery, deliberate partiality, knowingly permitting extraneous factors to influence the outcome, can all fall within the concept of bad faith depending on the circumstances.*¹⁰⁰
- 3.87. And in its 1998 report, *Investigation into Parliamentary and Electoral Travel*, the Commission observed that:
- The concept of wilfulness involves knowledge ...*
- An examination of the cases leads to the conclusion that breach of public trust involves bad faith. If what is done in carrying out an office is done honestly and in good faith, there can be no breach of public trust. Fraud can fall within the concept of bad faith. Honesty and good faith negate breach of public trust as the term is used in the Act.*¹⁰¹

⁹⁹ Referring to the Finn Report, Appendix II: “Official Trust: The Criminal and Civil Law” at 19.

¹⁰⁰ At 18.

¹⁰¹ At 66; see also ICAC 2003 *Report on Investigation into the Conduct of the Hon Malcolm Jones MLC* (at 31) both quoted in *Investigating Corruption* (at [11.245]); *R v Borron* (1820) 3 B & Ald 432; 106 ER 721.

- 3.88. And recently, in its report on the *Investigation into the conduct of the local member for Drummoyne* (Operation Witney), the Commission observed that bad faith, or the elements of awareness of the existence of the duty and of wilfulness, are necessary elements of a breach of public trust.¹⁰²
- 3.89. That is the approach the Commission has applied in this report.

Misconduct in public office: other matters

- 3.90. In *Maitland v R*, the Court of Criminal Appeal held that conduct does not amount to “wilful misconduct” for the purposes of the offence of misconduct in public office unless the conduct in question would not have been undertaken but for the improper purpose.¹⁰³
- 3.91. This observation from *Maitland v R* must be understood in context. As the Court said:
- Having regard to the rationale for the offence, it would be surprising if it was necessary for the improper purpose to be the sole purpose. If, for example, a Minister of the Crown embarked upon a transaction for the purpose of conferring a benefit on himself or his friends, it would not seem to matter that he also has a belief that the transaction would or might benefit some members of the public. In these circumstances, if the transaction in question would not have been undertaken **but for** the improper purpose, then subject to the other elements being made out, the offence, in our opinion, would have been committed.*¹⁰⁴ (Emphasis added)
- 3.92. Whether a breach of public trust amounts to serious misconduct for the purposes of the fifth element of the offence “is to be determined having regard to the responsibilities of the office and the office holder, the importance of the public objects which they serve and the nature and extent of the departure from those responsibilities”.¹⁰⁵

Jurisdiction

- 3.93. The Commission is not a court, but an administrative body that performs investigative functions and, in certain circumstances, makes reports.¹⁰⁶ Nevertheless, even as such, where the jurisdiction

¹⁰² At 23.

¹⁰³ (2019) 99 NSWLR 376; [2019] NSWCCA 32 at [72], [84] per Bathurst CJ, Beazley P, Ward CJ in Eq, Hamill and N Adams JJ. The Court used the expression “but for” in [72] and [87] and “except for” in [84]. It is clear their Honours regarded these expressions as synonymous, and this is how they have been understood: see *R v Macdonald*; *R v Edward Obeid*; *R v Moses Obeid (No 17)* [2021] NSWSC 858 at [343] per Fullerton J. In *R v Macdonald*; *R v Maitland (No 8)* [2022] NSWSC 1421 (No 8 judgment) (at [41]), however, Dhanji J concluded that in *Maitland v R* the Court of Criminal Appeal did not find that “the ‘but for’ test is the sole test to be applied in determining whether an act or omission constitutes misconduct”. Rather, in his Honour’s view, “a test requiring something less than the sole purpose but more than ‘motivated to a significant degree’ would appear to require that the ‘driving force’ of the decision was improper in accordance with the direction given at first instance in *R v Speechley*, or something akin to it”. Having made that decision, his Honour so directed himself in terms of the elements of the offence in *R v Macdonald*; *R v Maitland (No 10 - verdict)* [2022] NSWSC 1756 at [12](3) as follows, “In granting consent [Exploration Licence No. 7270], Mr Macdonald misconducted himself as the consent [exploration licence] was granted for the purpose of benefiting Mr Maitland and DCM in that this purpose was the driving force behind the decision such that the decision would not have been made but for this purpose”. Dhanji J did not refer at all to Fullerton J’s decision in either his No 8 or No 10 judgments. It is not for the Commission to determine whether Dhanji J’s approach is correct. However, it is difficult, with respect, to understand the difference in substance between his Honour’s “driving force-but for” formulation, and the but for test identified by the five member Court of Criminal Appeal in *Maitland v The Queen*.

¹⁰⁴ At [72].

¹⁰⁵ *Shum Kwok Sher v Hong Kong Special Administrative Region* (2002) 5 HKCFAR 480; [2002] HKCFA 30 at [86] per Sir Anthony Mason NPJ (with whom all members of the Court agreed).

¹⁰⁶ *Greiner v ICAC* (1992) 28 NSWLR 125 at 129 per Gleeson CJ.

of such a body depends on the existence of “jurisdictional facts”, it is proper for the body to inquire whether those facts exist so that it may determine whether or not it should proceed with the matter before it.¹⁰⁷

- 3.94. The question also arises in this investigation in respect to the Constitution Act because Mr Maguire has put in issue the Commission’s jurisdiction to investigate his conduct to the extent that the Commission’s investigation concerns the Disclosure Regulation made pursuant to s 14A of the Constitution Act.

Mr Maguire’s evidence concerning the Disclosure Regulation

- 3.95. Mr Maguire gave the following evidence during the First Public Inquiry:

[Counsel Assisting]: You deliberately didn’t want to be appointed formally as a director of G8way International Pty Ltd because you wanted to conceal any formal record of being in such a position. Is that right?

[Mr Maguire]: Yes.

[Q]: And at least part of what was exercising your mind in that regard is that you knew that if you were formally appointed as a director, it would be necessary for you to disclose that position on your return under the Constitution (Disclosure by Members) regulation. Is that right?

[A]: Yes.

[Q]: And you were concerned that if you did that, questions might be asked as to whether it was appropriate for you to be a director of such a company. Is that right?

[A]: Yes.

Counsel Assistings’ submissions

- 3.96. Counsel Assisting submitted that Mr Maguire’s deliberate concealment of his position in G8wayInternational undermined the mechanism established by s 14A to give effect to its enactment to “establish ... a scheme whereby members of Parliament can be seen to be above reproach”,¹⁰⁸ and that his conduct thereby undermined the object of s 14A of the Constitution Act.
- 3.97. Counsel Assisting also submitted that Mr Maguire’s deliberate concealment of his position in G8wayInternational compounded the gravity of his conduct in respect to G8wayInternational. They pointed to the fact that Mr Maguire accepted in evidence that he knew that he had an obligation to disclose his position in G8wayInternational under the Disclosure Regulation. He also accepted that his failure to do so was “[p]ossibly” because he was concerned that if he did disclose that matter and someone looked at the disclosures it might call into question the kinds of things that Mr Maguire was involved in ostensibly on behalf of G8wayInternational.

¹⁰⁷ *Eatts v Dawson* (1990) 21 FCR 166; [1990] FCA 158 per Morling, Beaumont and Gummow JJ.

¹⁰⁸ NSW Parliament, *Parliamentary Debates*, Legislative Assembly, 13 April 1981, at 5710 (Premier Neville Wran).

3.98. Counsel Assisting submitted that Mr Maguire's conduct in this respect was conduct of a serious kind that was corrosive to public confidence in the integrity of the Parliament and the members thereof. They contended the Commission should consider Mr Maguire's deliberate concealment of his position as a weighty factor in deciding whether it considered that his course of conduct in connection with G8wayInternational was of sufficient seriousness as to be conduct of a kind that satisfied the requirement of seriousness for the purposes of the fifth element of the offence of misconduct in public office.

Mr Maguire's submissions on jurisdiction

3.99. In addition to Counsel Assisting's submissions concerning the Constitution Act and the Disclosure Regulation in relation to Mr Maguire's conduct regarding G8wayInternational, the Commission invited Mr Maguire to address the question of whether his failure to disclose the following matters under the Disclosure Regulation could be serious corrupt conduct under the ICAC Act given:

- a) his interest or position in G8wayInternational, and
- b) that G8wayInternational and Maggie Wang were sources of income that he received at various times between 2012 and 2018.

3.100. Mr Maguire submitted that the Disclosure Regulation could play no role in the Commission's investigation of him because any issues concerning its possible contravention by him, or any other findings in relation to the Disclosure Regulation, were outside its jurisdiction. Mr Maguire contended that clause 23 of the Disclosure Regulation is clear and unambiguous in relation to any contravention, and that:

- 3.100.1. A contravention shall not attract any criminal or civil liability except to the extent expressly provided by section 14A of the [Constitution] Act.
- 3.100.2. Under section 14A(2), the relevant House of a member that contravenes the Disclosure Regulation has the exclusive jurisdiction to deal with that member.

3.101. Mr Maguire also contended that it is a fundamental part of the separation of powers that the Parliament is responsible for the conduct of members including imposing sanctions such as declaring a seat vacant.

3.102. Mr Maguire submitted that there is no provision within the ICAC Act which gives the Commission jurisdiction to investigate or determine whether a member of Parliament has contravened the Disclosure Regulation. He argued that the Parliament has clearly and unambiguously reserved to itself the power to investigate and determine whether any member has breached the Disclosure Regulation and expressly provided that any breach does not "attract any civil or criminal liability".

3.103. Mr Maguire did not cite any authority to support these submissions. He attached to them considerable materials dealing with what he referred to as the long history leading to the Disclosure Regulation. He did not identify any part of those materials which dealt with the genesis of clause 23 of the Disclosure Regulation. On examination, those secondary materials do not address that issue.

Jurisdiction: s 14A, Constitution Act

3.104. The first question in the Commission's view is whether s 14A, which empowers the making of regulations to give it effect, confers exclusive jurisdiction to deal with matters concerning a breach of the Disclosure Regulation on the relevant House of a member; in the case of Mr Maguire, the Legislative Assembly.

- 3.105. The question of whether s 14A confers such jurisdiction has been considered in *Obeid v R 2015* and *Obeid v R 2017*, neither of which were referred to in Mr Maguire’s submissions.

***Obeid v R 2015* – jurisdiction**

- 3.106. In *Obeid v R 2015*, Mr Obeid argued that the Supreme Court did not have jurisdiction to hear and determine the charge because it was within the exclusive jurisdiction of the Legislative Council. He pointed to what he said was an exclusive code regulating conflicts of interest, found in s 14A of the Constitution Act, and to the code of conduct governing members of the Legislative Council, and emphasised that part of the Crown case was that the allegations against him were, at the least, “connected with” his office.¹⁰⁹
- 3.107. The Court rejected Mr Obeid’s submissions on jurisdiction. It observed that the starting point of legal analysis was not the powers and privileges of the Legislative Council, but the jurisdiction of the Supreme Court of NSW.¹¹⁰
- 3.108. In this respect, Mr Obeid conceded that members of Parliament are subject to the ordinary criminal jurisdiction of the courts, including the Supreme Court, but submitted that that jurisdiction was to be read as subject to principles from the Constitution Act.¹¹¹ He also conceded that any exclusive jurisdiction on the part of the Parliament or one of its chambers was subject to statute. In noting that concession, the Court cited as an example of such a statute the legislation authorising investigations by the Independent Commission Against Corruption into corrupt conduct including by members¹¹², that is to say, the ICAC Act.
- 3.109. Relevantly, the Court held that the mere fact that, in that case, the Legislative Council of which Mr Obeid had been a member “might” choose to exercise a power to discipline a former member for misconduct did not mean it followed that anything which might fall within the ambit of that power thereby fell within the exclusive jurisdiction of the chamber.¹¹³
- 3.110. The Court (at [40]) cited the passage from the judgment of Lord Rodger in *R v Chaytor*¹¹⁴ to the effect that “[t]herefore the mere fact that the House **could** treat a matter as one of contempt does not mean that the House **must** do so. On the contrary, if the conduct questioned would constitute an offence under the ordinary criminal law of England, then the offence can be prosecuted in the criminal courts in the usual way.” (Original emphasis).
- 3.111. Insofar as s 14A of the Constitution Act was concerned, the Court said:

*[46] Section 13A may be contrasted with s 14A, on which Mr Obeid relied. Section 14A empowers the making of regulations relating to the disclosure of pecuniary interests. **Section 14A(2) empowers a chamber to declare a member’s seat vacant if the member has wilfully contravened such a regulation. It may be accepted that the conduct with which Mr Obeid has been charged falls within the scope of that power.***

¹⁰⁹ *Obeid v R 2015* at [30] per the Court (Bathurst CJ; Beazley P and Leeming JA).

¹¹⁰ *Obeid v R 2015* at [19].

¹¹¹ *Obeid v R 2015* at [20]–[21].

¹¹² At [23].

¹¹³ At [37].

¹¹⁴ [2011] 1 AC 684; [2010] UKSC 52 (at [108]).

[47] Although s 13A necessarily entails a concurrent jurisdiction of the courts and the parliamentary chamber, there is nothing (save for Mr Obeid's assertion) to suggest that s 14A supports an exclusive jurisdiction of a chamber of Parliament. There is nothing to suggest that the s 14A(2) mechanism is exclusive, and when ss 13A and 14A are read together, as they must be, it is plain that s 14A cannot be so regarded. The Code of Conduct, on which Mr Obeid also relied, takes the matter no further. (Emphasis added)

- 3.112. The Court rejected Mr Obeid's other challenges to the indictment. An application for special leave to appeal to the High Court was dismissed.¹¹⁵

Obeid v R 2017 – jurisdiction

- 3.113. As earlier noted, Mr Obeid stood trial and was convicted and appealed against his conviction and sentence. One of the grounds of his conviction appeal was whether the charge against him was within the exclusive cognisance of the NSW Parliament.
- 3.114. Bathurst CJ rejected this submission.¹¹⁶ In his Honour's view, the reasons the Court had given in *Obeid 2015* in rejecting the jurisdictional challenge to the indictment were equally applicable to the argument as it was sought to be reframed as one of "exclusive cognisance of the Parliament of New South Wales".¹¹⁷ His Honour re-affirmed the reasons the Court gave in *Obeid 2015* for concluding that s 14A of the Constitution Act said nothing to suggest an exclusive jurisdiction of a chamber of Parliament.¹¹⁸
- 3.115. Leeming JA agreed with Bathurst CJ but gave additional reasons addressing the issue of whether the Legislative Council had "exclusive cognisance to adjudicate whether Mr Obeid was guilty of misconduct in office".¹¹⁹ His Honour assumed the NSW Legislative Council found Mr Obeid guilty of the common law offence of misconduct in office but questioned whether it had power to punish him. Relevantly, his Honour observed that the "exercise of a power to punish a former member for offending conduct committed outside the Chamber is even further outside the limits of an implied power delineated by reasonable necessity, which was held unavailable to compel a current member who had been disorderly within the Chamber".¹²⁰ His Honour queried "[h]ow then is it reasonably necessary for a chamber to have power to punish a former member who has committed a common law crime?", and concluded:

It would be in my view a large thing for this Court to hold that a chamber has implied power to punish a member for a contravention of a common law offence. It is an even larger thing to hold that any such implied power extends to former members.¹²¹

¹¹⁵ *Obeid v The Queen* [2016] HCASL 86.

¹¹⁶ At [134]–[147] Leeming JA, R A Hulme, Hamill and N Adams JJ agreeing, Leeming JA giving additional reasons on the exclusive cognisance issue (relevantly at [292]–[322] with which Hamill J and N Adams J agreed.

¹¹⁷ At [134].

¹¹⁸ At [136].

¹¹⁹ At [292].

¹²⁰ At [298].

¹²¹ At [302]–[303].

- 3.116. Leeming JA's remarks about the jurisdiction of the courts over former members of Parliament apply *a fortiori* to Mr Maguire.
- 3.117. One of Mr Obeid's arguments in *Obeid 2017* was that in *Obeid 2015*, attention had not been drawn to the Disclosure Regulation. Leeming JA noted that although the Court did not refer to the Disclosure Regulation in terms, it did refer to the regulation-making power in s 14A of the Constitution Act as can be seen in the passages from *Obeid 2015* cited above. It is clear that the Court did not regard the Disclosure Regulation as advancing Mr Obeid's argument.
- 3.118. As the Court recognised in *Obeid 2015*, this Commission is authorised to investigate the conduct of members of Parliament. In a broad sense, its power to do so is anterior to the jurisdiction the Supreme Court exercises in dealing with a charge of misconduct in public office. It would be a surprising proposition if the Commission's power to investigate whether a member of Parliament had engaged in corrupt conduct was constrained in the manner for which Mr Maguire contends. Its jurisdiction is to investigate whether corrupt conduct has occurred. As further explained below, s 9(4) and s 9(5) of the ICAC Act empower it to make findings of corrupt conduct even if the identified conduct does not fall within one of s 9(1)(a) – s 9(1)(d) of the ICAC Act.
- 3.119. The Court's conclusion in both *Obeid 2015* and *Obeid 2017*, that there is nothing to suggest that s 14A of the Constitution Act supports an exclusive jurisdiction of a chamber of Parliament, equally applies to the Commission's authority to investigate whether a member of Parliament engaged in corrupt conduct by contravening the Disclosure Regulation.

Clause 23, Disclosure Regulation

- 3.120. Mr Maguire also relied on clause 23 of the Disclosure Regulation and its statement that “[a] contravention shall not attract any criminal or civil liability except to the extent expressly provided by section 14A of the [Constitution] Act”, as supporting his exclusive jurisdiction argument.
- 3.121. In the Commission's view that issue is resolved by the two decisions in *Obeid* on the issue of jurisdiction. The Court said in *Obeid 2015* that “the conduct with which Mr Obeid has been charged falls within the scope of that power”, being the power pursuant to s 14A(2) to declare a member's seat vacant if the member has wilfully contravened such a regulation. Nevertheless, it rejected the exclusive jurisdiction argument. As noted, the Court clearly did not regard the s 14A regulations generally as assisting Mr Obeid's argument.
- 3.122. The Commission also notes that it is at least arguable that clause 23 is invalid to the extent that it is inconsistent with s 14A of the Constitution Act.
- 3.123. In *The Constitution of New South Wales*, Professor Anne Twomey said that s 14A(1) of the Constitution Act:

*...empowers the making of regulations [but] does not of itself, require members to disclose their pecuniary interests. Section 14A has no effect unless there are regulations in operation which are made in compliance with the conditions set out in s 14A. The Governor, in making regulations, is limited to requiring Members to disclose all or any of the matters listed in s 14A(1)(a). The regulation may also deal with the timing of declarations, the verification of disclosures, and the compilation and maintenance of a register of the pecuniary interests which have been disclosed.*¹²²

¹²² A Twomey, *The Constitution of New South Wales*, The Federation Press, 2004, at 445.

- 3.124. As is apparent from the text of s 14A, and as Professor Twomey confirmed, there is nothing in s 14A which empowered the governor to make a regulation dealing with the liability of a member of Parliament for a contravention of the Disclosure Regulation, let alone limiting the jurisdiction of courts, or an investigative body.
- 3.125. It is a fundamental principle, usually reflected in the regulation-making section in Australian legislation, that the governor-general, or the governor as the case may be, may make “regulations not inconsistent with this Act for prescribing all matters which by this Act are required or permitted to be prescribed etc”. However, even if those express words do not appear, “the courts have always accepted the notion that subordinate legislation will be invalid if it contradicts – or as is usually stated, is repugnant to – the Act under which it is made”.¹²³
- 3.126. Section 14A did not expressly empower the making of clause 23 of the Disclosure Regulation and, on its face, it appears to contradict s 14A so as to be invalid.
- 3.127. The Commission cannot of course make a finding to that effect, but can be guided in the consideration of its jurisdiction to investigate Mr Maguire’s contravention of the Disclosure Regulation in addition to the conclusions in the *Obeid* cases, by the fact that it could be invalid as exceeding the regulation making power, s 14A of the Constitution Act. Such a conclusion would not affect the validity of the remainder of the Disclosure Regulation (s 32, *Interpretation Act 1987* (NSW)).

Codes of conduct

- 3.128. The decision in *Greiner v ICAC*¹²⁴ revealed that “there was a significant loophole (the absence of an identifiable standard by which any alleged breach by a minister of the Crown could be determined) in the ICAC Act”.¹²⁵ Accordingly, in 1994, the Independent Commission Against Corruption (Amendment) Act was passed. Its object was “to expand the jurisdiction of the Independent Commission Against Corruption in relation to Ministers of the Crown and members of Parliament”.¹²⁶ It achieved that object by amending the ICAC Act to insert s 9(1)(d) to the effect that “[d]espite section 8, conduct does not amount to corrupt conduct unless it could constitute or involve ... 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”.
- 3.129. The government acknowledged that the effect of s 9 unamended was “that Ministers and members of Parliament may be less amenable to the jurisdiction of the ICAC than, say, public servants” and that “for the purposes of the Independent Commission Against Corruption Act at least, a set of standards more analogous to that applying to other public officers should apply to Ministers and members of Parliament”. While it was to be “the responsibility of each House to develop its own code to regulate the conduct of its members”, it was “proposed that a ministerial code be adopted by regulation. Thus, the code will be public and subject to the scrutiny of this Parliament and disallowance by either House.” In addition, it was “the Government’s view that

¹²³ DC Pearce, *Delegated Legislation in Australia and New Zealand*, 1977 (Butterworths) at [396].

¹²⁴ (1992) 28 NSWLR 125.

¹²⁵ *Investigating Corruption* (at [11.85]); see also Independent Commission Against Corruption (Amendment) Bill, *Parliamentary Debates* (Hansard), Second Reading Speech, 22 September 1994.

¹²⁶ Independent Commission Against Corruption (Amendment) Bill, *Parliamentary Debates* (Hansard), Second Reading Speech, 22 September 1994.

[the ICAC's powers] should not be triggered merely because allegations have been made that there is conduct that may fall within section 8 of the Act. That could be very much a matter of subjective judgment. **A serious test, such as that provided for by section 9 of the Act and requiring the application of objective standards, should be retained**" (emphasis added).¹²⁷

- 3.130. A members' code of conduct has been in place in relation to both Houses of the NSW Parliament since May 1998, intended to assist members in the ethical and transparent discharge of their duties. The members' code has continuing effect unless modified by a resolution of the House. The Legislative Assembly has adopted a members' code at the commencement of each Parliament since 2007 for the purposes of s 9 of the ICAC Act. Although they are adopted by the Legislative Assembly and the Legislative Council respectively, they are to all intents and purposes identical.
- 3.131. As was observed in the Operation Witney report, "[w]hile the members' and the ministerial codes of conduct and the disclosure obligations of members of Parliament and ministers of the Crown, including parliamentary secretaries, do not define the totality of the obligations of a member of Parliament, they give effect to the foundational principle that public office is a public trust and public officials are trustees whose duty is always to favour the public interest over their own".¹²⁸
- 3.132. At all times throughout their terms as members of the Legislative Assembly, Ms Berejiklian and Mr Maguire were subject to the members' code.
- 3.133. A Ministerial Code of Conduct, which constituted an applicable code of conduct for the purposes of s 9 of the ICAC Act, was legislated as an appendix to the Independent Commission Against Corruption Amendment (Ministerial Code of Conduct) Regulation 2014 with effect from 20 September 2014.¹²⁹ That code in turn was replaced by the 2017 NSW Ministerial Code of Conduct on and from 1 September 2017.¹³⁰ The ministerial code is discussed in greater detail below and in the Berejiklian allegations section of this report.
- 3.134. A code of conduct adopted for the purpose of s 9 of the ICAC Act does not oust or limit a duty on members arising from the common law as enunciated in *R v Quach* and like authorities, or operate to prevent any criminal offence which would contravene the code from being prosecuted.¹³¹

Code of Conduct for Members

- 3.135. The members' code is a document with continuing effect unless modified by a resolution of the House. It has been adopted by the Legislative Assembly at the commencement of each Parliament since 2007 as an "applicable code of conduct" for the purposes of s 9 of the ICAC Act.

¹²⁷ Independent Commission Against Corruption (Amendment) Bill, *Parliamentary Debates* (Hansard), Second Reading Speech, 22 September 1994.

¹²⁸ At 22.

¹²⁹ Independent Commission Against Corruption Regulation 2010 (NSW) clause 4A, Appendix. Clause 4A and the Appendix were inserted into the Independent Commission Against Corruption Regulation 2010 (NSW) by the Independent Commission Against Corruption Amendment (Ministerial Code of Conduct) Regulation 2014 (NSW) with effect from 20 September 2014.

¹³⁰ *A Code of Conduct for Ministers of the Crown* approved by Premier Barry O'Farrell MP on 2 June 2011 was not an applicable code for the purposes of s 9 of the ICAC Act.

¹³¹ *Obeid v R 2017* (at [78]).

At 1 January 2010, the members' code in force would have been the version of the code as adopted by the House on 8 May 2007, with the subsequent amendments made to the code by way of resolution of the House on 20 June 2007.

3.136. Section 8 of the ICAC Act describes types of conduct being in the general nature of "corrupt conduct".

3.137. Under s 9 of the ICAC Act, however, conduct of the type described in s 8 will 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.

3.138. Accordingly, the effect of prescribing the members' code as an applicable code of conduct is that a suspected substantial breach of it may be investigated by the Commission and, if substantiated, give rise to a finding of corrupt conduct.

3.139. A members' code (albeit not one adopted for the purposes of s 9 of the ICAC Act) has been in force since Mr Maguire first joined Parliament in March 1999. From its inception, the Preamble to the members' code has always contained the statement:

Members of Parliament accordingly acknowledge their responsibility to maintain the public trust placed in them by performing their duties with honesty and integrity, respecting the law and the institution of Parliament, and using their influence to advance the common good of the people of New South Wales.¹³²

3.140. The Preamble to the members' code notes that it has been agreed by the members of both the Legislative Assembly and the Legislative Council. It acknowledges that:

Members of Parliament recognise that they are in a unique position of being responsible to the electorate. The electorate has the right to dismiss them from office at regular elections.

Members of Parliament acknowledge their responsibility to maintain the public trust placed in them by performing their duties with honesty and integrity, respecting the law and the institution of Parliament, and using their influence to advance the common good of the people of New South Wales.

Members of Parliament acknowledge that their principal responsibility in serving as Members is to the people of New South Wales.

3.141. Clause 1 of the members' code deals with conflict of interest. It relevantly provides:

1. Disclosure of conflict of interest

(a) Members of Parliament must take all reasonable steps to declare any conflict of interest between their private financial interests and decisions in which they participate in the execution of their office.

¹³² NSW Parliament, *Parliamentary Debates*, Legislative Assembly, 8 September 1999.

(b) This may be done through declaring their interests on the Register of Disclosures of the relevant House or through declaring their interest when speaking on the matter in the House or a Committee, or in any other public and appropriate manner.

(c) A conflict of interest does not exist where the member is only affected as a member of the public or a member of a broad class.

Use of public resources

Code of Conduct for Members

3.142. Clause 4 of the members' code provides:

Members must apply the public resources to which they are granted access according to any guidelines or rules about the use of those resources.

3.143. Applicable guidelines for the purposes of clause 4 include the determinations of the Parliamentary Remuneration Tribunal and the *Members' Entitlements Handbook*.

3.144. The 2010 *Legislative Assembly Handbook* referred to the additional roles and responsibilities of recognised office holders. The latter included the premier, senior ministers and other ministers, the government and opposition whips, a parliamentary secretary and the chair of a parliamentary committee. To reflect these added responsibilities, members in these roles are granted a salary of office and/or an expense allowance pursuant to s 6 and Schedule 1 of the *Parliamentary Remuneration Act 1989* (NSW) – “the Parliamentary Remuneration Act”.

3.145. Section 2A of the Parliamentary Remuneration Act explained that its purpose was to provide a system under which:

(a) all members are provided with statutory salaries (the basic salary) that are paid as personal income or received as employment benefits for the performance of their parliamentary duties as members, and

(b) all or some recognised office holders are provided with statutory additional salaries that are paid as personal income for the performance of their parliamentary duties as recognised office holders, and

(c) all or some recognised office holders are provided with statutory expense allowances for the purpose of facilitating the efficient performance of their parliamentary duties as recognised office holders, and

(d) all or some members and all or some recognised office holders may be provided with additional allowances and other entitlements for the purpose of facilitating the efficient performance of their parliamentary duties as members or recognised office holders, and

(e) superannuation arrangements are provided for members who are not continuing members of the closed Parliamentary Contributory Superannuation Fund.

3.146. “Parliamentary duties” of a member was defined in s 3 of the Parliamentary Remuneration Act to mean:

the duties that attach to the office of a member ... and includes the duties that a member ... is ordinarily expected to undertake, including participation in the activities of recognised political parties, and includes any duties prescribed as being within this definition, but does not include any duties prescribed as being outside this definition.

- 3.147. Pursuant to s 10 (General provisions as to determinations of additional entitlements), it was explained that “additional entitlements are to be provided for the purpose of facilitating the efficient performance of the parliamentary duties of members or recognised office holders”.
- 3.148. Under guidelines established in connection with the meaning of “parliamentary duties” for the purpose of members’ use of additional entitlements, it was explained that additional entitlements may be used for parliamentary duties, among other matters, for participation in a parliamentary group, such as the NSW Parliament Asia Pacific Friendship Group, provided that, such group is approved in writing by the President of the Legislative Council and the Speaker of the Legislative Assembly.
- 3.149. The guidelines also recognised circumstances where some intermingling of parliamentary duties and private activities occurs. In this respect they explained:
- Some intermingling of a Member’s parliamentary duties and private activities is, in practical terms, not always easily avoided, but the onus is always on the member to show that any expenditure or any claim for reimbursement relates to Parliamentary duties, or to the Parliamentary duties component of costs incurred for intermingled Parliamentary duties and private purposes.*
- 3.150. By way of illustration of such intermingling, the guidelines highlighted “parliamentary duties and other business duties, that is, work which is not related to a Member’s work as a parliamentarian”. They explained that in assessing any claim involving intermingling of parliamentary duties, Parliament applied a combination of three tests: a principal purpose test; a proportional approach; and a reasonable assessment test. The latter was explained in the following terms:
- In applying the “reasonable assessment approach” members should consider whether or not any reasonable assessment of their expenditure could invoke public criticism. This has often been referred to as “the front page” of the newspaper test and is explored further in Chapter 5.*
- 3.151. The *Members’ Entitlements Handbook* emphasised that there were a number of resources that “should not be intermingled under any circumstances”, including parliamentary staff, parliamentary offices and allowances relating to travel.

ICAC reports

- 3.152. There have been several previous Commission reports which have considered the use of public resources by members of Parliament. In the Commission’s 2004 *Report on investigation into conduct of the Hon J. Richard Face* (Operation Wingate), Assistant Commissioner Peter Johnson SC noted that in his work, *Members of Parliament: Law and Ethics*, Associate Professor Gerard Carney had observed:

Members are under an ethical obligation to use the public resources made available for their official use efficiently and not in a wasteful manner. These resources usually include allowances for parliamentary and electorate expenses and travel entitlements.

*Any use of those resources which is other than for official use is unlawful and likely to attract criminal sanction ... **In any event, any use of public resources for personal reasons unconnected with official use is unethical and may in cases of serious abuse constitute a criminal offence. An obvious example of improper use is where a member uses or allows family or friends to use electorate office facilities or staff for private business purposes.***

[...]

The rules in relation to the official use of public resources are usually prescribed by detailed guidelines. The Codes of Conduct in NSW include a provision which requires members to comply with any guidelines or rules in relation to the use of public resources (cl.4).

[...]

Two important reports have been issued in NSW by the ICAC which make extensive recommendations in relation to parliamentary allowances. The general thrust of those recommendations is to provide members with clear and detailed guidelines as to their entitlements and to establish adequate auditing procedures to ensure transparency and accountability. Significantly, the public needs to be informed of the extent of those benefits, the safeguards in place, and the use to which these benefits have actually been put.¹³³ (Emphasis added)

- 3.153. In one of the earlier reports to which Assistant Commissioner Johnson referred, Commissioner the Hon Barry O’Keefe AM QC wrote:

...the public expects that Members, in fact all public officials, should be more accountable, and the expenditure of public funds more open and transparent. Furthermore, it is important that Members give leadership to the public sector and the wider community by their own good example – as the ICAC contends they are elected to do.¹³⁴

...the ICAC believes there must be minimum standards expected of Members in the use of public resources.¹³⁵

*The provision of Members’ office services, facilities and equipment is also subject to a number of risks. **One risk is the use of electorate office staff, facilities, services and equipment for private business purposes.**¹³⁶ (Emphasis added)*

The 2010 Legislative Assembly Handbook

- 3.154. The role and responsibilities of members of the Legislative Assembly were explained in chapter 1 of the *Legislative Assembly Handbook*, the first edition of which was published in 2010 (“the 2010 LA Handbook”).
- 3.155. The 2010 LA Handbook explained that “to assist Members to discharge their many and varied duties in an ethical and transparent way, both Houses have adopted a Code of Conduct (the Code) for Members since May 1998”. It drew members’ attention to the full code of conduct available in Appendix C and on the Parliament’s intranet website.
- 3.156. The 2010 LA Handbook also sought to explain the members’ code. It pointed out that that code formed part of the web of definitional terms of “corrupt conduct” in s 8 and s 9 of the ICAC Act. It explained the interaction of those provisions. It drew the members’ attention to the fact that acts that might constitute corrupt conduct within the meaning of s 8, would constitute corrupt conduct if, relevantly, they amounted to a substantial breach of an applicable code of conduct.

¹³³ Prospect Publishing, Sydney, 2000, 371–372; Operation Wingate Report at 20.

¹³⁴ ICAC, *Parliamentary and Electorate Travel: Second Report – Analysis of Administrative Systems and Recommendations for Reform* (1998) at 5.

¹³⁵ *Ibid* at 16.

¹³⁶ *Ibid* at 30.

In this respect, it said:

An applicable code of conduct is defined in the ICAC Act as firstly, in the case of a Minister, a ministerial code of conduct prescribed or adopted for the purposes of section 9 by the regulations; and secondly, in the case of Members of Parliament (including a Minister of the Crown), a code of conduct adopted for the purposes of section 9 by resolution of the House concerned.

- 3.157. The 2010 LA Handbook counselled members, and their staff, that if they were uncertain about the best decision to make in a given set of circumstances, they could either discuss the matter with the Speaker, or the senior officers of the Department of the Legislative Assembly; or contact the parliamentary ethics adviser.

NSW Ministerial Code of Conduct

- 3.158. As noted above, on 20 September 2014, a ministerial code of conduct, (“the ministerial code”) prescribed as an applicable code of conduct for the purposes of s 9 of the ICAC Act, commenced (see s 9(1)(d), s 9(3) and s 9(6), ICAC Act). This meant that a substantial breach of the ministerial code by a minister of the Crown may give rise to a finding of corrupt conduct under the ICAC Act. The requirements of the ministerial code have not relevantly changed over the period under investigation.
- 3.159. The ministerial code also expressly applies to parliamentary secretaries, other than Part 1 and Part 5 of the Schedule, which relate to prohibited interests and employment after leaving ministerial office respectively. Other than in relation to those parts of the Schedule, the definition of a minister in clause 11 of the ministerial code includes a parliamentary secretary. The effect of Part 5 of the Schedule not applying to Mr Maguire meant that he was able to carry out secondary employment.
- 3.160. During the period the subject of the Maguire allegation, the ministerial code was not yet an applicable code in relation to parliamentary secretaries.¹³⁷ However, Mr Maguire was subject to the “Standing disclosures of interests” provisions in Part 2 of the Schedule. Clause 6 of the schedule obliged him to provide disclosures of interest to the premier, and clause 7 of the Schedule obliged him to provide continuous updates of those interests to the premier.
- 3.161. On 2 September 2014, the then premier, Mr Baird, wrote to Mr Maguire drawing his attention to the imminent commencement of the Ministerial Code 2014, pointing out that it applied to parliamentary secretaries in the same way as it applied to ministers except for Part 1 (Prohibited interests) and Part 5 (Employment after leaving Ministerial office). Mr Baird’s letter explained provisions of the new code, including the obligation that parliamentary secretaries were required then, and henceforth, to provide to Mr Baird their most recent return under the Disclosure Regulation, with a declaration as to any event since it was lodged, and which would need to be disclosed in the Parliamentary Secretary’s next return. It also drew attention to the conflicts of interest provisions and their application.
- 3.162. The ministerial code is most relevant to the allegations concerning Ms Berejiklian who, until her resignation from Parliament in 2021, was both a minister, then premier for the period from 2014 that the ministerial code was an applicable code of conduct for the purposes of s 9(1)(d) of the ICAC Act. The ministerial code is discussed in detail in the section of the report dealing with the Berejiklian allegations.

¹³⁷ This position was rectified by the *Integrity Legislation Amendment Act 2022* (NSW), Part 1.2 to Schedule 1 of which inserted the words “or Parliamentary Secretary” after “Minister of the Crown” in section 9(1)(d) of the ICAC Act, wherever occurring in the definition of “applicable code of conduct” in s 9(3), and in s 9(4) of the ICAC Act.

Chapter 4: G8wayInternational Pty Ltd

“Away we go”

By setting up a company it cocoons the income from my own business plus if the money that runs through is what we hope for it will be subject to company tax rate and not top marginal rate plus if and when you give your other job away we just appoint you as a director and away we go. – G8wayInternational director Phillip Elliott to Daryl Maguire

- 4.1. In 2012, within about a year of the Liberal–National Coalition taking power in NSW, Mr Maguire embarked on a course of conduct by which he sought to enrich himself by exploiting his position as a member of Parliament by various means. This included using G8wayInternational to “sell” his services as a member of Parliament to “business people who wish to develop stronger links with China and the Asia Pacific”. Although, as stated in chapter 3, Mr Maguire was not subject to any express constraints in terms of engaging in secondary employment, he knew he was constrained by the principle that he could not engage in any activity, whether in secondary employment or otherwise, if he did so wrongfully, such as by misusing his office or being in a conflict of interest and “things of that kind”. As the following demonstrates, those were precisely the ends to which Mr Maguire directed the activities the subject of the Operation Keppel investigation for the following six years.
- 4.2. As the above quotation of Mr Elliott’s email to Mr Maguire on 2 October 2012, the day G8wayInternational was incorporated, makes clear, Mr Maguire established G8wayInternational as a vehicle with Mr Elliott as the front man through which Mr Maguire could earn income which he would not have to disclose pursuant to his parliamentary obligations. Mr Maguire did not want to have to disclose such income because, as he admitted, he intended to monetise his parliamentary position with a view to making money for himself and his associates. The Commission finds that both Mr Maguire’s non-disclosure, and his monetisation of his office as a member of Parliament, were misuses of his public office. Mr Maguire’s failure to comply with his statutory disclosure obligations is discussed in greater detail later in this chapter, and in chapter 5.
- 4.3. The two men’s business model was that G8wayInternational was to be the intermediary, or broker, to create a network between China and Australia and make a commission or other fee along the way. Mr Maguire’s position as a member of Parliament was important to the success of this business model because, as they both recognised, he could be a door opener. Mr Maguire had many contacts both in Australia and in China, as well as the ability to make further contacts, given that he was a member of Parliament and of the party holding power in the state at the time. From June 2011, he was also chair of the APFG, and was a parliamentary secretary from 2014.

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- 4.4. Mr Elliott recognised that Mr Maguire’s status as a member of Parliament meant he was perceived in China as a government official and that this gave them greater access to more senior Chinese officials. By way of illustration, Mr Elliott said in his evidence in a compulsory examination:

We went to a particular meeting [in China] one day and a person of some importance was there, and then when it was determined that Mr Maguire was a member of Parliament that person was soon bumped and somebody a bit further up the chain was brought in, and then when it was found out that he was the whip, somebody else, so it was almost a circus in the end. A fellow in a tracksuit came streaming in towards the end who was the mayor or deputy mayor of a particular area. That was in Shenyang I think. So there’s no doubt that as soon as somebody was determined as a, as a member of Parliament, that, that opened doors or increased the importance on the other side.

- 4.5. Mr Elliott also agreed that to his observation, with Mr Maguire being involved, as a parliamentarian, friendship group chair, and parliamentary secretary, he was able to access more senior officials than, as Mr Elliott understood, he would be able to access not being a parliamentary official.
- 4.6. Even before G8wayInternational was incorporated, Mr Maguire was seeking to leverage financial benefits from the network of contacts he had accumulated in both Australia and China over time using a similar “middleperson” role as was to be adopted in relation to the G8wayInternational business. Between March and May of 2012, Mr Maguire exchanged a series of emails (using his parliamentary email address) with representatives of Berton Vineyards regarding the brokering of a sale of wine into China by Mr Maguire in exchange for a commission. On the latter subject, Mr Maguire wrote on 28 May 2012 to the principal of Berton Vineyards:
- As for commission ,standard industry is fine and vary according to price point , we want a long term profitable partnership so therefor we are flexible , our priority is for you to gain a sale and a bigger footprint in China , we all benefit . ,kind regards Daryl. (Spacing as per original)*
- 4.7. It is a safe inference that the reference to “we” was to the yet-to-be incorporated “G8wayInternational” which, by that stage, had had its first business cards created with the assistance of Nicole Hatton, one of Mr Maguire’s parliamentary staff, and had been the subject of communications between Mr Maguire and Mr Elliott.
- 4.8. As can be seen, therefore, preparation for the “launch” of G8wayInternational had been in train since early 2012. On 27 April 2012, Mr Elliott emailed to Mr Maguire, using the latter’s parliamentary email address, an email address – gatewayasiapacific@gmail.com – and instructions

about how to access it, including its password. The gatewayasiapacific name was apparently abandoned quickly in favour of G8wayInternational as is evident a few days later when in May 2012, as noted below, the business cards for Mr Maguire and Mr Elliott were ordered under that business name. However, both names reflect Mr Maguire's ambition to do business using his ability as a member of Parliament to open doors, and using the front of a company apparently controlled by Mr Elliott as the repository of any income garnered from that conduct.

- 4.9. Mr Elliott agreed that he had been on a number of trips to the People's Republic of China with Mr Maguire, with the first such trip being in early 2012, before G8wayInternational was incorporated. That trip was part of the background to setting up G8wayInternational. It got he and Mr Maguire thinking about potential business activities involving China and Australia. This trip appears to have commenced on 3 May 2012, and also involved Julian McLaren, who was president of the Wagga Wagga Business Chamber ("the Business Chamber"), Ms Hatton and Rebecca Cartwright, Mr Maguire's two parliamentary staffers, also went on this trip.
- 4.10. During this trip to China, Mr Maguire wore multiple hats, as it were, as a parliamentarian, as chair of the APFG and as government whip. Ms Hatton saw these roles as giving him access to more senior people in China and acting as a door opener for him.
- 4.11. Mr Elliott said that during this first trip to China with Mr Maguire, those travelling with Mr Maguire were welcomed at Shenyang University in the country's north as "the Honourable Daryl Maguire MP, Member of the NSW Parliament, and delegation". He agreed that while Mr Maguire was identified there as a member of Parliament and as a member of a delegation, one of the things Mr Maguire was doing on that trip was attempting to pursue business opportunities for himself, including in connection with Mr Elliott and G8wayInternational.
- 4.12. On 1 May 2012, Ms Hatton (using her parliamentary email address) sent an email to Mr Elliott asking for his email address and mobile telephone number for G8wayInternational business cards, and saying she would "speak with Daryl and check how he wants the mobile number to be shown". Mr Elliott responded that "the email for this exercise will be g8wayconsultancy@gmail.com and gatewayasiapacific@gmail.com". Ms Hatton said of this exercise that "They provided me with the business card, and they just wanted me to put in their, the telephone number and the mobile numbers." On 2 May 2012, Ms Hatton (again using her parliamentary email address) sent to Lydia Zhang – a contact of Mr Maguire's, living in China – a copy of a business card for Mr Elliott on G8wayInternational's "letterhead" showing the two email addresses he had sent her and saying "Daryl would like 250". On 3 May 2012, Ms Zhang responded, "no problem".
- 4.13. On 13 May 2012, four emails were sent to Mr Maguire's parliamentary email address from, respectively, "g8waytechnology@gmail.com", "g8wayproducts@gmail.com", "g8wayeducation@gmail.com", and "g8wayinternational@gmail.com".
- 4.14. On 20 May 2012, Mr Elliott sent an email to Ms Hatton (at her parliamentary email address) forwarding her the g8wayconsultancy@gmail.com email address and advising "This is an email address for you to use and access. I believe Daryl has spoken to you about it." Mr Elliott said it was sent to her "presumably so she could send emails on behalf of G8way".
- 4.15. On 27 May 2012, Mr Elliott advised Mr Maguire that he had registered a number of G8wayinternational domain names. Mr Maguire asked how much he owed Mr Elliott. The next day, 28 May 2012, Mr Elliott advised Mr Maguire that he had "just registered business name. g8wayinternational so all good and set up a seperate [sic] bank account under that name just to keep anything away from anything else".
- 4.16. In fact, formally, "G8WayInternational" was registered as a business name on 14 June 2012.

Mr Maguire's network

[M]y recollection is that some of these people were met at functions and, you know, events and things and I can't be clear that I introduced directly, but in some way, shape or form, through my network they would have been introduced. – Daryl Maguire

- 4.17. Throughout the period the subject of the allegation, Mr Maguire engaged with a network of people who were involved at various degrees of engagement with his activities. This was particularly the case in respect of the activities of G8wayInternational.
- 4.18. In the way of all networks, some people were engaged in more than one activity, and some introduced another who became engaged with another activity.
- 4.19. The most consistent acquaintance of Mr Maguire in this respect was Mr Elliott. Mr Elliott was a close friend of Mr Maguire and acted as his election campaign manager from time to time. He operated a business known as Riverina Strata Management. He incorporated G8wayInternational on 2 October 2012. He was the sole formally-appointed director and recorded shareholder upon incorporation. As Mr Elliott understood it, Mr Maguire viewed G8wayInternational as a business enterprise in respect of which he was closely involved. Mr Elliott agreed that although Mr Maguire was not formally appointed as a director of G8wayInternational, he did the kinds of things that a director might do, including, for example, pursuing business opportunities. The two men agreed that if G8wayInternational earned profits, they would share them.
- 4.20. A number of Mr Maguire's activities and network had a Chinese connection. He explained in Operation Dasha that he had "very good links with China, developed from my early days, before I was a parliamentarian. I'd suggest a lot of very strong friendships and some expats that live in China." He had "been a regular visitor to China since [he] first signed (as president) the Chamber of Commerce agreement for Wagga Wagga in around 1996".
- 4.21. One of those Chinese connections was Gordon Kar Ming Tse. Mr Tse was born in China but came to Australia when he was 18. He is an Australian citizen. He met Mr Maguire in about 1992–1993 when he moved to Wagga Wagga. At that time, Mr Maguire was working for Harvey Norman. Mr Tse operated restaurants in Wagga Wagga, but he moved back to China in 2003. Mr Tse had a company, Golden Sample, which was registered in Hong Kong. He also had a café called the No.3 Wagga Wagga Café in Guangzhou, which he described as an "Australian styled restaurant in a 1960's [sic] inspired milk bar".
- 4.22. On 30 July 2012, Mr O'Farrell, then the premier of NSW, opened the No.3 Wagga Wagga Café in Guangzhou. Mr Maguire also attended the opening and arranged for Mr O'Farrell to open it. Mr Tse was a member of G8wayInternational. He also paid commission to Mr Elliott when the latter introduced customers to Golden Sample, which would then assist those buyers to source wholesale products in China and then pack and send them on. In 2012, Mr Tse was identified on G8wayInternational's website as a representative of the G8wayInternational Business Network.
- 4.23. Mr Maguire met several people at the opening of the No.3 Wagga Wagga Café who were to become part of his network over the period the subject of Operation Keppel.
- 4.24. One was William Luong. Mr Luong was the managing director of Swamer Trading Pty Ltd and Swamer Investments Pty Ltd. In due course, he and Mr Maguire developed an association in relation to potential "property deals" in terms of Mr Maguire earning commission either from involving Mr Luong in a potential property transaction as an intermediary (in relation to land known as "Smartwest.Sydney", owned by interests connected with Louise Waterhouse) or

from providing information about government decisions concerning infrastructure and planning for Mr Luong in relation to potential property investments (including in Cawdor, NSW). These potential commission transactions are discussed in chapter 8.

- 4.25. Mr Maguire introduced Mr Luong to Mr Elliott, through whom, it appears, Mr Luong became aware of G8wayInternational.
- 4.26. In turn, Mr Luong introduced Mr Maguire to Ho Yuen Li in 2015. Mr Li was a Chinese national based in Hong Kong. He was the chairman of the board of the Shenzhen Jiurun Group and also of the Shenzhen Asia Pacific Commercial Development Association (SAPCDA), an organisation established in 2016, discussed in chapter 7. At their first meeting, Mr Maguire gave Mr Li his business card, which included his title as chair of the APFG. They met again in Shenzhen in July 2015, at which time Mr Tse was present.
- 4.27. Mr Maguire became the honorary chair of SAPCDA. Mr Tse was also involved with SAPCDA. Mr Maguire agreed that he used his role as chair of the NSW Parliament APFG to assist SAPCDA to explore commercial opportunities in the Pacific region.
- 4.28. Mr Maguire also met a man called Kent Lin at the No.3 Wagga Wagga Café opening. Mr Lin was from Zhahai. He and Mr Tse travelled to Wagga Wagga together to explore exporting wine to China. In 2012, Mr Lin was also identified on G8wayInternational’s website as a representative of the G8wayInternational Business Network.
- 4.29. Mr X was a vice consul in Sydney from 2002 until 2005. Mr Maguire appears to have met Mr X in that capacity. Mr Elliott was introduced to Mr X in 2011/12. In 2012, Mr X was also identified on G8wayInternational’s website as a representative of the G8wayInternational Business Network. Mr Elliott described him as a “a very highly educated English-speaking person”. He was G8wayInternational’s “man in Beijing”. If people travelled to China on buying trips, he would meet them and look after them at the Beijing end.
- 4.30. On 10 August 2012, Mr X sent Mr Maguire an email introducing him to Maggie Wang.¹³⁸
- 4.31. Mr X and Ms Wang had been family friends for more than two decades. On 7 September 2012, Mr Maguire sent Ms Wang an email from his parliamentary email address referring to Mr X’s introduction, introducing himself as “Chairman of the NSW Parliaments Asia pacific Friendship Group [sic]” and suggesting they meet.
- 4.32. Soon after, Ms Cartwright arranged a meeting between Mr Maguire and Ms Wang for 18 September 2012. The two discussed potential business opportunities, with the intention of them mutually making profits. Ms Wang also became aware of G8wayInternational at this time and could not discern a “very clear line” between Mr Maguire and G8wayInternational. In due course, Ms Wang became a member of G8wayInternational from which she received distributions. In 2012, she told Mr Maguire she could assist in matters of immigration as a representative for G8wayInternational.
- 4.33. In due course, it was Mr X who contacted Ms Wang in 2018 after Mr Maguire had given evidence in Operation Dasha and relayed a message to her from Mr Maguire to the effect “You should delete your messages” referring to the text messages and emails between Ms Wang and Mr Maguire.

¹³⁸ This report refers to Maggie Sining Logan as Maggie Wang – the name by which she was known to Mr Maguire.

- 4.34. Mr McLaren is a financial planner who moved to Wagga Wagga in 2007. He became acquainted with Mr Maguire during the 2010 Federal Election campaign. At that time, Mr McLaren was president of the Business Chamber and interacted with Mr Maguire in that capacity and also when he was elected to Wagga Wagga City Council in 2012. Wearing his hat as president of the Business Chamber, he travelled to Shenyang and Beijing in early May 2012 with Mr Maguire. Mr Maguire introduced him to Mr Elliott on that trip. Two months later, he travelled with Mr Maguire again, on this occasion visiting Hangzhou, Shanghai and Shenyang. Ms Hatton and Ms Cartwright also travelled on this occasion. Prior to a third trip to China in October 2012, which Mr McLaren took on his own, Mr Elliott sent him the details of G8wayInternational which Mr McLaren understood was a business club. In 2012, Mr McLaren was also identified on G8wayInternational's website as a representative in Australia of the G8wayInternational Business Network.
- 4.35. Soon after their first meeting, on 20 September 2012, Mr Maguire and Ms Wang were exchanging texts about Mr Maguire possibly mentioning to a particular consul-general that a friend of Ms Wang's in China wanted "to buy a lot of nickel". On 21 September 2012, Ms Wang sent a text to Mr Maguire thanking him (in relation to him sending her details to that consul-general) and saying "hopefully its a good start of our business together :)".

G8wayInternational – the inception

- 4.36. G8wayInternational was incorporated on 2 October 2012. On the same day, Mr Elliott sent Mr Maguire an email headed "gday.an update". In it he explained that he was still "working on the website and brochure ... [t]hen doing the advertisement for Gordons [sic] magazine". He also described the steps he had taken "[i]n order to keep everything separate". These included "set[ing] up a p/l company with me as the only shareholder and director at this point. It will be g8way international pty ltd". Of this, he said (as noted earlier in this chapter):

By setting up a company it cocoons the income from my own business plus if the money that runs through is what we hope for it will be subject to company tax rate and not top marginal rate plus if and when you give your other job away we just appoint you as a director and away we go.

- 4.37. Mr Maguire replied "Grat update [sic]".
- 4.38. Mr Maguire agreed that he deliberately did not want to be appointed formally as a director of G8wayInternational because he wanted to conceal any formal record of being in such a position or as a shareholder. He also agreed that he knew that if he was formally appointed as a director, it would be necessary for him to disclose that position on his return under the Disclosure Regulation and he agreed that he was concerned that if he did that, questions might be asked as to whether it was appropriate for him to be a director of such a company.
- 4.39. Mr Maguire never disclosed his position in G8wayInternational under the Disclosure Regulation. He knew, however, at the time that he was obliged to.
- 4.40. Consistently, no doubt with his role as the front man for G8wayInternational, Mr Elliott maintained its website. Among other matters, the website advertised the G8wayInternational Business Club and its immigration services. In the latter respect, it was aimed at Chinese–Australian-based people who had finished their degrees and were looking to stay. The website noted "the appointment of a specialist" in the immigration area, which was a reference to Ms Wang. The immigration scheme in which Mr Maguire and Ms Wang was involved is discussed in chapter 6.

- 4.41. Mr Maguire participated in the preparation of text for the G8wayInternational website.
- 4.42. A 2011 copyright mark appears on the G8wayInternational website. However, it appears from the fact Mr Elliott was still working on it just after G8wayInternational was incorporated that it was not launched until 2012. It was clearly functioning when Ms Wang and the immigration scheme started to get going in early 2013, and still functioning in November 2015, when under the heading “Breaking News” it advertised a new website would soon be “up and running”.
- 4.43. An email sent by Mr Elliott to Mr Maguire on 16 March 2013, six months after G8wayInternational was incorporated, indicates the intended structure of G8wayInternational and its operating model, at least at that time. A spreadsheet was attached to the email which contained the following fee distribution structure:

Table 1: G8wayInternational fee distribution structure

Introduced by	G8way	Introducer	Julian	Nicole	Mr X	Daryl	Phil
	50%	25%	5%	5%	5%	5%	5%

- 4.44. Thus, the proposed structure was, in effect: G8wayInternational would be entitled to receive and retain 50% of any commissions; there would be an incentive payment of 25% to the introducer; and those seen as the key stakeholders at the time would receive a 5% distribution. Those key stakeholders were Julian (McLaren), Nicole (Hatton), Mr X, Daryl (Maguire) and Phil (Elliott).
- 4.45. On 25 June 2014, Mr Elliott sent an email to Mr Maguire referring to a distribution of a kind contemplated in the 16 March 2013 email referred to above:

Did a distribution and have funds for Bec and Nicole to hand, balance held by me for you and I incl compensation for expenses to you.

Will work out a further distribution in regard to other introductions.

- 4.46. Mr Maguire replied the same day:

*Great, I paid Rebecca \$500 and Nic \$300. **Before you distribute can I see the amounts.** We need to add Maggie into these and Rebecca was a one off. I think the partnership is You Me Nic Julian Maggie [Mr X]. (Emphasis added)*

- 4.47. As is apparent from this email exchange, Mr Maguire was keeping a close eye on G8wayInternational’s finances.
- 4.48. Mr Maguire agreed that, as at June 2014, he saw the G8wayInternational “partnership” as involving himself, Mr Elliott, Ms Wang, Mr X, Mr McLaren and Ms Hatton. He said that he did not see Ms Cartwright as a party to the “partnership”. Mr Maguire agreed that he paid Ms Hatton and Ms Cartwright for their work for G8wayInternational. He also agreed that the payments related to work done for G8wayInternational, including work done in the time they were physically situated in the Parliament House office.

G8wayInternational – the intention

[Counsel Assisting]: Can I suggest to you this, that you and Mr Elliott set up the G8way International business in a way that you could put funds into the business to which you would have a claim at some point in time to avoid your disclosure obligations to parliament?

[Mr Maguire]: Yes. Yes.

[Q]: Can you tell us why you did that?

[A]: No.

- 4.49. While it is clear that Mr Elliott wished by incorporating G8wayInternational to keep it separate from Riverina Strata Management, it is also clear why Mr Maguire wanted to keep G8wayInternational separate from his parliamentary activities.
- 4.50. Mr Maguire agreed that he had an understanding with Mr Elliott that if he gave his other job away, in other words, retired from Parliament, there was an understanding between himself and Mr Elliott that he would be appointed as a director and “away you go” within the company. Mr Maguire also agreed that the idea was that G8wayInternational would engage in a series of business activities, make a lot of money and that he would share that money with Mr Elliott, amongst other people.
- 4.51. The advertising spiel for G8wayInternational on its website included the following: “At each end you will be met by our people who have the connections within the economic marketplace as well as at all levels of government” and “G8way International’s influence and experience reaches to high levels of government.” Mr Elliott agreed the latter was a reference to Mr Maguire, as did Mr Maguire. Mr Maguire agreed that “one of the things G8way International was seeking to sell as part of its international business network was influence and experience that would reach to high levels of government, at least in Australia”.
- 4.52. The reason Mr Maguire did not want his position and interest in G8wayInternational disclosed is apparent: as he agreed, he intended to monetise his positions by using his access and influence in his public offices as a member of Parliament, parliamentary secretary and in the APFG as something to which a G8wayInternational client or member might be able to get access. Mr Maguire agreed that it was quite wrong for him to seek to promote his access and influence in this way.

What Mr Maguire did

- 4.53. Although Mr Maguire and Mr Elliott sought to separate Mr Maguire from having any role in G8wayInternational, in fact, as Mr Maguire ultimately admitted, he acted as if he was its formally-appointed director.
- 4.54. According to Mr Elliott, Mr Maguire was not formally appointed as a director because, at the time that Mr Elliott set up G8wayInternational, Mr Maguire was a member of Parliament and therefore, as Mr Elliott understood it, did not want a formal office within the company. However, as he understood, G8wayInternational was a business enterprise in respect of which Mr Maguire was closely involved. While Mr Elliott was the “nominal” or “the titular director”, Mr Maguire was “pulling the strings”.
- 4.55. Ms Hatton knew at the time she was working for Mr Maguire that he was associated with G8wayInternational. She said she observed Mr Maguire to be “calling many of the shots to do with G8wayInternational business”.

- 4.56. Mr Maguire did the kinds of things that a director might do. He pursued business opportunities, he contributed to G8wayInternational's working capital, and was to receive a share of its profits after he retired from Parliament. At that time, Mr Elliott was to appoint Mr Maguire as a director of G8WayInternational.
- 4.57. Not only did Mr Maguire not want to be formally appointed as a director of G8wayInternational, he also did not want monies he received from G8wayInternational to be recorded in its books as payments to him. Accordingly, he received payment in connection with G8wayInternational activities "off the books" and in cash. When Mr Elliott was arranging to pay dividends for the 2013–14 financial year, he put all but those for Mr Maguire and himself through the books. He kept \$2,000 in cash out for he and Mr Maguire to use as a "special divvy". He added, "I don't need any so will just keep whatever you don't want in the safe as a bit if [sic] walking around money if and as required." Mr Elliott explained this expression, "walking around money", as being "an old saying, isn't it, just as a bit of cash money".

What G8wayInternational did

we are smokin!!! – Daryl Maguire

- 4.58. Mr Maguire agreed that he spent quite a bit of time and effort in attempting to get a number of G8wayInternational projects off the ground. An illustration of how active he himself was can be seen in an email exchange he had with Mr Elliott on 26 and 27 February 2013, a few months after G8wayInternational's incorporation, during which they discussed Mr Maguire going to China. Pending that trip, Mr Maguire observed:
- In the meantime we proceed, so Immigration stuff bubbling, meat , wine , coming along , G8 way ready to launch, coal mines just exploring, meeting Solomon Islands re land , Tin and Gold mines. I met Sussan about that yesterday, Joeseph identified land for iconic Sydney building , met with developer she is interested, for a fee, he is getting stats together. So we are smokin !!! [sic, and original spacing]*
- 4.59. Thus, Mr Maguire sought through G8wayInternational to create a network between China and Australia and to make a commission in multiple ways: through steel, wine, milk powder, a piloting school, a gold mine, a coal mine, a tin mine and meat. In due course, he ventured into larger enterprises for G8wayInternational concerning immigration (chapter 6) and exploiting his position as chair of the APFG to seek commercial benefits (chapter 7).
- 4.60. An illustration of how Mr Maguire used his position as a member of Parliament potentially for his personal benefit can be seen in his attempt in 2018 to make money with Ms Wang from the sale of oil technology, a matter dealt with in greater detail in chapter 7. When he spoke to Malcolm Roberts, the CEO of the Australian Petroleum Production and Exploration Association, about the proposal on 3 May 2018, Mr Maguire introduced himself as the chair of the NSW Parliament Asia Pacific Friendship Group. Malcolm Roberts said that if Mr Maguire had not been a member of Parliament, he would probably not have agreed to see him.
- 4.61. Another illustration arises from Mr Maguire's admission that he used his parliamentary email address to pursue business opportunities on behalf of G8wayInternational. That would no doubt have conveyed to the recipient that he was acting as a member of Parliament in so doing.
- 4.62. While a number of these areas did not lead to anything by way of remuneration, some areas did lead to some profits for G8wayInternational, and people associated with that company.

- 4.63. One aspect of this remuneration was the relationship between Mr Tse's company, Golden Sample, and G8wayInternational. Between 23 December 2013 and 28 December 2017, Mr Tse, and/or his company Golden Sample, transferred a total of \$40,116.06 into the G8wayInternational business account across six transactions, the largest of which was a payment of \$18,191.06 on 15 July 2016 from Golden Sample. Mr Tse's evidence was that these were commission payments.
- 4.64. Another example of such a transaction was given by Mr Elliott. He gave evidence of a commission having been paid in connection with the purchase of furniture and other goods by the Wagga RSL Club, of which he was a director. Mr Elliott travelled to China with Andrew Bell, CEO of the RSL Club, to purchase those items. Mr Tse, through his company Golden Sample in Guangzhou, acted as a buyer's agent. A commission was paid to Mr Tse who, in turn, passed a portion of the commission on to G8wayInternational.
- 4.65. Mr Elliott agreed that, from time to time, G8wayInternational received fees in cash, not all of which cash was banked. Mr Elliott also agreed that not all of the income received by G8wayInternational was recorded in its books. Rather, it was kept "off the books" in cash, which was kept in a safe at his property. Mr Elliott said that his recollection was that: he only received cash from Mr Maguire on "two or three occasions", and he understood it to be related to immigration activities (chapter 6). It may have totalled between \$16,000 and \$18,000.
- 4.66. Mr Luong also gave evidence of "a lot of attempts" being made by G8wayInternational to broker trade between Australia and China in relation to products such as olive oil, meats, water and cotton. According to him, these attempts were ultimately unsuccessful.

Use of parliamentary resources

[Counsel Assisting]: So you met Maggie in your capacity as a member of Parliament, is that what you're saying?

[Mr Maguire]: She was introduced to me by [Mr X], who was a former consul in Sydney.

[Q]: In your capacity as a member of Parliament?

[A]: It's hard to distance yourself from being a member of Parliament 24 hours a day. You, you cease to be a citizen once you become a member of Parliament.

- 4.67. There was one important respect in which Mr Maguire did not keep G8wayInternational separate from his parliamentary activities: he involved members of his parliamentary staff, Ms Hatton and Ms Cartwright, and also electoral staff in his Wagga Wagga office, in work for G8wayInternational.
- 4.68. Mr Maguire conceded in his written submissions in reply to those of Counsel Assisting that some business of G8wayInternational was conducted from both his parliamentary and electorate offices from time to time and that the facilities provided to him, together with support staff, were partly used for the business of G8wayInternational and that that was wrong.
- 4.69. It is necessary to consider the extent to which this conduct occurred to assess its gravity. Mr Maguire submitted that there is no evidence which assists the Commission as to the amount of time involved in the tasks outlined above except for that of Ms Hatton, who noted that the majority of tasks she completed "were all to do with parliament sitting" rather than G8wayInternational. That does not mean its significance cannot be gauged.

- 4.70. Mr Maguire agreed that while he was a member of Parliament, he used his office in Parliament House in seeking to pursue his own business interests. That included holding meetings in his Parliament House office, or in other Parliament House meeting rooms, and his use of his parliamentary email address and facilities such as photocopiers. He also agreed that while a member of Parliament, he asked his staff who were employed by the Department of Parliamentary Services to assist in pursuing his personal business interests, including Ms Hatton and Ms Cartwright and his electorate staff in Wagga Wagga from time to time.
- 4.71. Mr Maguire agreed that, to the extent that Ms Hatton or Ms Cartwright, or anyone else within the parliamentary staff, performed any functions in relation to G8wayInternational that was done with his approval.
- 4.72. Mr Maguire also gave Mr Elliott access to the resources that were available to him as a member of Parliament for G8wayInternational business such as the use of the parliamentary mail bag and access to parliamentary research services. Mr Elliott agreed that Mr Maguire made it clear that he could have access to his parliamentary staff, in particular Ms Hatton and Ms Cartwright, in order to undertake tasks relevant to G8wayInternational. Mr Maguire did not deny this to have been the case.
- 4.73. Mr Maguire agreed he gave Ms Hatton authority to use his Parliament House office and the resources available within Parliament House to assist Mr Elliott in the G8wayInternational business.
- 4.74. Ms Hatton worked for Mr Maguire from 2011, when he was government whip, as an additional temporary staff member (ATS), until late 2012 when she went to work for the Hon Gabrielle Upton. She returned to work for Mr Maguire in around 2015, once more in the capacity of an ATS. Ms Hatton worked on a casual basis and was required to fill out a timesheet, which Mr Maguire was responsible for approving.
- 4.75. Clause 4.2 of the NSW Parliament Code of Conduct for Members' Staff provided:
- You should inform your Member of the outside employment you wish to undertake and you are required to obtain prior approval from the Clerk of the Legislative Assembly or the Clerk of the Parliaments before engaging in any paid outside employment.*
- It is not necessary to obtain approval for voluntary or unpaid activities, unless a conflict of interest arises in relation to those activities and your official responsibilities.*
- 4.76. Ms Hatton said that while she worked for Mr Maguire, between 2011 and going to work for Ms Upton in late 2012, she did not have approval through the Parliament to undertake outside or secondary employment. She did not seek such approval because she did not know she needed it. She did not recall receiving any training as to her obligations under the Code of Conduct for Members' Staff.
- 4.77. Ms Hatton agreed that while she worked for Mr Maguire, she did perform some outside or secondary employment, including providing assistance to G8wayInternational, with the permission and on the instructions of Mr Maguire, but without approval from the clerk of the Legislative Assembly.
- 4.78. Ms Hatton agreed that Mr Maguire made it clear that the work she would be doing for the benefit of G8wayInternational could be done on parliamentary time, that is, it could be done during the time which she entered on her timesheets for Mr Maguire to approve so that she could be paid. Ms Hatton agreed that most of the work she did for G8wayInternational was on parliamentary time. The timesheets Mr Maguire approved for Ms Hatton did not disclose the G8wayInternational work.

- 4.79. The work that Ms Hatton did for G8wayInternational included administrative work, arranging travel, arranging visas, designing business cards, registering G8wayInternational on government tender websites, organising functions, sending quotes; and contributing business development ideas.
- 4.80. Some of this work was done, to the knowledge of Mr Maguire, on parliamentary time (that is, time paid for through the Department of Parliamentary Services) and for the benefit of G8wayInternational.
- 4.81. Ms Hatton stated that she did the work for G8wayInternational because she “worked for Daryl and Daryl asked me to”. She did, however, appreciate that what she was doing was “skimming the boundaries” in the sense that she was doing the work on parliamentary time. Notwithstanding her concerns, she did not report the matter and did not have a sense of to whom she should have reported any such concerns.
- 4.82. Ms Hatton recalled receiving a payment of \$300 from G8wayInternational at one point. Mr Maguire referred to such a payment in an email exchange with Mr Elliott on 25 June 2014 referred to above.
- 4.83. Ms Hatton agreed with the proposition that Mr Maguire effectively turned his Parliament House office into an office for G8wayInternational.
- 4.84. Ms Cartwright began to work in the government whip’s office in 2011, at a time when Mr Maguire was in that role. She remained attached to that office after Mr Maguire was appointed a parliamentary secretary and she worked on a full-time basis.
- 4.85. At a compulsory examination, in response to a question whether she needed to seek permission from Mr Maguire in relation to drafting a letter, Ms Cartwright said she “never did anything without his permission”.
- 4.86. Ms Cartwright said that she did not receive any training as to her roles and responsibilities as a member of staff at the time she was appointed to the government whip’s office. She did, however, recognise the Code of Conduct for Members’ Staff when shown it during her evidence and thought she may have received a copy of it as part of a “packet” when she first started working for Mr Maguire.
- 4.87. Ms Cartwright agreed that she understood when she went to work for Mr Maguire that she was not entitled to assist a member of Parliament with his or her private business activities. Nevertheless, Ms Cartwright helped Mr Maguire from time to time with his private business interests, including those associated with G8wayInternational. She knew that Mr Maguire was involved in G8wayInternational in the sense that he might ultimately stand to gain financially from it.
- 4.88. Ms Cartwright acknowledged that she was aware that there was a requirement that approval be sought to engage in outside employment, and that at no point in time did she have approval from the clerk of the Legislative Assembly to engage in secondary or outside employment insofar as it related to G8wayInternational. While she did not recall receiving any formal training on the issue, she was aware that she should report concerns about a member of Parliament to the clerk.
- 4.89. The assistance Ms Cartwright provided to Mr Maguire and/or his business associates included helping Joe Alha (a close friend of Mr Maguire) obtain a visa, some involvement with wine sales, sending documents to Fiji (in association with “Jetblaster”), some documents associated with agreements for G8wayInternational, assisting Mr Elliott obtain visas on behalf of others, and assisting Mr Maguire in quoting to third parties potential product sales (in connection with meat sales).

- 4.90. Ms Cartwright also received a loan from Mr Maguire in order to pay back another member of Parliament and the money came from G8wayInternational. She had not, as at the time of giving her evidence, paid the money back. The loan was for around \$2,000 to \$2,500. On a separate occasion she received \$500 in cash from Mr Maguire, which she said she believed was the \$500 associated with the distribution referred to above.
- 4.91. Ms Cartwright agreed, with the benefit of hindsight, that some of the things that she was asked to do in her parliamentary role were things to suit Mr Maguire's personal private interests rather than the interests of the public. She also agreed, with the benefit of hindsight, that Mr Maguire was "running a business on the side" with the use of his parliamentary office and the assistance of staff, although she said she did not appreciate it at the time. She also accepted that she was asked to do things and did do things which, with the benefit of hindsight, she should not have done.
- 4.92. Mr Maguire agreed that to the extent that Ms Hatton or Ms Cartwright or anyone else within the parliamentary staff performed any functions in relation to G8wayInternational, that was done with his approval. He also agreed that he made it clear to them that if Mr Elliott asked them to do something, such as, for example, to assist in the preparation of business cards, they had his authority to proceed.
- 4.93. Mr Maguire conceded that he understood at the time that he was not permitted to use his Parliament House office, or his parliamentary staff and resources in the way that he did, for the benefit of G8wayInternational, but was rather required to use those resources wholly and solely in the exercise of his public functions.
- 4.94. As can be seen, Mr Maguire made extensive use of his parliamentary resources for his private business, G8wayInternational. Mr Maguire also agreed that he effectively, albeit partly, turned his office in Parliament House into an office for G8wayInternational.

Mr Maguire's use of his position with a view to gaining profits for G8wayInternational: claiming a fee for an introduction to Premier Barry O'Farrell

- 4.95. The issue to be determined in this section of the report is whether Mr Maguire, through G8wayInternational, sought, and received, a fee for introducing the party secretary of Liaoning Province and members of his delegation ("the Liaoning delegation") to then premier Mr O'Farrell at Parliament House on 30 November 2012. The Liaoning delegation was attending Parliament House not only to meet the premier, but also to attend a signing ceremony with Wagga Wagga City Council in relation to the establishment of the Wu'ai International Wholesale Trade Centre in Wagga Wagga. The meeting with the premier and the signing ceremony were to be followed by a lunch, also at Parliament House.
- 4.96. The issue turns on one invoice (Invoice #SHEN201201), but in the three days prior to 30 November 2012, two more invoices were prepared on G8wayInternational letterhead in relation to aspects of that day's events: Invoice #SHEN201202 and Invoice #SHEN201203.¹³⁹
- 4.97. As events transpired, and as is explained below, the Liaoning delegation did not attend the planned lunch at Parliament House following the signing ceremony. Nevertheless, an invoice in the sum of \$1,869 for that meal and for some other food related to the event was issued on 30 November 2012 by NSW Parliamentary Catering to Mr Maguire. There is evidence from a member of Mr Maguire's

¹³⁹ The three invoices are referred to collectively as the "#SHEN Invoices".

staff, and Ms Zhang, who was helping organise the events of the day for the Liaoning delegation, that Ms Zhang paid for the lunch, but in an amount which far exceeded its cost, and which in any event is contradicted by evidence that that account was paid by Wagga Wagga City Council.

- 4.98. It is necessary to consider all the evidence concerning the invoices issued by G8wayInternational and that issued on 30 November 2012 by NSW Parliamentary Catering in connection with the events at Parliament House on that date. While that evidence is unsatisfactory and inconsistent in certain respects, the totality of that evidence, and in particular the contemporaneous documentary evidence, enables the Commission to be satisfied that Mr Maguire, through G8wayInternational, sought and received payment for arranging for Mr O'Farrell to meet with members of the delegation from Liaoning Province at Parliament House on 30 November 2012.
- 4.99. This was wrong and was possibly the first, and an egregious, example of Mr Maguire seeking to monetise his position as a member of Parliament while hiding his involvement in G8wayInternational.

Travel to Wu'ai

- 4.100. Both Ms Hatton and Ms Cartwright travelled to the city of Wu'ai in China with Mr Maguire in July 2012. The itinerary for the trip was organised by Ms Hatton and included travel to the city of Shenyang, the capital of Liaoning Province, involving, amongst other things, two days of visits to the Wu'ai markets located in the northern part of the city centre. The Wu'ai markets were the basis for a trade centre concept that Mr Maguire wanted to introduce in Wagga Wagga. The term "Wu'ai" derives from the Wu'ai Market in the Shenhe District of Shenyang City, Liaoning Province in China.
- 4.101. Ms Cartwright gave evidence that she and Ms Hatton had their accommodation and some expenses on that trip paid for by Humphrey Xu, a contact of Mr Maguire's living in China. Ms Hatton said that Mr Xu and his business partner, Ms Zhang, were associated with Mr Maguire's plans to bring the trade centre modelled on the Wu'ai markets to Wagga Wagga.
- 4.102. Ms Zhang and Mr Xu had a company, ACA Capital Investments, of which she was the general manager, and he was a director. It was registered in Australia but was a state-owned Chinese Government company which provided services for state-owned companies like Wu'ai, and also consulted to the Chinese Government. Ms Zhang said that she and Mr Xu worked with Mr Maguire to bring the Wu'ai Trade Centre to Wagga.
- 4.103. Mr Maguire described Ms Zhang as "the lady that was representing Liaoning organising the function for the Wu'ai signing ... responsible for the costs". She was described by Ms Hatton as "a conduit from Daryl to Chinese businesses".
- 4.104. When being asked in her compulsory examination about her familiarity with G8wayInternational, as well as the events of 30 November 2012, Ms Zhang said that "during that period of time we did have a huge connections [sic] with Mr Maguire and the state government, so ... when I know he's in office sometimes would just, just pop in and say hello and talk for a few minutes." She also said that Mr Maguire had mentioned forming G8wayInternational to her, but that she was never involved with that.
- 4.105. Ms Zhang agreed that when she was dealing with Mr Maguire, "there were a lot of meetings and a lot of people coming in and out". She said, "You know Mr Maguire's office, just the whip, you know, everybody passed to, you know, to get a lolly and say hello and go, you know." She estimated she visited Mr Maguire in Parliament House "quite often, maybe more than 10" times during this period. She said that she and Mr Maguire met "Quite often at that time because

we do already have a very heavy business engagement ... at that, only on that period of time only.” Ms Zhang agreed that all of these meetings were for the “business engagement” she had with Mr Maguire.

Arrangements for Mr O’Farrell’s reception of the Liaoning delegation

- 4.106. On 15 November 2012, Ms Zhang sent an email to Chris Eccles, the director general of the Department of Premier and Cabinet (DPC), and Peter McConnell, the chief of staff for Mr O’Farrell, carbon copying it to Mr Maguire and Mr Xu. Ms Zhang referred to having met Mr Eccles and Mr McConnell in China on 31 August 2012, at a formal meeting in Guangzhou to which Mr O’Farrell had invited representatives of the Wu’ ai Group.
- 4.107. Ms Zhang advised in her email that the premier had recently written a few letters to the Wu’ ai Group and had also invited “our political leader”, the party secretary of Liaoning Province, to visit NSW. She wrote that the party secretary had happily accepted that invitation and would be visiting Sydney on 30 November 2012.
- 4.108. Ms Zhang’s email also expressed a wish for the visiting delegation to have the opportunity to meet the premier on the morning of 30 November 2012 and to have the premier host a lunch function for the delegation afterwards. She also wrote that the Wu’ ai group wished “to celebrate their \$400 million dollars investment decision” and wanted to have a signing ceremony witnessed by Mr O’Farrell and the party secretary. She advised that the (Chinese) Department of Foreign Affairs had asked her company to make this arrangement and that Mr Maguire had encouraged her to write to the email recipients directly. She added that if more information was required, she or Mr Maguire could be contacted.
- 4.109. On 23 November 2012, Mr Maguire sent an email to Mr O’Farrell thanking him for agreeing to meet the party secretary of Liaoning Province on 30 November 2012 and looking to lock in a meeting time. He indicated that 30 minutes should be allowed for that purpose from 10.00 am on Friday, 30 November 2012. Despite the terms of Ms Zhang’s email to Mr Eccles, which had been copied to Mr Maguire, and its request that the premier attend both the signing ceremony and the lunch, Mr Maguire wrote, “we dont [sic] expect you to do anything other than to meet greet and have photos on your 8th floor board room”. He said that following Mr O’Farrell’s meeting, the delegation would proceed to the signing of a memorandum of understanding (MOU) with Wagga Wagga City Council “regarding the \$400 million Wu’ ai investment in Wagga”.
- 4.110. Mr Maguire also told Mr O’Farrell:
- What I need is for you to meet all the delegation in your Board room around the table Chinese style with a cup of tea and woo them. **Then the obligatory photos they have a media team with them , they leave at 1030 to attend the signing and meet the Mayor of Wagga, and CSU . we [sic] will then have a lunch which I have arranged .***
(Emphasis added, original spacing).
- 4.111. Later, on 23 November 2012, Ms Zhang sent Mr Maguire a list of 17 names and corresponding titles, including the party secretary, “Mr Humphrey Xu, director of ACA capital investment Pty Ltd” and “Lydia Zhang, Director of Liaoning E business Investment and management”. The list appears to be the names of the members of the delegation from Liaoning Province. Mr Maguire forwarded the list to Phil Pinyon, the general manager of Wagga Wagga City Council.
- 4.112. Mr Maguire agreed that he had a fairly good relationship with Mr O’Farrell and that he had made a personal request of the premier to receive the Liaoning Province delegation in his boardroom. He agreed that the arrangement ultimately reached was that there would be a smaller delegation

of individuals met by Mr O'Farrell in his boardroom, following which there would be a separate signing ceremony that Mr O'Farrell would not attend.

- 4.113. Mr Maguire said that a signing ceremony is a traditional part of the formalities of progressing any business or transaction in China. He agreed that the document signed in such formalities is in the nature of an MOU which, while not a legal document, is an indication of good faith by both sides that they are attempting to reach a particular goal. He noted that “nothing progresses without an MOU and all the fanfare that goes with it”.

G8wayInternational: Invoices #SHEN201201 – 201203

- 4.114. In the lead up to the 30 November 2012 event, there was a flurry of activity between Mr Maguire, Mr Elliott, Mr Maguire's staff (Ms Hatton and Ms Cartwright) and Ms Zhang. This included the preparation of three invoices in relation to the event, Invoices #SHEN201201 – 201203. The circumstances of their preparation are set out below under the heading of each invoice. Other relevant events are inserted chronologically in the sections relating to the respective invoices.
- 4.115. Mr Elliott was not involved in the signing ceremony for the proposed Wu'ai International Trade Centre and said he did not know what involvement G8wayInternational had in it. He did not recall having any involvement in the organisation or preparation of the function itself and did not attend it.
- 4.116. However, Mr Elliott prepared draft invoices on G8wayInternational letterhead in relation to at least introduction services and interpreting services for the 30 November 2012 event. He agreed that, at least in some areas, Mr Maguire would take the running on activities of G8wayInternational and not necessarily keep him involved in each and every step. That was consistent with Mr Maguire, although he was not formally appointed as a director, performing roles as a director.
- 4.117. Mr Elliott agreed that he had an arrangement with Mr Maguire whereby if he wanted to use G8wayInternational as a vehicle through which to be involved in events such as the one that took place on 30 November 2012, he had Mr Elliott's permission to use the company for that purpose and Mr Elliott would leave it to Mr Maguire to come up with pricing narratives and the like. In relation to invoices, Mr Elliott would not personally satisfy himself that the work had actually been done or that the prices charged were actually appropriate.

G8wayInternational – Invoice #SHEN201201

- 4.118. On 26 November 2012, Ms Cartwright sent an email to Mr Maguire with the subject heading “Arrangements for Friday”. She advised Mr Maguire that she had just met with Ms Zhang who had asked that the signing ceremony take place in a larger room than the Speaker's room and indicated that she wanted a big banner put up. Ms Cartwright advised that she had contacted someone to help getting the banner made in time and told Mr Maguire that “Lydia said she is paying for that one”.
- 4.119. Ms Cartwright went on in her email to Mr Maguire to note:

Lydia also wants to have drinks—tea, coffee, soft drinks, wine, beer and champagne and a fruit platter to be served in the Gov party Room after the signing as you cannot get into the President's dining room till 12pm. I think that's a good idea but that will add to the costs and I believe that Wagga Wagga City Council is paying for the food side so do not want to start to order food and staff without the ok from you. (Emphasis added)

- 4.120. On 27 November 2012 at 10:15 am, Mr Elliott sent an email to Ms Hatton (addressed to both her parliamentary email address and her @g8way email address) attaching a draft tax invoice and suggesting that she should “maybe run it pass [sic] Daryl”. The email also noted that Mr Elliott had spoken (briefly) to Ms Zhang that morning and continued, “will send to you the proforma if ok with you s tha on Lydias [sic] advise we can add in the appropriate details”. The attached draft tax invoice did not identify a recipient, or any amount or have an identifying invoice number. The invoice identified that it was for:
- Introduction and interpreter services*
- Client liaison and private meeting*
- Secretary Liaoning Province PRC*
- Conducted Friday November 30th, 2012.*
- 4.121. The draft tax invoice also included a provision for “Total Introduction Fee” (which was marked “XXXX”) and provided for payment by means of “[c]heques payable to G8wayinternational Pty Ltd”. Ms Hatton replied to this email at 2:03 pm on 29 November 2012, stating “Looks great... Little late but better than never”, and separately forwarded the draft invoice to her @g8way email address. Mr Elliott said that he would have entered the details on the invoice template most probably as instructed by Mr Maguire, as reinforced by his comment of “maybe run it pass [sic] Daryl”.
- 4.122. Ms Hatton said that having regard to Mr Elliott’s suggestion, “maybe run it pass [sic] Daryl”, she would “have given it to Daryl then”. She also said she would never have issued an invoice on G8wayInternational letterhead without having it signed off by Mr Maguire or Mr Elliott.
- 4.123. Mr Maguire said he did not recall the attached invoice being run past him. However, he agreed that a draft invoice of that kind must have, at least as a matter of practice, been drawn to his attention given that, first, he was, for all practical purposes, a director of G8wayInternational and, secondly, the invoice concerned an event that he was running, at least in part, as a member of Parliament. He also agreed that in relation to a matter in Parliament House, as a matter of practice, his staff would not have acted without his authority to raise an invoice of this nature, albeit the invoice was on G8wayInternational letterhead. Mr Maguire could not recall having any involvement in the setting of a fee and this particular invoice. He could not identify any reason why the Commission might think that Mr Elliott would have come up with a fee or the description on the draft invoice.
- 4.124. On 27 November 2012 at 4:24 pm, Mr Elliott sent an email to Mr Maguire and Ms Hatton attaching a “tax invoice template to be used for the event on Friday”. The email was sent to both the @g8way email addresses of Mr Maguire and Ms Hatton and to other personal email accounts of theirs (notably, not their parliamentary email addresses). Mr Elliott asked the recipients, “Could you pass this on to Lydia or assist her once she provides details.”
- 4.125. Mr Elliott then wrote:
- We are of course happy to accept the funds and hold them for future distribution but we don’t want to be in a position where any expenses are allocated to G8wayInternational **before** (original emphasis) the money is received. In other words we don’t want Lydoa [sic] booking events and the like up and us being left with outstandings [sic].*
- 4.126. Mr Elliott noted that in his brief conversation with Ms Zhang that morning he had advised her that “something [was] on the way with invoicing”. Mr Elliott asked Ms Hatton to “put this to the letterhead you received. It’s not brilliant but all the details we need are on this invoice..abn etc.” [sic]. He added “All that will need to be done is roll the invoice numbers with each client..01,02 etc”.

- 4.127. There is no invoice template attached to Mr Elliott's email as it was tendered. Mr Maguire submitted that there was no evidence that the template said to be attached was in fact attached.
- 4.128. However, Mr Elliott said that "[I]f I put down 'attached is', then I would have prepared that". He identified the invoice template as a document which, while it bore more details than the one he had forwarded earlier that day, such as the identifying invoice details (Invoice #SHEN201201) and the price of \$5,000 plus GST of \$500 (which he said he did not insert), was still in template form awaiting the "Client name" and the date details to be inserted in the spaces allocated for them. Notably, however, the service description had been amended to read:

Meeting with The Secretary, Liaoning Province

Peoples Republic of China

The charged fee is for the introductory service, interpreter service and associated activity in the liaison with the Secretary as a precursor to business opportunities within the region

- 4.129. Having been shown his email to Ms Hatton on the morning of 27 November 2012, attaching the draft invoice referring to "introduction and interpreter services", Mr Elliott said that he could not recall what that item would have referred to. He observed that it was "obviously a document that's been drafted where a fee was going to be charged to provide a person to be an interpreter between the secretary of Liaoning Province and somebody" but said that he could not recall who and did not know who.
- 4.130. Mr Elliott denied that G8wayInternational ever charged a fee to any person for an introduction to a NSW minister or other government official. He said that he had no recollection of the services for which G8wayInternational was going to be charging, as set out in the invoice, or of the specific situation involving the party secretary of Liaoning Province.
- 4.131. Mr Elliott agreed that it was a fair assumption that if Invoice #SHEN201201 was being sent to the Chinese side, then the reference to introductory service (as it was in the second draft of the invoice) must be to someone on the Australian side. He could not identify any reason as to why the Commission would not conclude that this invoice was charging for, amongst other things, an introduction to NSW government officials, including the then premier, Mr O'Farrell.
- 4.132. Ms Hatton also identified the invoice template as being the same document identified by Mr Elliott above. She said that while she did not have a specific recollection of that invoice, the "introductory service" it identified was consistent with the structure of G8wayInternational, as she understood it, to introduce people and to charge a fee. She did not think that she was involved in determining the fee charged on the invoice and assumed it had been determined by either Mr Elliott or Mr Maguire.
- 4.133. On 28 November 2012, Ms Cartwright sent Ms Zhang an email with the subject line "card details" asking for her credit card details "asap" so that she could order tea, coffee and fruit and pay for linen to be cleaned. Ms Zhang replied, asking:

Do you know the price, I need to have the price and pass the bill to the government.

- 4.134. Ms Cartwright told her:

*It will cost around \$180 for fruit tea coffee—\$40 for the cloths and the luncheon for food only is \$1,929.00 (at this stage) drinks will be on consumption. **Daryl is not paying and waiting for the money from the Government we need the card details.***
(Emphasis added)

4.135. Ms Zhang then informed Ms Cartwright:

*Hi Becky, there will be a change with the function, We may need to change to a smaller room to have early lunch or not lunch because the time is limited for this delegation. Wld you pls check the presidents room, the final decision will be made this afternoon, **Humphrey will be in your office meeting daryl this afternoon at 3:30pm.** Sorry for the stress.*
(Emphasis added)

4.136. Ms Cartwright replied, "I Think you mean the Speaker's dining room as you have the Presidents' I have booked the Speakers from 10.30am to 3.00pm. I had this room booked originally for you lucky that I did" [sic].

4.137. On 29 November 2012 at 11.23 am, Ms Hatton sent Mr Elliott an email advising him, "here is a copy of the invoice for Lydia for our records, they are coming in today to pay. Do you want me to make a receipt template or do you? Thanks Nicole".

4.138. Attached to the email was an invoice which was described as "INVOICE #SHEN 201201". It now included all the details but was on G8wayInternational letterhead. In addition, the "Client name" section was filled out as "Lydia Zhang", and the date, 29 November 2012, was entered in the "Date" space. The services for which the invoice was issued were also identical to those which had appeared on the invoice template identified by Mr Elliott and Ms Hatton, referring to "Meeting with The Secretary, Liaoning Province" on Friday, 30 November 2012. The charged fee was said to be for "the introductory service, interpreter service and associated activity in the liaison with the Secretary as precursor to business opportunities in the region". As with the invoice template, both cheque and direct deposit payment methods were stated to be payable to a G8wayInternational bank account.

4.139. Mr Elliott replied to Ms Hatton by email on 29 November 2012, advising that he would "issue a receipt when the funds are deposited", and that "In the meantime the tax invoice will act as documentation." (The holdings of the Commission do not include any such receipt.)

4.140. Mr Elliott agreed that the invoice addressed to Ms Zhang for \$5,500 was the first invoice ever issued by G8wayInternational, but said that he did not believe that it was ever paid. Despite Ms Hatton's advice in her email to him on 29 November 2012, namely, that "they are coming in today to pay", Mr Elliott said that he had no recollection of it either being paid, or of issuing a credit note or anything of the kind to reverse the invoice.

4.141. Ms Hatton said that she could not recall whether the first G8wayInternational invoice for \$5,500 was ever paid. She could not specifically recall sending it, although she said, "I would have sent this invoice out", and that "If I was instructed to do something, I would send it."

4.142. Ms Hatton said she did not recall Ms Zhang coming in on 29 November 2012 to pay Invoice #SHEN201201 but said she may have. She observed that there were a number of occasions when Ms Zhang had said she would be coming in to drop off a cheque or to do something and she never showed up. Ms Hatton said that had Ms Zhang come in and given her either cash or a cheque in respect of that invoice, she would have left it for Mr Maguire in his drawer with the understanding "maybe it went back to, to Mr Elliott" but she did not "deal with that aspect".

4.143. Ms Hatton said that it was "[m]ore than likely", although she did not recall, that there were occasions when she was presented with and accepted cash on behalf of Mr Maguire, Mr Elliott or G8wayInternational, and that there were probably occasions when she accepted and received cash in an amount exceeding \$1,000 in a single delivery.

- 4.144. Ms Cartwright said that she was not aware of any expenses involved with the function that took place in the premier's boardroom and was not aware of any bill issued from the Parliament to Mr Maguire or anyone else in relation to it. She said she coordinated the "courtesy call" on Mr O'Farrell and did not recall any expenses associated with it. Nor was she aware of whether Mr Maguire or anyone else charged a fee in relation to the meeting with the premier. She agreed that that would be an unusual thing to do.
- 4.145. Mr Maguire gave evidence that he did not recall having seen the invoice addressed to Ms Zhang in the amount of \$5,500 for introductory and other services associated with the visit by the Liaoning Province party secretary before he was shown it during the public inquiry.
- 4.146. Asked if there was any reason why the Commission would not conclude that the reference to "introductory service" was a reference to an introduction to Mr O'Farrell, amongst other people, Mr Maguire responded that he could give no reason other than that the invoice, and other G8wayInternational invoices, were created because Ms Zhang was attempting to recover monies she had paid for the functions and the invoices were needed. His recollection was that there was a luncheon to be paid for "and that was the invoice for the luncheon that Ms Zhang had concocted with, with, with the staff".
- 4.147. The Commission does not accept that evidence in the light of the fact that, as Mr Maguire knew at least from Ms Cartwright's email to him on 26 November 2012, before the process of preparing any of the #SHEN invoices commenced (at least on paper), that Wagga Wagga City Council was paying for "the food side" of the event. That, no doubt, is why no G8wayInternational invoice was prepared for Ms Zhang or anyone connected with the Liaoning delegation for the "food side" of the event in Parliament House. This evidence is discussed further below.
- 4.148. Ms Zhang denied having seen G8wayInternational Invoice #SHEN201201. She said that she never understood she was paying for an introduction and had never paid for the items it described. However, she did say she received a physical bill for "about 5,000 or something" from the NSW Parliament "dining section". Ms Zhang told the Commission that she ended up paying around \$5,000 for the function, which she thought was "3,000 and something for the food and about 1,000 and something for the drink".
- 4.149. The evidence indicates that it is probable that Ms Zhang came to Parliament House and made payments on 29 November 2012, associated with the events of that day. Ms Zhang said she knew she was the only person paying any money for the function because "the visitors ... didn't expect they need to pay for it".
- 4.150. Consistent with Ms Hatton's email to Mr Elliott on 29 November 2012, there is evidence of a cash deposit of \$1,000 in 10 x \$100 notes made into a G8wayInternational bank account on 30 November 2012, which was the amount shown on the next G8wayInternational invoice, Invoice #SHEN201202, discussed below. While that deposit was not the amount of \$5,500 shown on Invoice #SHEN201201 attached to Ms Hatton's email, it is improbable that Ms Hatton attached the wrong invoice to her email to Mr Elliott. Rather, the Commission finds that, as Ms Hatton said she would have done if instructed to do so, she had sent Invoice #SHEN201201 to Ms Zhang, and that Ms Zhang had advised her, as Ms Hatton told Mr Elliott, that she would come to Parliament House on 29 November 2012 to pay it. As the invoice for the dinner was only prepared on the afternoon of 29 November 2012, it is probable that it was given to Ms Zhang when she attended Parliament House, and that she paid that invoice too.
- 4.151. Mr Maguire denied that G8wayInternational ever charged a fee to any person in exchange for an introduction to a NSW minister or other government official with his authority. He said that were he ever asked for such authority, he would "absolutely" have refused it. He said he would not

have authorised such a charge as it would be “going too far” to monetise his office by offering an introduction to “a Minister, or someone like that, or the Premier”.

- 4.152. Mr Maguire had difficulty explaining why he would draw the line at monetising his office by offering an introduction to “a Minister, or someone like that, or the Premier”, but have no apparent compunction in doing so when, for example, on a number of occasions, he had introduced or set up meetings between individuals and government officials so as to assist those individuals in the hope that there might be a profit in it for him. Ultimately, Mr Maguire walked back from his denial that he had done so, and simply said he did not “have a recollection of at least agreeing to a fee being charged for an introduction”.

G8wayInternational – Invoice #SHEN201202

- 4.153. At 2:43 pm on 29 November 2012, Ms Hatton sent an email from her parliamentary email address to her own @g8way email address, as well as to Mr Elliott. The subject line said, “Invoice template [1].doc”. The email attached a copy of an undated draft invoice (not on G8wayInternational letterhead) and stated, “Copy of invoice for dinner–\$1000 Nicole”. It was identified as “INVOICE #SHEN201202”. The “Client name” appeared as “Ting Duan” – a person the Commission has been unable to identify. The description on the draft invoice was:

Friday November 30th, 2012

Meeting with The Secretary, Liaoning Province

Peoples Republic of China–Dinner

- 4.154. The service fee was \$910 plus an (incorrect) GST component of \$90 (which should have been \$91). Mr Elliott replied to this email at 3:15 pm on 29 November 2012 stating, “Perfect, the only thing we need to do is include an address of the payer”.
- 4.155. Ms Hatton gave evidence that it was either herself or Mr Elliott who had prepared the invoice, but she had no recollection of having had anything to do with organising a dinner for the party secretary of Liaoning Province in November 2012.
- 4.156. Nor did Mr Elliott have any recollection of the circumstances in which the invoice came to be issued. He noted that the itemised GST amount in the invoice was incorrectly calculated and agreed that he inferred from that fact that he did not prepare it. He conceded there was a presumption that invoices of this kind were sent to him so that he would make sure “they went through the books” for G8wayInternational. However, he also agreed that not all income received by G8wayInternational was recorded in the quarterly business activity statements he filed for the company and that some of G8wayInternational’s income did not go through the books.
- 4.157. Mr Elliott recalled an invoice that he believed to be in the vicinity of \$2,000 having been paid and later refunded. This appears to have been a mistaken reference to the \$1,000 invoice issued for the planned dinner event addressed below. That was the only money he could recall receiving in relation to the Liaoning delegation.
- 4.158. On 4 December 2012, Ms Hatton sent an email to Mr Elliott in which she advised:
- Remember last week we had a payment of \$1000 for the China dinner that in the end did not take place ... I banked the funds into the G8wayInternational bank account on Friday am. The women is [sic] now wanting her money refunded. How is the best way to handle this?*
- 4.159. Mr Elliott replied that he had “Just had a chat to Rebecca. I can transfer to ladies account of [sic] if she wants cash I will transfer to one of your accounts and you could withdraw funds”.

Ms Cartwright then emailed Mr Elliott, “The lady wants cash of course which is fine so can you pay my account” and gave him her bank account details. She added, “Cheers for that I’m going to the bank now to withdraw the cash for her.”

- 4.160. Ms Cartwright had no recollection that money was paid that had to be refunded and did not recall ever giving any cash back to a woman she would assume was Ms Zhang in connection with the November 2012 event. She had no recollection of Mr Elliott having transferred \$1,000 to her bank account so that she could withdraw the cash and refund Ms Zhang for a dinner that had not taken place. However, it is clear from her email exchanges with Mr Elliott that she did, in fact, withdraw the money to be refunded from her bank account, and that G8wayInternational reimbursed her by transferring that amount to her bank account.
- 4.161. Mr Maguire also could not recall whether there was a dinner associated with the event. He could not recall going to one. That is consistent with the fact that it did not take place, and it was for that reason that Ms Zhang sought and received the refund. But it does not mean a dinner was not planned to occur. As is apparent from what appears below, there was some unpleasantness on 30 November 2012 which led to the Liaoning delegation not attending the lunch planned at Parliament House, and it is possible that, for the same reason, they were not prepared to attend a dinner.

G8wayInternational – Invoice #SHEN201203

- 4.162. At 8:30 am on 30 November 2012, Mr Elliott sent an email from his @riverinastrata email address to Mr Maguire (at his @g8way email address) with the subject, “china invoice nov 30”, and an attached document in the form of a tax invoice payable to G8wayInternational (although not on G8wayInternational letterhead) in the amount of \$2,059.10 plus GST. On this occasion, the invoice number was “INVOICE #SHEN 201203”, and the “Client name” was “SHENHE DISTRICT [Mr Y – a provincial official]”. Mr Maguire’s recollection was that Mr Y managed the Wu’ ai Centre in China. The date details had not been inserted in the “Date” space. The description on the invoice was:

Friday November 30th, 2012

Function preparation and room set up, decoration and associated activity

- 4.163. At 8:33 am on 30 November 2012, Mr Maguire sent a copy of this draft invoice from his parliamentary email address to a private email address of Ms Hatton with the subject line, “china invoice nov 30.doc can you put on letterhead **asap**” (emphasis added).
- 4.164. At 10:42 am on 30 November 2012, Ms Hatton forwarded Mr Maguire’s email of 8:33 am to Ms Cartwright (at her parliamentary email address) stating, “Can you print this on the letterhead I have emailed you. It fits perfectly in the template. Nicole”. Ms Hatton said she would have asked Ms Cartwright to do this as she was not at Parliament House and did not have remote access to her Parliament House email address when she was not there.
- 4.165. At 11:06 am on 30 November 2012, Ms Cartwright sent an email to Mr Maguire (at his parliamentary email address) with the same subject line as his email to Ms Hatton attaching a copy of the invoice on G8wayInternational letterhead. The completed invoice had the date 30 November 2012, entered in the “Date” space.
- 4.166. Mr Maguire said he would not have sent the draft invoice to Ms Hatton for completion unless he expected it to be presented to Mr Y.

- 4.167. Ms Cartwright could not remember printing the invoice on G8wayInternational letterhead for Ms Hatton but said she would have done what Ms Hatton asked. She did not recall Ms Hatton working at Parliament House on the day of the Liaoning delegation visit or of seeing her during that day. She said she did not know why Ms Hatton would want a tax invoice to be issued by G8wayInternational in relation to function preparation and room set-up, decoration and associated activity in circumstances where there were no costs incurred in relation to those matters.
- 4.168. Ms Hatton said she did not recall putting this invoice on G8wayInternational letterhead, nor know the individual to whom it was addressed, although she assumed he was part of the delegation. She also said she did not know why someone associated with the delegation would have to pay for function preparation, room set-up, decoration and associated activity and said of the amount on the invoice, “that seems like the lunch”.
- 4.169. Mr Maguire submitted that this email is clearly not evidence that “even if he was copied in [he] was involved in the preparation of the invoice”, and, secondly, that there was no document or other evidence which suggested he at any time requested anyone to create invoices relating to the function, more particularly an invoice for an introductory fee.
- 4.170. The Commission rejects this submission which appears to have no regard to the considerable evidence as to Mr Maguire’s involvement in the preparation of the invoices.
- 4.171. It is notable that Mr Elliott sent this invoice directly to Mr Maguire. He was not “copied in”, he was the direct recipient. Almost as soon as he received it, he sent it to Ms Hatton to be put on G8wayInternational letterhead as Mr Elliott requested. He did not demur, or query the invoice. Nor did he when Ms Cartwright returned it to him, duly engrossed on G8wayInternational letterhead. He also gave evidence that he would not have sent the draft invoice to Ms Hatton for completion unless he expected it to be presented to Mr Y, the client named on it. Mr Maguire clearly approved of, and was involved in, the preparation of this invoice. His involvement is consistent with his involvement from 26 November 2012 in the preparation, including wording, of Invoice #SHEN201201, and his acknowledgement that to the extent his staff were involved, they would not have acted without his approval and authorisation.
- 4.172. Ms Cartwright gave evidence that she organised both a room for the signing ceremony and the lunch at Parliament House. She confirmed that Parliamentary Services would not have charged a fee for the room booked for the signing ceremony, or for it being set up. Because it was being booked by a member of Parliament, the parliamentary attendants would have set it up. That set up happens in effect as a matter of course and is not billed to the member. However, anything brought in from outside, such as banners and flowers, would be the responsibility of the Chinese delegation.
- 4.173. Consistently with this, Ms Cartwright confirmed it was her recollection that everything that needed to be brought in from outside was dealt with at the Chinese end and was not dealt with out of Mr Maguire’s office. She believed that it was Ms Zhang who was responsible for bringing in the large blue banner on behalf of the Chinese delegation.
- 4.174. Ms Cartwright’s recollection about these arrangements is corroborated by the email she sent to Mr Maguire on 26 November 2012, with the subject heading “Arrangements for Friday” referred to above. However, it appears that by 30 November 2012, it had been determined that Wagga Wagga City Council would be paying for the fruit Ms Zhang had wanted served between the signing ceremony and lunch. This accords with the invoice NSW Parliamentary Catering issued to Mr Maguire for the lunch on 30 November 2012, which included a charge for three fruit platters as well as a two-course lunch for 30 people. As explained below, that invoice was paid by Wagga Wagga City Council on 17 December 2012.

- 4.175. Ms Zhang gave evidence under compulsory examination that she knew Mr Y to be a low-level provincial government official. Notwithstanding this description, he was “the main contact for ... this signing”. She denied any knowledge of costs incurred by anyone for the preparation and room set-up for the signing ceremony. She said she did not think Mr Y would have had any financial involvement with Mr Maguire or with anyone else in relation to the function, “because at that time all the money come through me, not any other people”. She said she was “positive” that Mr Y was not charged any costs “because all the bill [sic] are paid directly to the canteen, to the restaurant, yeah”. As earlier noted, Ms Zhang insisted that she knew she was the only person paying any money for the function.
- 4.176. Mr Maguire agreed that the function he hosted on 30 November 2012 was in effect paid for by the delegation he hosted, through Ms Zhang, but he said that his recollection was that it was “an absolute nightmare” and that Ms Zhang was “heavily involved” in how Invoice #SHEN201203 was paid and how the charge for the costs was levied to Mr Y.
- 4.177. Mr Maguire said that for G8wayInternational to issue a tax invoice that involved it making no money did not seem like very good business. He added that the costs for that event were “quite high if I recall rightly”, but repeated “this was managed by my staff, Ms Hatton, Ms Zhang, and I just can’t recall how this came about”. However, Mr Maguire acknowledged that as a matter of practice, his staff would not issue invoices without his authority. The fact he does not recall a number of years later individual occasions of the practice being followed does not detract from a finding, which the Commission makes, that this invoice too was issued with his authority. However, there is no evidence of any payment of, or any attempt to pursue payment for, Invoice #SHEN201203.
- 4.178. It is difficult to understand Mr Maguire’s evidence that the costs for the 30 November 2012 event were “quite high”. The evidence is that the only actual cost he incurred for the function was for the luncheon and fruit platters which, while invoiced to him on his Parliament House account, was paid by Wagga Wagga City Council, which he knew would be the case as at 26 November 2012, if not earlier (assuming it is probable it was he who arranged for Wagga Wagga City Council to pay for that “side” of the event). However, the fact that he recalled costs being paid by the delegation is consistent with a payment in the amount of Invoice #SHEN201201.
- 4.179. Mr Maguire did not know whether G8wayInternational would have built into the price on Invoice #SHEN201203 an appropriate fee for, amongst other things, issuing the invoice. He agreed that as someone who expected ultimately to gain from G8wayInternational, he would want some profit margin built into the invoice. He said he had no recollection of how the fee on it was arrived at, and was not aware if there was a fee included. He could not recall whether he gave an instruction to Ms Hatton or anyone else to build in such a profit margin.
- 4.180. Mr Elliott also did not know whether the #SHEN invoices built in a profit margin for G8wayInternational. He said that as the director of G8wayInternational, which was in business and whose purpose was to make a profit, he would hope to make a profit along the way if it were to be used as a vehicle for anything. He said he may, but could not recall, have said to Mr Maguire that if he were to use G8wayInternational as a vehicle for things like the 30 November 2012 event, he should make sure that he built in a profit line in relation to that. He said that in this situation he just left matters of that kind to Mr Maguire. That was consistent with Mr Maguire effectively being able to act as a director of G8wayInternational even though he was not formally appointed as such.
- 4.181. The Commission finds on the basis of Ms Cartwright’s email to Mr Maguire on 26 November 2012, the email exchanges concerning the preparation of Invoice #SHEN201201, the email

exchanges between Ms Cartwright and Ms Zhang on 28 November 2012 and the emails between Mr Elliott, Mr Maguire and Ms Hatton on the morning of 30 November 2012, in relation to #SHEN201203, that Mr Maguire was privy to the discussions concerning the arrangements for the function, charging for aspects of the event and that his staff did not act in relation to those arrangements and associated costs without his approval. It rejects his evidence to the contrary. As with the practice of his staff only raising invoices with Mr Maguire's authority, it is highly improbable they would make arrangements for an event so important to him in Parliament House without Mr Maguire approving the details.

- 4.182. Significantly, Ms Cartwright's email also establishes that as at 26 November 2012 it was understood, at least by Mr Maguire and Ms Cartwright, that Wagga Wagga City Council would be paying for the lunch on 30 November 2012. By 30 November 2012, it is apparent from the invoice prepared on that day, that they knew that Ms Zhang would be paying for the banner for the signing ceremony and Wagga Wagga City Council was paying for any incidental food and drink that was required prior to the lunch in the President's dining room.
- 4.183. The Commission rejects Mr Maguire's evidence that the signing ceremony function was "booked" by Mr Xu and Ms Zhang and that he was not involved in the creation of an invoice to cover the costs associated with it. The Commission finds that any arrangements or discussions as to costs, that Ms Hatton and Ms Cartwright entered into with Ms Zhang in connection with the function on 30 November 2012, were only done on Mr Maguire's instruction and with his authority and approval.
- 4.184. The flurry of email exchanges and the preparation and issuing of three invoices in the few days prior to the 30 November event, particularly taken with Mr Elliott's email to Ms Hatton and Mr Maguire at 4.24 pm on 27 November 2012, demonstrate a sense of urgency to obtain any amount Mr Maguire sought to extract from the Liaoning delegation in relation to the 30 November 2012 event prior to its occurrence.
- 4.185. In his evidence, Mr Maguire said his staff were "very concerned that the accounts wouldn't be paid". But the reality was, as far as his staff were concerned and, the Commission finds, to Mr Maguire's knowledge, there was no cost for the function room, the "food side" was being looked after by Wagga Wagga City Council, and the monies paid for the dinner were refunded. That only leaves the first and third invoice. As already said, there is no evidence as to the payment for the third invoice, but there is evidence which supports the finding that Ms Zhang paid the first invoice. This has been addressed already and is addressed further below.
- 4.186. It would be consistent with the sense of urgency exhibited in those few days prior to, and on, 30 November 2012, that Mr Maguire was concerned to get the monies for the first invoice at least prior to the meeting with the premier in case the Liaoning delegation was displeased with some aspect of the arrangements.

Meeting the premier

- 4.187. On 29 November 2012 at 6.31 pm, Mr Maguire, (using his @g8way email address) sent Mr Elliott an email (at his @g8way email address) with the subject line, "Finally it's happening", to which was attached a photograph of a room with a large table behind which was a banner with both Chinese and English characters. The English characters said in part "Liaoning Shenyang Shenhe Wu'ai Group" and "The Signing Ceremony of Australia Wu'ai International Trade Centre".
- 4.188. Mr Elliott understood the subject line to refer to the fact that the Wu'ai delegation was "looking to do an international trade centre in Wagga Wagga". He thought the heading "Finally it's happening" was suggesting that the delegation was going to sign.

- 4.189. Mr Maguire initially gave evidence that he could not recall whether G8wayInternational had some role in organising either the signing ceremony or the reception with Mr O'Farrell. He said that he had sent Mr Elliott the photograph because he was excited that they had finally reached the point of being able to have a signing ceremony, and because Mr Elliott had been to Wu'ai with him to look at the trade centre at some point.
- 4.190. An indication of the significance of the imminent meeting can be gleaned from Ms Zhang's email on 27 November 2012 to Francine Nahas, the assistant protocol officer in the DPC. Ms Zhang wanted Ms Nahas to confirm she had the names of those in the delegation. She also asked Ms Nahas if she had the names of those from the NSW Government who would be attending. She explained, "The foreign affair office wish to know the detail" and added "This is a top level of visit of our state".
- 4.191. On 28 November 2012, Ms Nahas replied both to Ms Cartwright and Ms Zhang advising the NSW representatives who would be attending the courtesy call with the premier and the party secretary of Liaoning Province. Mr Maguire was among those representatives.
- 4.192. On 30 November 2012, the delegation from Liaoning Province attended Parliament House and was met by Mr O'Farrell, Mr Maguire and others in the premier's boardroom. Photographs of the event depict Mr Maguire standing next to the premier on his left, with the mayor of Wagga Wagga on Mr Maguire's left. On the right of the premier is the gentleman who appears to be the party secretary of Liaoning Province. Ms Zhang said that Mr Maguire introduced that gentleman to Mr O'Farrell.
- 4.193. Following the meeting with the premier, the delegation participated in a signing ceremony in another room in Parliament House during which the party secretary of Liaoning Province and the mayor of Wagga Wagga City Council signed an MOU in relation to the proposed Australian Wu'ai International Trade Centre to be located in Wagga Wagga.
- 4.194. According to the MOU, the Australian Wu'ai International Trade Centre was proposed to include 3,750 outlets, 250 room five star hotel accommodation, a business convention/entertainment centre and a variety of restaurants.
- 4.195. As Mr Maguire had said in his email to Mr O'Farrell a week earlier, he, or more accurately his staff, had arranged for the Liaoning delegation to have lunch in Parliament House after the MOU was signed.
- 4.196. Ms Cartwright confirmed that she had booked the lunch at Parliament House arranged to take place following the signing ceremony. The event order from NSW Parliamentary Catering indicates that Ms Cartwright was the contact on behalf of Mr Maguire, as the parliamentary host, for the booking of a two-course lunch for 30 people in the President's dining room from 1 pm to 3 pm on 30 November 2012. The event order indicated that the total cost of the lunch and three fruit platters was \$1,869 including GST. It noted that "Beverages will be billed at end of function". The invoice NSW Parliamentary Catering ultimately issued to Mr Maguire for the event was in the same amount as the event order and did not bill any alcohol.
- 4.197. According to Ms Zhang, the events of 30 November 2012 did not proceed as the Chinese delegation had hoped. She said the purpose of the meeting was:

...to sign some sort of MOU with the, with the Premier of New South Wales, but I think Barry ... didn't have time, but we didn't think that was polite, you know, to shake hands and sign, you know, let's push them out of the door, it was my idea to say, look, you need to host a dinner or something, you know, to celebrate something to make it more polite. Firstly, the State Government didn't have the budget or didn't have the time, so then we pay for it.

So, we paid for it on, on behalf of the New South Wales Government, just make the government look nicer.

- 4.198. Ms Zhang clearly shared the delegation's annoyance. She agreed that, given the proposal was to invest a significant amount of money in Wagga Wagga, she thought it was appropriate and polite for the premier to meet the delegation and important for the project for this to happen:

Of course, or course, that's you've increased about 2,000 jobs in the region and the Premier didn't have time? I think that's ridiculous, yeah.

...I as in the meeting room, so ... actually a Premier only has, Barry only got about a few minutes, about 10 minutes to come and shake hand, take some photos and sign or witness the MOU and sign and then he just went off to something else ... I think maybe they're expecting Barry to stay for a dinner, for the lunch or whatever, that was didn't happen and so we end up nobody, everybody just went, nobody actually stayed for lunch, everybody just got up and left.

- 4.199. Ms Zhang said it was obvious that the NSW Government did not want to host a function or think it necessary. Because she considered a function very important and that it would be a "disaster":

Then I say okay, don't worry, you know, if you don't have a budget I pay for it, I just want to save the trouble and made [sic] things forward.

- 4.200. Ms Zhang agreed that Mr Maguire also thought it would be "polite" for a function to take place and was involved in helping to get one organised, although she noted that he was doing so more to "help himself and help the people of Wagga" than to help her. She said:

I think Mr Maguire try very hard to get Barry's 10 minutes. You know, he did try very hard for it but other than that I think because Mr Maguire he has his difficulty as well because the Premier has a lot of democratic, [sic] I mean, yeah, around him so...

- 4.201. She noted that Mr Maguire "was very, you know, angry and jumping up and down, yeah, that day".

- 4.202. Ms Hatton also recalled that because Mr O'Farrell did not stay for the lunch following his meeting with the delegation, "the Chinese delegation was saying, 'well, we're not going to have the lunch' and they left and it was, what do you do with all this food". Ms Hatton said her recollection was that "if it's the correct delegation, when they left there was 20 meals".

- 4.203. Ms Cartwright also gave evidence that the lunch ultimately did not go ahead because the Chinese delegation left and did not turn up for it. She said that the delegation had been expecting the premier to attend the lunch and when they learnt he would not be coming, they were annoyed and decided not to attend themselves. She understood they went on a cruise around the harbour instead.

- 4.204. Mr Maguire recalled Mr O'Farrell receiving at least part of the delegation in his boardroom at Parliament House but not attending the signing ceremony. This was consistent with what Mr Maguire had asked the premier to do.

Daryl's not paying

- 4.205. Mr Maguire told the Commission that the lunch at Parliament House did go ahead, although there were fewer people in attendance than the number for which it was originally booked, and he could not recall who attended. He appeared to recollect, however, that the Liaoning delegation did not attend, but said he was "just not clear about what actually eventuated with the fact that they didn't turn up". He said, "I knew there was a kerfuffle going on, but I, I wasn't

abreast of the finer detail". Mr Maguire claimed not to recall that part of the "kerfuffle" was the fact that following his reception attended by a number of members of the Liaoning delegation in his boardroom, Mr O'Farrell did not attend the signing ceremony or the lunch that had been organised.

- 4.206. Ms Hatton recalled that Mr Maguire told her the delegation left "because they were insulted".
- 4.207. Mr Maguire claimed that the reason for the Liaoning delegation's unhappiness and for their decision not to attend the lunch was an issue for Ms Zhang and Mr Xu. His recollection, too, was that the delegation went on a tour of Sydney Harbour and other people were "collared in" to attend the lunch function in lieu of the missing delegation members.
- 4.208. Mr Maguire said he thought Ms Zhang paid for the lunch. When asked whether it was possible that the Wagga Wagga City Council actually paid for it, rather than Ms Zhang, he said "I don't know. I don't recall." Mr Maguire confirmed that he had not had to pay anything and, on that basis, the G8wayInternational invoices he had been shown in the public inquiry must have been paid. If that was the case, leaving aside the amount shown on Invoice #SHEN201202 which was refunded, Mr Maguire was admitting that the other two invoices were paid. As the payee was G8wayInternational, and neither of the amounts on Invoice #SHEN201201 or Invoice #SHEN201203 appeared in G8wayInternational's bank account in or about 30 November 2012, the available inference is the amounts were paid in cash and like other amounts, as Mr Elliott acknowledged was a G8wayInternational practice, did not go through the books.
- 4.209. Ms Cartwright gave evidence that the bill of \$1,869 for the lunch was paid in cash by Ms Zhang "a little bit after the event". She said that "because they hadn't turned up for the luncheon ... Lydia thought that it wasn't something that they needed to pay for". Ms Cartwright said she contacted Ms Zhang about the bill and:
- ...she came, I met with her, she paid, and I, we both went to the Finance Department and paid the bill because it would have been on Daryl Maguire's account. And so, and that was paid off to pay off Daryl Maguire's account, house committee account.*
- 4.210. Ms Cartwright agreed that it was her belief that it had been agreed in advance that it was the Chinese delegation, rather than the Australian counterpart to the MOU, who should be paying for the lunch. She said the basis of her belief was that a function of this size would not normally be paid for by Mr Maguire, but by the visiting delegation, although she conceded that would not always happen, but rather depended on the particular occasion.
- 4.211. Ms Cartwright did not know why, in any event, the commercial people on the Liaoning side were paying for the function rather than either NSW or someone associated with NSW or the Liaoning delegation itself. She said Ms Zhang paid "Not a penny more, not a penny less" than the account of \$1,869 for the lunch.
- 4.212. To Ms Cartwright's knowledge, this was the only money that changed hands from Ms Zhang or Mr Xu in connection with the 30 November 2012 event.
- 4.213. Ms Zhang's evidence concerning payment for the lunch was materially different from Ms Cartwright's. Ms Zhang told the Commission that she ended up paying around \$5,000 for the "function". She said she received a physical bill for "about 5,000 or something" from the NSW Parliament "dining section". She thought she paid "3,000 and something for the food and about 1,000 and something for the drink". She said she thought she went in person and paid by personal credit card. She said that the cost was for the food and drink and denied that it was for anything else. Ms Zhang's evidence that she paid the luncheon account by credit card is inconsistent with Ms Cartwright's evidence that she paid for the lunch in cash.

- 4.214. Ms Zhang said she did not tell anyone else in her government (that of Liaoning Province) that she was paying for the function.

The contemporaneous documents

- 4.215. The evidence of each of Mr Maguire, Ms Cartwright and Ms Zhang is contradicted by the contemporaneous documentary evidence obtained by the Commission.

- 4.216. On 11 December 2012, Ms Zhang sent Mr Maguire an email asking him to:

Please confirm urgently that lunch after the signing Ceremony on the 30th Nov in parliament house was organized two weeks before and fully paid even the Chinese delegation did not turn up. The function room need to be pre-book, drink and Manu [sic – menu] was fixed.

Mr Maguire replied minutes later:

*Lydia I can confirm that all contained in your email is correct! We are seriously embarrassed [sic] by the event. **We paid for this event and the food was wasted, cost us a lot of money.** That room is the best in the parliament. (Emphasis added)*

- 4.217. This was a lie on two counts. First, assuming the use of the plural personal pronoun is either a reference to Mr Maguire and his office, or to G8wayInternational, none of them had “paid” anything as far as the documents reveal for the event. Although Mr Maguire said Ms Zhang had paid for the lunch, as noted above, when asked if it was possible that Wagga Wagga City Council actually paid, Mr Maguire said he did not know, and did not recall.
- 4.218. When asked whether he knew “whether any of the invoices that had been shown to him were paid, Mr Maguire said “obviously I didn’t have to pay, so they must have been.” While Mr Maguire remembered sufficiently that he had not had to pay the invoices associated with the event, he did not recall the occasions when he had been told that Wagga Wagga City Council would be paying, and had paid, for “the food side”. Those occasions included Ms Cartwright’s email to Mr Maguire on 26 November 2012, the receipt issued by NSW Parliamentary Catering showing the payment for the lunch by credit card over the signature of the executive assistant to the general manager of the council, as well as the credit in his Parliament House running account.
- 4.219. Secondly, to the extent Mr Maguire’s email suggested the lunch was abandoned (“the food was wasted”), it is contradicted by Mr Maguire’s evidence that the lunch at Parliament House did go ahead, although there were fewer people in attendance than originally booked for it, and he could not recall who attended.
- 4.220. Even though he must have known the Wagga Wagga City Council was paying for the lunch, Mr Maguire appears to have sought to give Ms Zhang a message to palliate the difficulties she was facing in China, by professing that “we paid for this event and the food was wasted”, the fallaciousness of which has already been addressed.
- 4.221. Mr Maguire submitted that there was no basis in the 11 December 2012 email to support a submission that he lied to Ms Zhang in it, and it was not put to him that he had lied. He contended that the email was susceptible to the interpretation that the phrase “we paid for this event” was a reference collectively to the Wagga Wagga parties. He also submitted that the reference to the food being wasted was correct as the Chinese delegation walked out, and that although the lunch proceeded, some meals were wasted.
- 4.222. The Commission does not accept that submission. The email is clearly expressed in terms personal to Mr Maguire. It adamantly asserts the “we” were embarrassed, that “the food”, not “some of

the food” was wasted and that it “cost us a lot of money”. For the reasons explained, it had not cost Mr Maguire any money, and it did not cost the Wagga Wagga City Council any more than it had originally agreed to pay – or at least, it did not when it came to pay the luncheon invoice on 17 December 2012 as outlined below.

- 4.223. As to it not having been put to Mr Maguire that this email was a lie, the Commission accepts that this was not put to him during either of the public inquiries. However, having regard to the Commission’s investigative role, it is always possible that not every point will be covered at that stage. Mr Maguire has now been given the opportunity to give an explanation in relation to the 11 December 2012 email.
- 4.224. On 12 December 2012, Ms Zhang sent an email to Ms Cartwright seeking express confirmation that the lunch for the delegation had actually been arranged and paid for, and in apparent ignorance of Mr Maguire’s reply to her the previous day, or possibly because he had not sent her any documentary proof. She said:
- Daryl maybe busy, would you pls provide a email to me to state the lunch for 30 people on the 30th Nov was pre book and fully paid for.*
- People are making political trouble by saying the lunch was never organized, we just [sic] your statement to support the fact.*
- 4.225. Ms Zhang’s query in substantially the same terms as the email she sent to Mr Maguire is illuminating in that she does not ask for evidence she paid for the lunch, but neutrally asks for a statement that the lunch “was pre book and fully paid” or “organized”.
- 4.226. Ms Cartwright did not appear to have understood Ms Zhang to have been seeking a receipt for the lunch, not least no doubt because, at the time, Ms Cartwright knew the Wagga Wagga City Council was paying for “the food side”. Rather, on 13 December 2012 she sent Ms Zhang the invoice for the lunch issued on 30 November 2012 by NSW Parliamentary Catering to Mr Maguire for \$1,869. Having regard to Mr Maguire’s evidence that his staff only acted with his authority and approval, and her evidence that she never did anything without Mr Maguire’s permission, it can be inferred that Ms Cartwright was acting with his authority and approval when she so acted.
- 4.227. Ms Zhang’s requests for confirmation, from both Mr Maguire and Ms Cartwright, that the lunch was “pre-book and fully paid” (that is to say, by a third party) are inconsistent with her evidence that she paid “about \$5,000” for the food and drink for the function on her personal credit card when she realised the NSW Government did not want to pay for the lunch and considered that situation impolite and inappropriate.
- 4.228. Ms Zhang’s request for confirmation that the lunch was “pre-book and fully paid”, and Ms Cartwright’s response in sending her the unpaid invoice for \$1,869 (but not a receipt), are also inconsistent with Ms Cartwright’s evidence that she accompanied Ms Zhang to the appropriate office at Parliament House sometime after 30 November 2012, so that Ms Zhang could pay exactly that invoice.
- 4.229. If, instead, Ms Zhang’s 11 and 12 December 2012 emails should be understood as her seeking evidence she paid for the lunch, it could be consistent with Ms Zhang making that request because she had to “pass the bill to the government”, albeit inconsistent with her evidence that she did not tell anyone else in her government (that of Liaoning Province) that she was paying for the function.
- 4.230. It was not until almost a year later, on 1 October 2013, that Ms Zhang expressly asked for a receipt in an email to Ms Cartwright in which she said:

Would you please forward the receipt to me, which we paid for the function while the delegation visited Sydney for the Wuai project.

- 4.231. However, it is telling that in 2013, Ms Zhang did not ask for a receipt for payment for the lunch, but for the “function”. It is tolerably apparent that what Ms Zhang was seeking to do in 2013 was to recoup from (“pass the bill to”) the Liaoning government the monies she had paid in respect of the 30 November 2012 event. The only “service” in respect of that event for which there was an invoice in 2012, in relation to which the event the subject of the invoice had occurred but not been paid for either by Wagga Wagga City Council or refunded to Ms Zhang, was Mr Maguire’s introduction of members of the Liaoning delegation to the premier, Mr O’Farrell – the “introductory service” referred to on G8wayInternational Invoice #SHEN201201 – and the third invoice about which the evidence as to payment is silent. It is only the first invoice, Invoice #SHEN201201, which was for an amount consistent with what Ms Zhang said she received a physical bill for, and paid, “about \$5,000”. It is clear Ms Zhang was seeking a receipt for that “about \$5,000” payment.
- 4.232. Ms Cartwright could not recall whether she provided the receipt Ms Zhang sought in October 2013. She gave evidence that her recollection of the receipt Ms Zhang was requesting in October 2013, related to her payment for the lunch for \$1,869 which she had come to Parliament House to pay in cash. Ms Cartwright said she believed a handwritten receipt had been given to Ms Zhang after she had paid in cash and that an official parliamentary receipt would have been issued later. Ms Cartwright said that because she was the contact on the invoice, that receipt would ordinarily have been sent to her. She had no recollection of forwarding such a receipt on to Ms Zhang but thought she would have.
- 4.233. Ms Zhang told the Commission she probably needed the receipt for her own accounting purposes because all the money was paid from her personal credit card. She could not remember whether Ms Cartwright sent her the receipt and said she would no longer have the receipt in her personal accounting records, nor would she have used it for her tax return because it was not her own personal cost. She said she would have been reimbursed the costs she incurred by her company (ACA Capital Investment) but that as it was so long ago (about seven years earlier at the time of her compulsory examination), the company would no longer have the receipt on its books. She said that while she maintained some contact with Mr Xu, who was responsible for the company’s records, she was no longer in a business relationship with him.
- 4.234. Mr Maguire submitted there was no evidence from him to the effect that Ms Zhang paid for the lunch the Chinese delegation boycotted. However, that was his first, and firm, response to Counsel Assisting’s question:
- [Counsel Assisting]: Do you remember who actually paid for the lunch?*
- [Mr Maguire]: Ms Zhang I think, yes.*
- 4.235. He did not know or could not recall whether Wagga Wagga City Council had paid for it. He submitted that he had plainly conceded the cost of the lunch could have been paid for by Wagga Wagga City Council. The Commission does not accept that submission. As Mr Maguire submitted, the event was a Wagga Wagga event, because the Wagga Wagga City Council was signing an MOU with the Wu’ ai delegation. It might be thought Mr Maguire would have had no difficulty recalling that it had borne responsibility for the cost of the lunch. However, his first response was that Ms Zhang had paid for it, indicating a recollection that she had paid for something to do with the event. As discussed above, as it is plain that there was no “food side” for the Chinese delegation to pay, the available inference having regard to the amount Ms Zhang was definite that she paid, was the amount the subject of Invoice #SHEN201201.

- 4.236. Mr Maguire also submitted that the only evidence of any payment made by Ms Zhang was for the \$1,000 paid for the dinner, which was cancelled, and the amount refunded. He contended that there was no evidence of any other invoice being issued by G8wayInternational to Ms Zhang.
- 4.237. The Commission rejects this submission. For the reasons set out above, it is satisfied that G8wayInternational Invoice #SHEN201201, which was addressed to Ms Zhang, was given to Ms Zhang and that she paid the amount it bore on its face.
- 4.238. Mr Maguire also drew attention to Ms Zhang's evidence that she never saw G8wayInternational Invoice #SHEN201201, or paid the amount shown on it. The Commission accepts, as set out at the outset of its consideration of this issue, that the evidence is unsatisfactory and inconsistent in certain respects, but has had regard to the totality of that evidence, and in particular the contemporaneous documentary evidence, and the compelling inferences which arise from that consideration. The facts are that Ms Zhang was adamant that she had paid an amount of about \$5,000, which as has been said many times now is consistent with the only invoice she could have paid: Invoice #SHEN201201.

Wagga Wagga City Council foots the bill

- 4.239. An hour after sending the NSW Parliamentary Catering invoice to Ms Zhang on 13 December 2012, Ms Cartwright sent the invoice attached to an email to Mr Pinyon from Wagga Wagga City Council. The subject line for the email was "Invoice for Official Luncheon for Party Secretary and Delegation 30 Nov 2012". The body of the email stated:

Please find attached the invoice for the official luncheon for the above delegation following the signing of the MOU between the Party Secretary (Liaoning Province) ... and the Wagga Wagga City Council.

- 4.240. Carmel Posselt, the general manager's executive assistant, paid the invoice on 17 December 2012, using the council's credit card. Mr Maguire's Parliament account was duly credited on 17 December 2012. Ms Cartwright sent Ms Posselt the invoice with the receipt the same day.

Why was G8wayInternational involved at all?

- 4.241. Mr Maguire said that the event at Parliament House on 30 November 2012 was "definitely an electorate matter, a parliamentary matter". He said he saw Ms Hatton and Ms Cartwright's involvement in the event as "a parliamentary duty".
- 4.242. Mr Maguire said he understood that Ms Hatton and Ms Cartwright, or perhaps Mr Elliott, were involved in sending invoices from G8wayInternational in relation to the meeting with Mr O'Farrell and the signing ceremony.
- 4.243. Mr Maguire sought to distance himself from any involvement in the preparation of the three #SHEN invoices by attributing responsibility for organising the event to his staff, Ms Hatton and Ms Cartwright, and the organiser, Ms Zhang, saying:

*My recollection is that this function was booked by Mr Xu and Ms Zhang. There were, there was a luncheon booked, there were costs to be paid, and **the interaction between Ms Hatton, Ms Cartwright and Ms Zhang resulted in an invoice being issued to this group to pay for those costs. The discussions that occurred between them all, I wasn't involved in them. My staff arranged and managed that** ... there was a luncheon that was hosted. There was the preparation of signage and flowers and all the traditional things that needed to be provided for the signing ceremony. (Emphasis added)*

- 4.244. Mr Maguire said that his recollection was that there was a concern that those costs would not be paid and that he would be left with the account. All members of Parliament are responsible for the account from functions they host or hold and either have to pay those accounts or have them paid.
- 4.245. Pressed as to why, if Ms Hatton was performing a parliamentary role rather than a G8wayInternational role in relation to arrangements for the function, he would tell her to send an invoice on G8wayInternational letterhead. Mr Maguire responded:
- I don't know why that occurred. All I recall is that there was a big kerfuffle about getting paid and that an invoice had to be created. And I'm not one hundred per cent sure of all the details but I know that staff were very concerned that the accounts wouldn't be paid.*
- 4.246. When asked why Invoice #SHEN201203 was being issued on the letterhead of G8wayInternational, if the events of 30 November 2012 were a parliamentary function conducted in his parliamentary capacity, Mr Maguire said:
- My understanding is because the invoice was to be paid by the group and it would have been totally improper for the Parliament, me, hosting the event, to provide an invoice to that group. My recollection is there was a lot of discussion between staff and Ms Zhang about the payment of these invoices and it would have been inappropriate for me to provide an invoice to this group.*
- 4.247. He explained his concern about inappropriateness as follows:
- Well, because in tradition in China and when you're hosting groups you're hosted, all of those costs are paid for. In New South Wales we have to pay for the tea and coffee and the biscuits. There is no ability to be able to host something like this, so it had to be paid for.*
- 4.248. Mr Maguire said that he did not know what the exact arrangements or costs were, but he understood that Ms Zhang was "heavily involved in making arrangements that his staff were coping with". He confirmed that parliamentary staff would set up things such as tables and chairs, but that things such as flowers or banners were dealt with out-of-house. He said he thought it was Ms Hatton who took responsibility for dealing with those out-of-house matters.

Mr Maguire's submissions

- 4.249. Mr Maguire submitted there was no direct evidence that he ever asked for a fee in relation to facilitating an introduction to then premier, Mr O'Farrell, and that there was no circumstantial evidence which could support a proposition that he intended and attempted to seek a fee.
- 4.250. Mr Maguire responded to propositions advanced by Counsel Assisting as follows.
- 4.251. Counsel Assistings' first two propositions were that it would make little sense to prepare an invoice (Invoice SHEN#201201) and not issue it and that Ms Hatton's evidence was that she was "sure she would have sent it" (although she said she did not have a specific recollection of having done so).
- 4.252. Mr Maguire contended that an equally and indeed more plausible reason for not issuing this invoice is that it should never have been prepared because Mr Maguire would not have charged a fee as confirmed by his evidence. This contention suffers from the vice of circularity. It relies merely on Mr Maguire's denial but does not address the considerable evidence referred to above concerning the draft invoices being copied to him or referred to him for passing on to be placed on the G8wayInternational template.

- 4.253. Next, Mr Maguire argued that there was no evidence that anyone received the invoice, notwithstanding the exhaustive examination of emails and text messages by the Commission, and that the named recipient, Ms Zhang, denies receiving it. Further, even if it were established that it had been sent, this does not establish Mr Maguire knew and approved the contents.
- 4.254. However, as Counsel Assisting pointed out, Ms Hatton said she was sure she would have sent Invoice #SHEN201201. The nominated “client” on the invoice was Ms Zhang, so it is a reasonable inference that the invoice was sent to Ms Zhang with whose email address both Mr Maguire and his staff were well acquainted. That Ms Hatton sent the invoice is also corroborated by her attaching it to the email she sent to Mr Elliott on 29 November 2012 from her Parliament House address (carbon copying it to her g8wayinternational address), advising him it was a “copy of the invoice for Lydia **for our records**” (emphasis added). This is a clear indication that Ms Hatton, guided by the authority and approval of Mr Maguire, understood the invoice to reflect revenue to be earned by G8wayInternational.
- 4.255. Counsel Assisting’s third proposition was that it appears that it was at least planned that Ms Zhang would attend to receive the invoice on 29 November 2012. In response, Mr Maguire referred to the fact that as at 29 November 2012, there were three invoices: Invoice #SHEN201201, which he contends was never paid; the invoice issued by the Parliament for the lunch, being \$1,869; and the invoice for the proposed dinner which did not occur. He contended that there was no evidence to suggest that Ms Zhang intended to pay the first invoice. He relied on her evidence that she knew nothing about that invoice until it was shown to her by the Commission during her examination.
- 4.256. However, Ms Hatton attached Invoice #SHEN201201 to her email to Mr Elliott on 29 November 2012 and told him, “they are coming in today to pay”. The clear inference is that “they” were coming in to pay that invoice. As the invoice was addressed to Ms Zhang, if it had not already been sent to her as Ms Hatton was sure she would have done, then, as Counsel Assisting contended, it is probable she was attending both to be given the invoice and to pay it. The other two invoices are the subject of direct evidence that one was paid by Wagga Wagga City Council, and the other was paid, but the money was refunded.
- 4.257. Insofar as Ms Zhang claimed she did not see invoice #SHEN201201 until shown it in a compulsory examination, that is inconsistent with Ms Hatton’s evidence that she was sure she would have sent it, and also by the fact that the only amount Ms Zhang insisted she paid was “about \$5,000” which is almost precisely the amount shown on the invoice, and an amount not shown on any of the other invoices.
- 4.258. Counsel Assisting’s fourth proposition was that the invoice was numbered 201201, and subsequent invoices were numbered incrementally 201202 and 201203.
- 4.259. Mr Maguire submitted that there was no dispute that Ms Hatton created Invoice #SHEN201201. Rather, the issue was whether it was created on his instructions and/or whether he knew and agreed to the contents. He repeated his contention that there was no evidence of it being sent to Ms Zhang or even that it was proposed by Mr Maguire to charge an introduction fee. Accounting software provides for each invoice created to be given a sequential invoice number. If an invoice is later cancelled or not sent, the invoice number remains in the system even if it is cancelled or the debt written off.
- 4.260. This submission is sufficiently addressed in what has already been said, though additional evidence that Mr Maguire knew and approved the invoice contents is found in Mr Elliott’s email forwarding the draft invoice to Ms Hatton, asking her to “maybe run it pass [sic] Daryl”, her evidence that she would have done that, its return to Mr Elliott with an amended description of the services, the clear

implication that it was amended by Mr Maguire or on his instructions and Mr Maguire's evidence. Mr Maguire agreed that even though he did not recall the invoice, it would have been drawn to his attention and that his staff would not have raised an invoice such as this without his authority.

- 4.261. Counsel Assistings' fifth proposition was that the dissatisfaction of the Liaoning delegation may be explicable on the basis that they were expecting the provision of an "introductory service" in accordance with the invoice. In this respect, Mr Maguire submitted that the only evidence as to the expectation of the Liaoning delegation was that they expected that the then premier would attend the lunch. There was no evidence that they expected to pay a fee for his attendance at the lunch. He repeated Ms Zhang's evidence that she was not aware of Invoice #SHEN201201 and "didn't pay for something like this".
- 4.262. Counsel Assistings' submission that the Liaoning delegation may have abandoned the planned lunch because their expectations had been raised by virtue of their having paid for an "introductory service", that Mr O'Farrell would also attend both the signing ceremony and the subsequent lunch, is not implausible. The fact that he was not going to attend the lunch was certainly said to be one of the reasons for the Liaoning delegation not attending it. It had been Ms Zhang's request on 15 November 2012 to Mr Eccles that the premier be involved in all three events, and it is plausible that having paid "about \$5,000" on 29 November 2012 for "the introductory service", which was not as extensive as she would have liked, she communicated her umbrage to the delegation.
- 4.263. Counsel Assistings' sixth proposition was that Ms Zhang's initial recollection of what she paid for the event (prior to being shown the invoice) was "about \$5,000 ... \$5,000 or something" which was consistent with the amount on the invoice Ms Hatton forwarded to Mr Elliott on 29 November 2012. Mr Maguire's submission was that the observations of Counsel Assisting on this point did not establish that Mr Maguire had any role in the creation of Invoice #SHEN201201, which is the key issue to make out the allegation that he sought a fee in relation to securing the former premier's attendance at the lunch. This submission has already been addressed in detail in the report.
- 4.264. While acknowledging that the Commission is not bound by the rules of evidence, so that the rule in *Browne v Dunn* does not apply, Mr Maguire complained that the proposition that he would charge an introduction fee, that he instructed Ms Hatton to prepare Invoice #SHEN201201 and to include a fee of \$5,000 or that his denial (that G8wayInternational ever charged a fee to any person in exchange for an introduction to a NSW minister or other government official with his authority) was false was not squarely put to him. He submitted that the fact his denial of those matters was not challenged needed to be considered when weighing up the evidence put forward against him.
- 4.265. It should be noted that underlying Mr Maguire's submission about the rule in *Browne v Dunn* is a common misapprehension that the only way to challenge a witness' evidence is by a mechanical process of putting to the witness that their evidence in a particular respect is false. However, it must be recalled that in *Browne v Dunn*, Lord Herschell pointed out that in cases where notice has been distinctly and manifestly given to a party, specific questions need not necessarily be put to the witness of or from the other party.¹⁴⁰
- 4.266. As Meagher JA observed in *Oneflare Pty Ltd v Chernih*,¹⁴¹ "[t]here are many ways in which a party or other witness might sufficiently be put on notice that their evidence on a particular subject or to a particular effect is challenged as untruthful, and as to the basis of that challenge."

¹⁴⁰ See *Scaysbrook v R* [2022] NSWCCA 69 (at [90] – [92]) per Bellew J (Loneragan J and Ierace J agreeing).

¹⁴¹ [2017] NSWCA 195 (at [42]), Gleeson and Leeming JJA agreeing.

- 4.267. The Commission is satisfied that Mr Maguire was on notice that his evidence in relation to his knowledge of, and involvement in the issuing of, Invoice #SHEN201201 was challenged as explained above. Further, Mr Maguire's evidence he would not have authorised such a charge as it would be "going too far" to monetise his office by offering an introduction to "a Minister, or someone like that, or the Premier", was squarely challenged by Counsel Assisting.
- 4.268. Mr Maguire submitted that there was no basis to make a finding that Ms Zhang paid Invoice #SHEN201201 on or about 29 November 2012, that there was no evidence that he ever saw a copy of the invoice, nor that he, Mr Elliott, Ms Hatton or Ms Cartwright ever discussed the payment of such a fee with Ms Zhang. He reiterated Ms Zhang's evidence about not having seen the invoice. This has already been dealt with.
- 4.269. As to the first point, the evidence is set out above, but in short, Ms Hatton forwarded Invoice #SHEN201201 to Mr Elliott on 29 November 2012 with the advice that "they are coming in today to pay", and Ms Zhang said she paid an amount of "about \$5,000", which was close to the amount shown on the invoice, and was the only invoice issued in respect of the 30 November 2012 event with an amount close to \$5,000.
- 4.270. As to the second point, Mr Elliott's evidence was clear as to Mr Maguire's involvement in the preparation of Invoice #SHEN201201 and in the fact that it was attached to Mr Elliott's email to Ms Hatton and Mr Maguire on 27 November 2012.
- 4.271. As to the third point, it is not necessary that there be evidence that any of the named persons discussed the payment of such a fee with Ms Zhang. The documents speak for themselves.
- 4.272. Mr Maguire also noted that Counsel Assisting had not been prepared to draw the inference the Commission now has. However, Counsel Assisting did not have all the documents which the Commission has considered in reaching its conclusion.
- 4.273. Mr Maguire made a number of bald assertions as to why the Commission would not conclude he had sought an introduction fee including that:
- 4.273.1. he denied doing so and there was no evidence to contradict his denial
 - 4.273.2. Mr Elliott said Mr Maguire had never sought an introduction fee
 - 4.273.3. Ms Zhang said she never received an invoice for an introduction fee, it was never discussed, and she would never agree to pay such a fee
 - 4.273.4. there was no evidence Mr Maguire asked anyone to prepare an invoice and approved its content
 - 4.273.5. there is no "clear evidence" the invoice was sent. Ms Hatton said she was "sure she would have sent it" but was not examined as to how. No email has been located sending it and Ms Zhang said she never received it, and never made any payment
 - 4.273.6. the proposition that the invoice was paid on 29 November 2012 was not put to Ms Zhang, and no witness has given evidence of receiving funds from her on that day in payment of the invoice
 - 4.273.7. the absence of any evidence that the invoice was sent and/or an introduction fee was to be charged is consistent with the evidence of both Mr Maguire and Mr Elliott that they would not have approved making a charge for an introduction fee.

- 4.274. Each of these matters has already been addressed both in the analysis of the evidence and in dealing with Mr Maguire’s submissions. The only one which warrants an additional observation is the last. The overwhelming evidence in the Commission’s view is that an introduction fee was to be, and was, charged. If Mr Maguire and Mr Elliott would not have approved making a charge for an introduction fee, why did they go to so much trouble to prepare the invoice in the first place?
- 4.275. Finally, Mr Maguire submitted that a finding to the effect of that the Commission proposed was a “very serious allegation” and drew attention to Dixon CJ’s cautionary words in *Briginshaw v Briginshaw* that “when the law requires the proof of any fact, the tribunal must feel an actual persuasion of its occurrence or existence before it can be found. It cannot be found as a result of a mere mechanical comparison of probabilities **independently of any belief in its reality**”.¹⁴² (Mr Maguire did not include the emphasised words in the passage he quoted.)
- 4.276. Mr Maguire submitted that Counsel Assisting had undertaken such a “mechanical comparison of probabilities”. It is not clear whether that submission was directed to Counsel Assisting’s original submission, or to the further communication by the Commission to Mr Maguire in October 2022 to which Mr Maguire’s submission raising this proposition responded. Either way, the Commission rejects the submission. On no reading, in the Commission’s view, could Counsel Assisting’s submissions be read as having engaged in a “mere mechanical comparison of probabilities”.
- 4.277. Insofar as the October 2022 communication is concerned, the Commission is conscious of the gravity of the proposed finding to which it drew Mr Maguire’s attention. In advancing that proposed finding, it has not undertaken a mere mechanical comparison of probabilities. It has reached its conclusion on a close consideration of the evidence, the contemporaneous documents and the available inferences. On that basis, it has concluded that the reality of the situation is that it was Mr Maguire who arranged for the issuing of Invoice #SHEN201201, with the intention of charging the Liaoning delegation and/or Ms Zhang \$5,500 (including GST) for being introduced to the premier of NSW and that those monies were paid in anticipation of, and/or consequent upon, the introduction to Mr O’Farrell which Mr Maguire effected.

Findings: Invoice #SHEN201201

- 4.278. Insofar as Invoice #SHEN201201 is concerned, the Commission makes the following findings on the balance of probabilities, having regard to the *Briginshaw v Briginshaw* standard.
- 4.279. First, the Commission finds that the evidence is compelling that it was Mr Maguire who directed, authorised and approved the events at Parliament House in and surrounding the 30 November 2012 event, including the preparation of Invoice #SHEN201201, and authorised it being issued in the expectation that it would be paid by the recipient, Ms Zhang.
- 4.280. Secondly, the Commission finds that the words “introductory service” on Invoice #SHEN201201 referred to Mr Maguire arranging for members of the Liaoning delegation to meet Mr O’Farrell, and that he did, in fact, introduce Mr O’Farrell to members of the delegation.
- 4.281. Thirdly, the Commission finds that Invoice #SHEN201201 was issued by G8wayInternational on the instructions or with the permission of Mr Maguire to Ms Zhang.
- 4.282. Fourthly, the Commission finds that Ms Zhang paid Invoice #SHEN201201. In this respect, the Commission is satisfied that when Ms Hatton advised Mr Elliott that on 29 November 2012, “they were coming in to pay”, it is probable that Ms Zhang attended Mr Maguire’s parliamentary office that day and paid not only Invoice #SHEN201201 of \$5,500, but also the second

¹⁴² (1938) 60 CLR 336 (at 362).

G8wayInternational invoice for \$1,000 for dinner, which was later refunded when the dinner did not eventuate. The Commission finds it probable that the \$5,500 invoice, like the \$1,000 invoice for the dinner, was paid in cash to G8wayInternational and/or Mr Maguire.

- 4.283. Fifthly, the Commission finds that it was Mr Maguire who arranged for the issuing of Invoice #SHEN201201, with the intention of charging the Liaoning delegation and/or Ms Zhang \$5,500 for being introduced to the premier of NSW and that those monies were paid in anticipation of, and/or consequent upon, the introduction which Mr Maguire effected.
- 4.284. The Commission makes these findings based on the direct and circumstantial evidence referred to above and summarised in the following further findings.
- 4.285. Mr Maguire and Ms Zhang were the joint organisers of the 30 November 2012 function as is apparent from Ms Zhang's email to Mr Eccles on 15 November 2012. As is also apparent from that email, it was Mr Maguire who encouraged Ms Zhang to write directly to the premier's chief of staff to make arrangements in relation to the signing ceremony.
- 4.286. Critically, according to both Mr Maguire and Ms Zhang, she was representing the Liaoning delegation in organising the function for the Wu'ai signing and was responsible for the costs.
- 4.287. It was Mr Maguire who, on 23 November 2012, confirmed with the premier personally the details of the premier's meeting with the party secretary of Liaoning Province on 30 November 2012. He had also arranged the lunch in Parliament House. It was he who introduced Mr O'Farrell to the party secretary of the Liaoning delegation. This would have satisfied at least that part of Invoice #SHEN201201 which called for an "introductory service".
- 4.288. The Commission is satisfied on the evidence that Mr Maguire was responsible for arranging the events that took place on 30 November 2012 including arranging for Mr O'Farrell to meet and greet the Liaoning Province delegation in his boardroom prior to the signing ceremony and lunch at Parliament House. The Commission is satisfied that Mr Maguire did not ask Mr O'Farrell to attend the signing ceremony or lunch and that his request of the premier was limited to arranging for some members of the visiting delegation to meet and be photographed with him.
- 4.289. On 26 November 2012, Ms Cartwright advised Mr Maguire (as he must have already known, and no doubt arranged) that she believed Wagga Wagga City Council was paying "for the food side" – as is apparent from her email, that being the "food side" at Parliament House. It did so on 17 December 2012.
- 4.290. Over the period from 27 to 29 November 2012, Mr Elliott and Ms Hatton jointly prepared Invoice #SHEN201201. Mr Elliott had no direct involvement in the event at Parliament House and said he would have entered the details on the invoice template most probably as instructed by Mr Maguire, as reinforced by his comment of "maybe run it pass [sic] Daryl." It will be recalled that it was Mr Maguire who was "pulling the strings" in respect of G8wayInternational. Ms Hatton said if she was told to run the invoice past Mr Maguire, she would have done so.
- 4.291. Mr Maguire accepted that, even though he said he had no recollection of Invoice #SHEN201201, it must, as a matter of practice, have been drawn to his attention, and that his staff would not have raised such an invoice without his approval. The invoice was not just "drawn to" his attention. It was sent to him directly by Mr Elliott on 27 November 2012, at which stage it included the final details of the invoice, including "The charged fee is for the introductory service...". The final invoice, engrossed on G8wayInternational letterhead, emanated from Mr Maguire's office, sent by Ms Hatton to Mr Elliott on 29 November 2012 "for our records".

- 4.292. The Commission is satisfied that after Mr Elliott sent the draft of Invoice SHEN#201201 to Ms Hatton with the suggestion that she “maybe run it pass [sic] Daryl”, she did so and that Mr Maguire then amended the description of the services to be the subject of the fee. Mr Elliott said he would have entered the details on the invoice template most probably as instructed by Mr Maguire. Both the first and second drafts of Invoice #SHEN201201, contemplated a fee for an “introduction” (first draft) and an “introductory service” (second draft and as engrossed on G8wayInternational letterhead). Accordingly, the Commission finds that Mr Maguire approved the form of words which appeared on G8wayInternational Invoice SHEN#201201.
- 4.293. It is possible Ms Zhang had some role in the creation of the invoice, because on 27 November 2012 when Mr Elliott sent a copy of it to Mr Maguire and Ms Hatton, he asked them to “pass this on to Lydia or assist her once she provides details”. Also, he had spoken to Ms Zhang that morning and given her the heads up that “something [was] on the way with invoicing”. Mr Maguire said that Ms Zhang had concocted “the invoice for the luncheon that with, with, with the staff”. This is a surprising suggestion having regard to Mr Maguire’s acceptance that his staff would not have acted without his authority to raise an invoice of the nature of Invoice SHEN#201201, even one on G8wayInternational letterhead. Consistently with that, they would not have accepted instructions from Ms Zhang without seeking his approval.
- 4.294. In any event, Invoice #SHEN201201 is not for a lunch (there was no G8wayInternational invoice for a lunch on 30 November 2012) and, as Mr Maguire was aware, the costs for the lunch were to be, and were, met by Wagga Wagga City Council.
- 4.295. It would not have come as a surprise to Ms Zhang to have received invoices on G8wayInternational letterhead. She had heard of that company at least as early as 2 May 2012, when Ms Hatton had sent Ms Zhang a copy of a business card for Elliott/G8way (scanned) with a request for 250 cards for Mr Maguire, as earlier noted in this chapter, to be printed in China.
- 4.296. Mr Elliott could not identify any reason as to why the Commission would not conclude that Invoice SHEN#201201 was charging for, amongst other things, an introduction to NSW government officials, including the then premier, Mr O’Farrell.
- 4.297. The “introductory service” itemised on the invoice template identified by Mr Elliott and Ms Hatton, was consistent with the structure of G8wayInternational, as Ms Hatton understood it, of introducing people and charging a fee.
- 4.298. Ms Hatton could not recall if Invoice #SHEN201201 was ever paid, and could not specifically recall sending it, although she said she was “sure [she] would have sent it”. The Commission finds that she did send it to Ms Zhang, and that fact can be inferred, not least, from Ms Hatton’s 29 November 2012 email to Mr Elliott advising him, “here is a copy of the invoice for Lydia **for our records**, they are coming in today to pay. Do you want to me to make a receipt template or do you?” (emphasis added). As earlier noted, the fact that the invoice was sent “for our records”, is a clear indication that Ms Hatton, guided by the authority and approval of Mr Maguire, gave, or forwarded, the invoice to Ms Zhang and wanted it recorded by G8wayInternational for business purposes.
- 4.299. Further, as Invoice #SHEN201201 was the first in time, it was most probably “sent” before the subsequent two invoices. It is known that Invoice #SHEN201202 for “dinner” was provided to Ms Zhang because on 29 November 2012, Ms Hatton deposited \$1,000 in cash for the “dinner” the subject of that invoice into G8wayInternational’s bank account. As Ms Zhang paid in cash for that event, it is highly probable that had she paid Invoice #SHEN201201, she would also have done that in cash.

- 4.300. It is notable that in respect of Invoice #SHEN201203, Mr Maguire said he would not have sent the draft invoice to Ms Hatton for completion as he did on 30 November 2012 unless he expected it to be presented to Mr Y. The same reasoning must apply *a fortiori* to Invoice #SHEN201201 which Ms Hatton was directed to complete both by Mr Elliott and, on Mr Maguire's admission, with his authority and approval. Mr Maguire was aware Ms Hatton was going to complete Invoice #SHEN201201 on G8wayInternational letterhead because that was the instruction Mr Elliott gave her in the 27 November 2012 email which was sent to both Mr Maguire and Ms Hatton, to which the draft invoice was attached.
- 4.301. It is most probable that Ms Zhang paid Invoice #SHEN201201, first, as it was the only G8wayInternational invoice relating to the function which was addressed to her and, secondly, the amount of the invoice is consistent with her account of the amount she paid in relation to the function, albeit that she described it as a payment for "food and the drink".
- 4.302. The Commission is satisfied that the evidence of Ms Cartwright, Ms Zhang and Mr Maguire in relation to what services Ms Zhang paid for, how much she paid for and what invoice or invoices she paid in connection with the events on 30 November 2012 is unreliable and problematic. Contrary to that evidence, the Commission is satisfied on the basis of the contemporaneous documentation that it was Wagga Wagga City Council that paid for the lunch and that there was no other parliamentary bill or account in connection with the events of 30 November 2012 for which Ms Zhang, or anyone connected to Mr Maguire was liable.
- 4.303. The amount of \$5,500 does not appear in G8wayInternational's accounts as available to the Commission. However, Ms Hatton also said that had Ms Zhang come in and given her either cash or a cheque in respect of Invoice #SHEN201201, she would have left it for Mr Maguire in his drawer. If the money was left in Mr Maguire's drawer, it may not have been paid into G8wayInternational's accounts. This would be consistent with Mr Maguire receiving payment in connection with G8wayInternational activities "off the books" and in cash, and Mr Elliott keeping "walking around money" in the safe for Mr Maguire.
- 4.304. Ms Zhang has been consistent in saying she paid "about \$5,000", albeit for "food and the drink". There was no other invoice issued with respect to the 30 November 2012 event in an amount close to or "about \$5,000" other than Invoice #SHEN201201. The Commission does not accept Ms Zhang's evidence that she paid for food and drink in respect of the event in that amount. That assertion cannot be reconciled with the objective facts and is contrary to compelling inference.
- 4.305. First, it is indisputable that, as per Ms Cartwright's email to Mr Maguire on 26 November 2012, Wagga Wagga City Council was paying "for the food side" – as is apparent from her email, that being the "food side" at Parliament House. It did so on 17 December 2012.
- 4.306. Secondly, there were only two food invoices with respect to the 30 November 2012 event. One was issued by G8wayInternational for the "dinner" (Invoice #SHEN201202). Ms Zhang paid G8wayInternational for that in cash which was refunded by G8wayInternational also in cash (at Ms Zhang's request) because the dinner did not take place. The other invoice was issued by NSW Parliamentary Catering to Mr Maguire and was, as said, paid by Wagga Wagga City Council – a fact known to Mr Maguire.
- 4.307. Thirdly, Ms Zhang's attempt to break down the "about \$5,000" said to be on the physical bill/invoice she received from the NSW Parliament into "3,000 and something for the food and about 1,000 and something for the drink", cannot be reconciled with the invoice issued for the lunch. It was issued to Mr Maguire, was in an amount of only \$1,869 and did not differentiate between "food" and "drink".

- 4.308. The only invoice Ms Zhang can have paid in an amount resembling the money she said she paid is Invoice #SHEN201201. The Commission finds that to be the case, that is to say, that Ms Zhang paid G8wayInternational about \$5,000 for the services set out on that invoice.
- 4.309. In like vein, the Commission rejects the evidence of Ms Zhang, Ms Cartwright and Mr Maguire, to the effect that Ms Zhang paid for the lunch that the Chinese delegation boycotted. It is inconsistent with the evidence that the lunch was in fact paid for by Wagga Wagga City Council.
- 4.310. A curiosity in the evidence is both Mr Maguire and Ms Cartwright's misstatements about Ms Zhang paying for the food component of the event.
- 4.311. The Commission does not accept Ms Cartwright's evidence that it had been agreed in advance that the Chinese delegation would pay for the lunch. Her email to Mr Maguire on 26 November 2012, discussed above, indicates her awareness that the lunch would be paid for by the Australian counterpart to the MOU, namely, Wagga Wagga City Council. Her email to Ms Zhang on 28 November 2012 did not disclose that understanding to Ms Zhang but indicated just that Mr Maguire would not be paying, and that Ms Zhang's credit card details were required to cover costs including those of the lunch.
- 4.312. The Commission likewise does not accept Ms Cartwright's evidence that Ms Zhang directly paid an amount of \$1,869 in cash off Mr Maguire's parliamentary account. The evidence obtained by the Commission establishes that a bill for that amount was paid by Wagga Wagga City Council using a credit card against Mr Maguire's account on only one occasion, on 17 December 2012.
- 4.313. The Commission finds that Mr Maguire misused his office as a member of Parliament by seeking, and receiving, a fee for introducing the party secretary of Liaoning Province and the Liaoning delegation to then premier, Mr O'Farrell, at Parliament House on 30 November 2012 with a view to gaining benefits for G8wayInternational and thus, ultimately, for Mr Maguire himself.

Epilogue

- 4.314. These events reveal that from the outset of G8wayInternational's incorporation, Mr Maguire was prepared to use the cloak of anonymity provided by never disclosing his connection with the company to behave audaciously, including by seeking to monetise his close relationship with the premier for his personal pecuniary ends. As Counsel Assisting submitted, it was Mr Maguire who could, and did in fact, achieve that by introducing the Liaoning delegation to the premier. Mr Maguire saw value in "knowing people" and "putting them together" and this was a way in which he could leverage a financial return from the network of contacts to which he had access through his public office.
- 4.315. As earlier noted, Mr Maguire said it would be "going too far" to monetise his office by offering an introduction to "a Minister, or someone like that, or the Premier". Yet he authorised his staff, in collaboration with Mr Elliott, to prepare G8wayInternational Invoice #SHEN201201, which was clearly about the 30 November 2012 event, and clearly for the introduction of members of the Liaoning delegation to the premier of NSW.
- 4.316. It is hard to accept such a self-serving statement from Mr Maguire. In October 2012, he had just embarked upon a deliberate course of deception by not disclosing his interest in G8wayInternational as required by the Disclosure Regulation so that he could secretly monetise his role as a parliamentarian for his personal financial benefit and for the benefit of his associates.
- 4.317. Another fair assessment of Mr Maguire's behaviour in relation to the issuing of Invoice #SHEN201201 is that, as said at the outset, this was wrong and was one of the more egregious

examples of Mr Maguire seeking to monetise his position as a member of Parliament while hiding his involvement in G8wayInternational.

4.318. The Wu'ai International Trade Centre ultimately did not proceed.

Mr Maguire's submissions

4.319. Mr Maguire submitted that where it is asserted that a member of Parliament has misused their position as a member of Parliament, one must look carefully at how it is said they "used (misused)" their position for a personal benefit or gain.

4.320. He contended that the issue to be determined by the Commission was whether the evidence establishes that Mr Maguire "used (misused)" his position as a member of Parliament for his personal benefit. That is, whether he was using his personal profile and connections in the community fostered over many years, or his office as a member of Parliament. He suggested that this was not an easy issue to determine because the Commission needed to decide whether it was the fact that Mr Maguire was a well-known public figure that created business opportunities, or whether it was him using (misusing) his position as a member of Parliament to secure those opportunities.

4.321. The Commission does not doubt that it must look carefully at the evidence to determine this issue. That is what its investigation entailed, that is what was addressed in the public inquiries and that is what is addressed in this report.

4.322. However, it should be noted that Mr Maguire's submission flies in the face of his admission during the First Public Inquiry that misusing his position as a member of Parliament is precisely what he did:

[Counsel Assisting]: The ultimate proposition I'm putting to you for your comment is whether you agree that during the period from 2012 to 2018 you sought to monetise your offices as a member of Parliament, parliamentary secretary and chair of the New South Wales Parliament Asia Pacific Friendship Group. And by monetise I mean seeking to use the status of those public offices – the fact you're a member of Parliament, the fact you're a parliamentary secretary, the fact that you're the chair of the New South Wales Parliament Asia Pacific Friendship Group – and the opportunities and resources to which you had access by reason of having those offices – parliamentary office, parliamentary staff, access to consular officials through the New South Wales Parliament Asia Pacific Friendship Group, that kind of thing – with a view to making money for yourself and making money for your associates.

[Mr Maguire]: Yes.

4.323. Mr Maguire recognised that it was "hard to distance yourself from being a member of Parliament 24 hours a day". What Mr Maguire sought to do by establishing G8wayInternational was to capitalise on his parliamentary role, while concealing his involvement in that company by failing to disclose it to his parliamentary colleagues and the public pursuant to the Disclosure Regulation.

4.324. As already stated, Mr Maguire had networks, many possibly developed when, for example, he visited China on parliamentary business. It was apparent to those who accompanied him, and to himself, on those visits that once those being visited learned Mr Maguire was a member of Parliament, doors opened for him and his associates. Both Mr Elliott and Mr Maguire recognised this, as, too, did Ms Hatton.

- 4.325. Mr Maguire also submitted that a finding that he used his position as a member of Parliament to promote G8wayInternational is not sustainable or consistent with the uncontested evidence that he sought to conceal his involvement with G8wayInternational.
- 4.326. The Commission rejects this submission. Once again, it is inconsistent with Mr Maguire's admission that he did use his position as a member of Parliament to promote G8wayInternational. The fact that he concealed his involvement in the company by failing to comply with the Disclosure Regulation, does not detract from that admission, nor from the evidence that G8wayInternational was capitalising on Mr Maguire's position as a member of Parliament to attract business.
- 4.327. Mr Maguire also submitted that a screenshot of the G8wayInternational website as at February 2017 was the only evidence put forward to support an allegation that Mr Maguire used (misused) his position with a view to gaining profits for G8wayInternational and thereby himself. He contended that what was being promoted on the website was that G8wayInternational had access to skills and connections to provide the services described on the website and did not establish that Mr Maguire was using his position as a member of Parliament for personal gain.
- 4.328. Once again, this submission does not acknowledge Mr Maguire's admission that this is precisely what that reference on the website was doing.
- 4.329. As earlier noted, if someone contacted G8wayInternational to follow up on the promise on its website that "G8wayInternational's influence and experience reaches to high levels of government," Mr Maguire was the person to whom they would have access to facilitate whatever endeavour they needed such "influence and experience" for, including using his position to give them access to high levels of government. Mr Maguire agreed that this was an example of him seeking to monetise his office by promoting that as something that a G8wayInternational client or member might be able to get access to. He agreed that it was quite wrong for him to seek to promote such access and influence in that way.
- 4.330. Mr Maguire also submitted there was no evidence anyone was aware of the website, and that it would involve Mr Maguire's services. Accordingly, it is argued that the only finding open based on the screenshot of the G8wayInternational website and the evidence of Mr Maguire and Mr Elliott relating to it, is that it does not provide a basis for the Commission to conclude that Mr Maguire "used his position" as a member of Parliament for the benefit of G8wayInternational on the G8wayInternational website.
- 4.331. The Commission rejects this submission. It does not accord with Mr Maguire's admission, nor with the evidence that lures such as the G8wayInternational website were what was intended to promote Mr Maguire's position as a member of Parliament, albeit to those who enquired. It also does not recognise that the website was another part of the G8wayInternational business model used to connect purchasers and suppliers in transactions from which G8wayInternational, as the intermediary, would extract a commission.
- 4.332. To isolate one piece of evidence cannot detract from the extent of the conduct in which G8wayInternational engaged, and sought to engage, over the six years the subject of the Maguire allegation.
- 4.333. Mr Maguire submitted that having regard to the nature of the tasks outlined by Ms Cartwright and Ms Hatton, the tasks performed on behalf of G8wayInternational do not appear to have been significant.
- 4.334. That submission cannot be accepted. Mr Maguire's use of parliamentary resources was so significant that Ms Hatton agreed that Mr Maguire effectively turned his Parliament House office into an office for G8wayInternational, and Ms Cartwright agreed that Mr Maguire was

“running a business on the side” with the use of his parliamentary office and the assistance of staff, although she said she did not appreciate it at the time. Mr Maguire also agreed that he effectively, albeit “partly”, turned his office in Parliament House into an office for G8wayInternational.

- 4.335. To use his parliamentary office as a private office, and to run a business from the side, clearly connotes a constant and repetitive use by Mr Maguire of his parliamentary office for G8wayInternational business.
- 4.336. Mr Maguire also submitted that his use of his parliamentary resources could not be characterised as “serious corrupt conduct” because there was no absolute prohibition preventing staff from assisting members on private matters and the impugned conduct does not involve a substantial breach of an applicable code of conduct.
- 4.337. The Commission has already rejected the first of these propositions. There has been no submission that Mr Maguire’s conduct in misusing his parliamentary resources was the subject of an applicable code of conduct. Rather, it was part of the course of conduct in which he engaged during the six years the subject of the Maguire allegation which was a breach of public trust and could constitute or involve a criminal offence for the purposes of s 9(1)(a) of the ICAC Act.

Mr Maguire’s conduct

- 4.338. The Commission makes the following findings about Mr Maguire’s involvement in G8wayInternational.
- 4.339. Mr Maguire caused Mr Elliott to establish G8wayInternational in October 2012 as a vehicle for Mr Maguire’s activities whereby he intended to monetise his parliamentary position with a view to making money for himself and his associates. According to Australian Securities & Investments Commission (ASIC) records, Mr Elliott was the sole shareholder and director of G8wayInternational.
- 4.340. Accordingly, Mr Maguire and Mr Elliott set up the G8wayInternational business so that Mr Maguire could put funds into the business to which he would have a claim at some point in time while avoiding his disclosure obligations to Parliament.
- 4.341. Mr Maguire had an arrangement with Mr Elliott to keep his involvement in G8wayInternational “off the books”, that is to say, to conceal his involvement in G8wayInternational with Mr Elliott being the front man but permitting Mr Maguire to act as a de facto director in relation to G8wayInternational’s activities.
- 4.342. Mr Maguire and Mr Elliott’s arrangement was that Mr Maguire would formally be appointed a director of G8wayInternational after he retired from Parliament.
- 4.343. In fact, the “true state of affairs” was that, as he and Mr Elliott had agreed, Mr Maguire performed the role of a director of G8wayInternational from the time of G8wayInternational’s formation in 2012 (at which time he was a member of Parliament). Mr Maguire also received “at least some money” through that organisation.
- 4.344. Mr Maguire accepted that part of his motivation for not wanting to be appointed formally as a director of G8wayInternational was that he did not want to have to disclose that position in his returns under the Disclosure Regulation. Consistently with this plan, during the period from 2012 to August 2018, Mr Maguire concealed his role in G8wayInternational by not disclosing his interest in that company or remuneration he earned from its activities as he was required to by the Disclosure Regulation. He knew that if he disclosed that position as the Disclosure Regulation required, questions might be asked as to whether it was appropriate for him to be a director of such a company.

- 4.345. At one stage, Mr Maguire said that he failed to disclose his position in G8wayInternational only “possibly” because he was concerned if he did, it might call into question the kinds of things he was involved with on that company’s behalf. The Commission rejects Mr Maguire’s evidence that this outcome was only one he “possibly” intended. It was manifest from the extent and nature of the income-producing activities upon which Mr Maguire embarked using his position as a member of Parliament to advance each activity, from almost as soon as G8wayInternational was incorporated, that he would not wish to disclose that income, and hence the nature of the activity from which it was derived. These activities included charging the Liaoning delegation to meet Mr O’Farrell and introducing constituents in his electorate to Ms Wang with the hope, intention and expectation that they would participate in a cash-for-visas scheme in exchange for his receipt of large sums of cash from Ms Wang, as outlined in chapter 6.
- 4.346. As at June 2014, Mr Maguire saw G8wayInternational as a partnership in the sense of multiple people working together with a view to achieving a common goal of making some money and involving himself, Mr Elliott and Ms Wang (among others).
- 4.347. Mr Maguire admitted that in the course of conducting his business interests through G8wayInternational he:
- 4.347.1. used his office in Parliament House in the course of seeking to pursue his own business interests
 - 4.347.2. authorised his staff to use his Parliament House office and resources available within Parliament House in the G8wayInternational business
 - 4.347.3. “partly” turned his office in Parliament House into an office for G8wayInternational.
- 4.348. As Mr Maguire ultimately agreed:
- 4.348.1. on more than one occasion, he improperly used his parliamentary resources and his position as a member of Parliament to gain a benefit for himself and persons close to him
 - 4.348.2. he breached the public trust that was placed in him as a member of Parliament, a parliamentary secretary and chair of the APFG.
- 4.349. Mr Maguire was successful in his intention of monetising his position as a member of Parliament for his personal financial gain and for the benefit of his associates as demonstrated by the activities in which he engaged on G8wayInternational’s behalf as set out in this chapter and also, in particular, in chapter 6 (“The Immigration Scheme”) and chapter 7 (“The NSW Parliament Asia Pacific Friendship Group”).

Corrupt conduct findings

Mr Maguire

Section 8(1)(c), ICAC Act

- 4.350. Mr Maguire was not subject to any express constraints in terms of engaging in secondary employment. However, he knew he was constrained by the principle that he could not engage in any activity whether in secondary employment or otherwise if he did so wrongfully, such as by misusing his office or being in a conflict of interest and “things of that kind”.
- 4.351. Accordingly, he embarked upon his admitted intention to monetise his parliamentary position to leverage, or seek to leverage, that position for private gain with a view to making money for

himself and his associates. To pursue this end, he and Mr Elliott engaged in a sham by creating G8wayInternational as the vehicle, yet shield, for Mr Maguire (and select associates including Mr Elliott) to profit from using his parliamentary position.

- 4.352. As an adjunct to these activities, and to facilitate their pursuit, and as the discussion in this chapter reveals, Mr Maguire turned his parliamentary office at least partly into an office for G8wayInternational. He also effectively used Ms Hatton and Ms Cartwright, who were paid by the Department of Parliamentary Services, their formal employer, as G8wayInternational employees to carry out considerable work for that company. These were taxpayer-funded resources to which Mr Maguire was given access to perform public duties.
- 4.353. Mr Maguire's use of these resources was governed by clause 4 of the Code of Conduct for Members, stating members must apply the public resources to which they are granted access according to any guidelines or rules about the use of these resources. While the guidelines in the *Members' Entitlements Handbook* acknowledge the observation of the Parliamentary Remuneration Tribunal ("the Tribunal") that "[s]ome intermingling of a Member's parliamentary duties and private activities is, in practical terms, not always easily avoided" (such as "where a Member drives from home to Sydney accompanied by a family member"), they expressly proscribe intermingling parliamentary staff and parliamentary offices. Mr Maguire's use of his parliamentary services in the manner revealed by the evidence most certainly would not have passed the "front page of the newspaper test", referred to in the guidelines.
- 4.354. Mr Maguire submitted that the words "should not" in the guidelines relating to the receipt, use and operation of additional entitlements dealing with parliamentary resources did not absolutely prohibit staff from assisting members of Parliament on private matters.
- 4.355. This submission cannot be accepted. The relevant guideline is headed "Resources that should not be intermingled". It notes that the Tribunal recognises some circumstances in which intermingling of parliamentary duties and private activities occurs and is not easily avoided. However, the guideline injuncts that certain parliamentary resources "should not be intermingled under any circumstances", including parliamentary staff, parliamentary offices and allowances relating to travel. It is plain that in context, in a separate section from that recognising and accepting occasional intermingling, and having regard to the heading, the words of the guideline "should not" is intended to mean "must not".
- 4.356. Further, this submission is contrary to Mr Maguire's evidence. He conceded that he understood at the time that he was not permitted to use his Parliament House office, or his parliamentary staff and resources in the way that he did, for the benefit of G8wayInternational, but was rather required to use those resources wholly and solely in the exercise of his public functions.
- 4.357. It was a breach of public trust for Mr Maguire to misuse his office in this way by using taxpayer-funded resources to which he was given access to perform public duties for private purposes.
- 4.358. Mr Maguire submitted that the fact he was not named on G8wayInternational's website, and, indeed, concealed his connection with that company, disproved the proposition that he misused his position with a view to gaining profits for that company, and thereby himself. The Commission does not accept that submission.
- 4.359. The evidence is that if someone had contacted G8wayInternational, for example, lured by the promise on the website that "G8wayInternational's influence and experience reaches to high levels of government," Mr Maguire was the person to whom they would have access to facilitate whatever endeavour they needed such "influence and experience" for, including using his position

to give them access to high levels of government. Mr Maguire agreed that this was an example of him seeking to monetise his office by promoting that as something that a G8wayInternational client or member might be able to get access to. He agreed that it was quite wrong for him to seek to promote such access and influence in that way.

- 4.360. The reality was, as Mr Maguire acknowledged, in language reminiscent of Knox CJ and Gavin Duffy J's statement in *Horne v Barber*, "It's hard to distance yourself from being a member of Parliament 24 hours a day. You, you cease to be a citizen once you become a member of Parliament."
- 4.361. Mr Maguire's conduct was wilful and in bad faith. The evidence reveals that Mr Maguire never sought to distance or divest himself from his character as a member of Parliament. His admitted intention was to monetise that role, albeit using the shield of G8wayInternational to conceal his conduct in that respect. And to do so, he also wilfully breached the Disclosure Regulation for the entire period after G8wayInternational's incorporation in October 2012 until his resignation from Parliament in August 2018. He was aware of his obligations under the Disclosure Regulation, but deliberately determined to breach them.
- 4.362. In addition, Mr Maguire wilfully misused his office as a member of Parliament by seeking, and receiving, a fee for introducing the party secretary of Liaoning Province and the Liaoning delegation to then premier Mr O'Farrell at Parliament House on 30 November 2012 with a view to gaining benefits for G8wayInternational and thus, ultimately, for Mr Maguire himself.
- 4.363. The Commission finds that between 2012 and August 2018, Mr Maguire engaged in conduct which constituted or involved a breach of public trust within the meaning of s 8(1)(c) of the ICAC Act by improperly using his office and the resources to which he had access as a member of Parliament to benefit G8wayInternational, a company of which he was in substance a director and in respect of whose profits he had an arrangement to share by:
- 4.363.1. monetising his position as a member of Parliament in order to promote his own pecuniary interests and those of persons close to him, in breach of his duties and obligations as a member of Parliament to act only in accord with what he believed to be in the public interest and the interests of the electorate
 - 4.363.2. misusing his position and taxpayer-funded resources to which he had access as a member of Parliament to benefit G8wayInternational, a company of which he was in substance a director and in respect of whose profits he had an arrangement to share personally
 - 4.363.3. deliberately choosing not to comply with his obligations under the Disclosure Regulation in relation to his position in G8wayInternational, and pecuniary benefits received from or in connection with G8wayInternational's activities
 - 4.363.4. misusing his office as a member of Parliament by seeking, and receiving, a fee for introducing the party secretary of Liaoning Province and the Liaoning delegation to then premier Mr O'Farrell at Parliament House on 30 November 2012 with a view to gaining benefits for G8wayInternational and thus, ultimately, for Mr Maguire himself.

Section 9(1)(a), ICAC Act

- 4.364. As explained in chapter 3 (“Misconduct in public office”) a breach of public trust can constitute the offence of misconduct in public office for the purposes of s 9(1)(a) of the ICAC Act.
- 4.365. The elements of that offence were set out in *R v Quach*¹⁴³ and approved in *Obeid v R 2015*. They are also set out in chapter 3 of the report.
- 4.366. Mr Maguire as a member of Parliament was a public official throughout the period the subject of the Maguire allegation. His conduct in relation to G8WayInternational was in the course of, or connected to, his public office in the sense that he used his public office and resources to which he had access in that capacity to advance his own private interests, or private interests with whom he was closely associated (namely, the interests of G8wayInternational through which he was a beneficiary). As is apparent from chapter 6 (“The Immigration Scheme”) and chapter 7 (“NSW Parliament Asia Pacific Friendship Group”), the Commission is also of the view that Mr Maguire’s conduct in respect of those activities is capable of constituting misconduct in public office. The combined effect of those activities is considered in chapter 10.
- 4.367. Mr Maguire’s misconduct was wilful and in bad faith because, as he admitted, first, he knew that his conduct in offering his services as a member of Parliament to promote his own pecuniary interests and those of persons close to him was wrong, and a breach of his duties and obligations as a member of Parliament to act only in accord with what he believed to be in the public interest and the interests of the electorate, yet he chose to do so over the course of the six years the subject of the Maguire allegation.¹⁴⁴
- 4.368. Secondly, Mr Maguire knew that he was not permitted to use parliamentary staff and resources to benefit G8wayInternational yet chose to do so anyway.
- 4.369. Thirdly, Mr Maguire knew he was obliged to comply with the Disclosure Regulation yet deliberately chose not to do so in relation to his position in G8wayInternational, and pecuniary benefits received from or in connection with G8wayInternational’s activities.
- 4.370. Fourthly, Mr Maguire knew it would be “going too far” to monetise his office by offering an introduction to “a Minister, or someone like that, or the Premier” for a fee. Nevertheless, the evidence reveals that that is precisely what he did, no doubt emboldened by the shield he and Mr Elliott had created by incorporating G8WayInternational, the ostensible creditor on Invoice #SHEN201201.
- 4.371. As to the fourth element of the offence of misconduct in public office (without reasonable excuse or justification), there was no reasonable excuse or justification for any of Mr Maguire’s conduct discussed in this chapter. Mr Maguire did not suggest otherwise and, indeed, accepted on a number of occasions that his conduct was wrongful.
- 4.372. As for the fifth element of misconduct in public office, whether Mr Maguire’s conduct was sufficiently serious and meriting criminal punishment having regard to the responsibilities of the office and the officeholder, the importance of the public objects which they serve and the nature and extent of the departure from those objects, it is necessary and appropriate for the Commission to have regard to Mr Maguire’s course of conduct in connection with G8wayInternational.

¹⁴³ At [136].

¹⁴⁴ See *Obeid v R 2017* [2017] NSWCCA 221 at [28].

- 4.373. Mr Maguire's conduct in monetising his position as a member of Parliament in order to promote his own pecuniary interests and those of persons close to him was in breach of his duties and obligations as a member of Parliament to act only in accord with what he believed to be in the public interest and the interests of the electorate. It confounded the principles explained in chapter 3 about Mr Maguire's "duty as a representative of others to act in the public interest", which is an aspect of representative parliamentary democracy and includes "an obligation to act according to good conscience, uninfluenced by other considerations, especially personal financial considerations". Rather than serve "with fidelity and with a singlemindedness for the welfare of the community," Mr Maguire abused, indeed, abdicated his position as a member of Parliament for his own personal pecuniary benefit, and that of G8wayInternational and his associates.
- 4.374. In breach of the injunction against intermingling parliamentary staff and resources under any circumstances, Mr Maguire embroiled his parliamentary staff, who were also a taxpayer-funded resource, in G8wayInternational activities. In so doing, Mr Maguire put those persons in a seriously compromised position in circumstances of a significant power disparity: on the one hand, Mr Maguire's staff had a duty or sense of loyalty to Mr Maguire; yet, on the other, were being urged by Mr Maguire to do things that Mr Maguire admitted he knew he was not allowed to use parliamentary staff to do.
- 4.375. In so doing, Mr Maguire also misused taxpayer resources provided for his use as a member of Parliament which he was obliged not to intermingle with his personal purposes.
- 4.376. Further, over a protracted period, from 2012 to August 2018, Mr Maguire agreed that he sought to monetise his offices as a member of Parliament, parliamentary secretary and chair of the NSW Parliament APFG by using the status of those public offices and the opportunities and resources to which he had access by reason of having those offices with a view to making money for himself and making money for his associates.
- 4.377. As Counsel Assisting submitted, Mr Maguire's conduct struck at the heart of the state's system of representative parliamentary democracy. It is apt to undermine public confidence in the Parliament by suggesting that some members of Parliament are "only in it for themselves". Conduct of that kind should be regarded as conduct approaching the highest level of seriousness having regard to the responsibilities of members of Parliament and the central role of members of Parliament in the state's system of representative parliamentary democracy.
- 4.378. As can be seen from the discussion in this chapter, Mr Maguire's efforts to monetise his position were extensive. His intentions are evidenced by him establishing a separate corporate vehicle to conceal his activities, and his wilful failure from October 2012 to August 2018 to comply with the Disclosure Regulation insofar as his G8wayInternational activities were concerned. This was another means to conceal his conduct. Such conduct is a betrayal of the trust and faith the electorate, and the community at large, places on a member of Parliament.
- 4.379. Counsel Assisting submitted that Mr Maguire's deliberate concealment of his position with G8wayInternational compounded the gravity of his conduct. Mr Maguire accepted that he knew he had an obligation to disclose his position in G8wayInternational under the Disclosure Regulation. He did not do so because he was concerned that if he did disclose that matter and someone looked at those disclosures, it might call into question the kinds of things that he was involved in ostensibly on behalf of G8wayInternational. That admission itself demonstrates Mr Maguire's appreciation that what he did in relation to G8wayInternational was serious misconduct.

- 4.380. Further, Mr Maguire’s deliberate concealment of his position in G8wayInternational undermined the disclosure scheme established pursuant to s 14A of the Constitution Act. That system was not established idly. Rather, it was intended to satisfy concerns that “members of Parliament can be seen to be above reproach”. In accordance with clause 20 of the Disclosure Regulation, the registers compiled and maintained under it are open to public inspection.
- 4.381. Accordingly, a consequence of Mr Maguire’s concealment of his position in G8wayInternational was that the Parliament, his constituents and the public at large were denied information regarding his position in that company. Mr Maguire’s conduct thus denied the Parliament, his constituents and the public at large information that they, or some of them, may have regarded as being relevant to them as participants in the political process.
- 4.382. As Counsel Assisting submitted, such deliberate concealment was of a serious kind which was corrosive to public confidence in the integrity of the Parliament and its members. It is a weighty factor in deciding whether Mr Maguire’s course of conduct in connection with G8wayInternational was of sufficient seriousness as to be conduct of a kind that satisfies the requirement of seriousness for the purposes of the fifth element of the offence of misconduct in public office.
- 4.383. Insofar as Counsel Assisting relied on Mr Maguire’s non-compliance with the Disclosure Regulation in relation to misconduct in public office, Mr Maguire submitted that any issues concerning a possible contravention of the Disclosure Regulation by him are outside the scope of this Commission. The issue of the Commission’s jurisdiction in relation to the Disclosure Regulation has been dealt with adversely to Mr Maguire in chapter 3.
- 4.384. The Commission finds that, having regard to the fundamental obligations of members of Parliament as outlined in chapter 3 to act in the public interest, and the nature and extent of Mr Maguire’s departure from those obligations as found in this chapter, Mr Maguire’s conduct is serious and could merit criminal punishment.
- 4.385. The Commission finds that Mr Maguire’s misconduct in connection with G8wayInternational would not have been engaged in but for his improper motive of profit for G8wayInternational, himself and his associates. In the Commission’s view, that is an available, indeed probably the only, inference in circumstances where Mr Maguire’s misconduct in relation to G8wayInternational (using parliamentary resources for the benefit of G8wayInternational and using his position with a view to gaining profits for G8wayInternational) could not plausibly be seen to have been performed for some permissible purpose such as for the benefit of the community or for the benefit of Mr Maguire’s electorate.
- 4.386. The Commission finds, for the purposes of s 9(1)(a) of the ICAC Act, that if the facts as found in relation to Mr Maguire’s conduct in respect of G8wayInternational were to be proved on admissible evidence to the requisite standard of beyond reasonable doubt and accepted by an appropriate tribunal, there would be grounds on which such a tribunal could reasonably conclude that Mr Maguire committed the offence of misconduct in public office. Accordingly, that conduct could constitute or involve a criminal offence within the meaning of s 9(1)(a) of the ICAC Act.

Section 13(3A), ICAC Act

- 4.387. The Commission is satisfied for the purposes of s 13(3A) of the ICAC Act, that, if the facts it has found concerning Mr Maguire’s conduct in respect of G8wayInternational were to be proved on admissible evidence and accepted by an appropriate tribunal to the requisite standard of beyond reasonable doubt, there would be grounds on which such a tribunal would find that Mr Maguire engaged in conduct that constitutes the offence of misconduct in public office.

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

Section 74BA, ICAC Act: serious corrupt conduct

- 4.389. The Commission is satisfied, for the purposes of s 74BA of the ICAC Act, that Mr Maguire's conduct in relation to G8wayInternational is serious corrupt conduct for the reasons already set out above, but which in short are as follows.
- 4.389.1. Mr Maguire's conduct struck at the heart of this state's system of representative parliamentary democracy. It is apt to undermine public confidence in the Parliament and public administration. He persisted in it unabashed for six years until finally brought to account in Operation Dasha.
- 4.389.2. Throughout the period of his misconduct, Mr Maguire held a position of high public office as a member of Parliament. He was a parliamentary secretary from 2014, and chair of the APFG from 2011. He had a duty as a representative of others to act in the public interest at all times and to elevate the public interest, particularly as it concerned his own constituents, above his private interest.
- 4.389.3. Mr Maguire's conduct represents a significant departure from those responsibilities. It was a significant breach of public trust. Mr Maguire erected, or caused to be erected, a sham corporate vehicle behind which he could pursue his intention to monetise his position as a member of Parliament for his personal financial benefit and that of his associates. To monetise, or seek to monetise, a position as a member of Parliament is the antithesis of the general duty of a member of Parliament "to serve and, in serving, to act with fidelity and with a singlemindedness for the welfare of the community".
- 4.389.4. Mr Maguire wilfully failed, from October 2012 to August 2018, to comply with the Disclosure Regulation, a scheme established to ensure members of Parliament can be seen to be above reproach. He also misused taxpayer-funded resources, including the parliamentary staff employed by the Department of Parliamentary Services.
- 4.389.5. By concealing the nature of his relationship with G8wayInternational and Ms Wang, including the financial aspect of those relationships, Mr Maguire could engage in the misconduct set out in this report in this chapter ("G8wayInternational Pty Ltd"), chapter 6 ("The Immigration Scheme") and chapter 7 ("NSW Parliament Asia Pacific Friendship Group"). Mr Maguire's failure to comply with the Disclosure Regulation also facilitated the misuse of his public office in other respects.
- 4.389.6. Mr Maguire substantially profited from his misconduct. The sums of money he received from Ms Wang (and failed to disclose as required) during the Immigration Scheme were relatively large, received in cash, occasionally received in Parliament House, and related to a cash-for-visas scheme. On the Commission's finding in chapter 6, Mr Maguire personally received and retained in excess of \$100,000 in cash in connection with his involvement in the Immigration Scheme.
- 4.389.7. A particularly egregious form of Mr Maguire's misconduct was to leverage his office as a member of Parliament to make a financial return by seeking, and receiving, a fee for introducing the party secretary of Liaoning Province and the Liaoning delegation to then premier Mr O'Farrell at Parliament House on 30 November 2012 with a view to gaining benefits for G8wayInternational and thus, ultimately, for Mr Maguire himself.

- 4.389.8. Mr Maguire’s seniority, standing and experience are relevant.¹⁴⁵ At the time G8wayInternational was created (and his non-disclosure commenced), Mr Maguire had been a parliamentarian for 13 years. He had held senior positions within his party, being opposition whip from 2003, then government whip from March 2011. As government whip, he was involved in the mentoring and induction of new members of Parliament who belonged to his party during the period from 2011 to 2014. It could be expected he had educated them as to the necessity to comply with the Disclosure Regulation, during a period when he had determined not to do so himself.

Corrupt conduct conclusion

- 4.390. The Commission therefore finds that, between 2012 and August 2018, Mr Maguire engaged in serious corrupt conduct which constituted or involved a breach of public trust within the meaning of s 8(1)(c) of the ICAC Act by improperly using his office and the resources to which he had access as a member of Parliament to benefit G8wayInternational, a company of which he was in substance a director and in respect of whose profits he had an arrangement to share, in particular by:
- 4.390.1. monetising his position as a member of Parliament in order to promote his own pecuniary interests and those of persons close to him, in breach of his duties and obligations as a member of Parliament to act only in accord with what he believed to be in the public interest and the interests of the electorate
 - 4.390.2. misusing his position and taxpayer-funded resources to which he had access as a member of Parliament to benefit G8wayInternational, a company of which he was in substance a director and in respect of whose profits he had an arrangement to share personally
 - 4.390.3. deliberately choosing not to comply with his obligations under the Disclosure Regulation in relation to his position in G8wayInternational, and pecuniary benefits received from or in connection with G8wayInternational’s activities
 - 4.390.4. misusing his office as a member of Parliament by seeking, and receiving, a fee for introducing the party secretary of Liaoning Province and the Liaoning delegation to then premier Mr O’Farrell at Parliament House on 30 November 2012 with a view to gaining benefits for G8wayInternational and thus, ultimately, for Mr Maguire himself.

Section 74A(2) statements

- 4.391. 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”, relevantly a statement as to whether or not in all the circumstances 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 person for a specified criminal offence.
- 4.392. 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.

¹⁴⁵ See *Obeid v R 2017* (at [194]).

- 4.393. The Commission is satisfied that Mr Maguire, Ms Cartwright and Mr Maguire's son, James Maguire, are "affected persons".

Daryl Maguire

- 4.394. Mr Maguire's evidence was the subject of a declaration under s 38 of the ICAC Act and cannot be used against him in criminal proceedings, except in relation to prosecution for offences under the ICAC Act. However, evidence of witnesses other than Mr Maguire would likely be available in any prosecution of him for the offence of misconduct in public office in relation to his involvement in G8wayInternational. That, coupled with the substantial documentary evidence that is available and is evident from the references to it in this chapter, warrants consideration being given to obtaining the advice of the DPP with respect to the prosecution of Mr Maguire for misconduct in public office in relation to his activities in respect of G8wayInternational.

Rebecca Cartwright

- 4.395. Counsel Assisting submitted that the Commission should form the opinion that substantial allegations have been made in the course of or in connection with Operation Keppel against Ms Cartwright, such that, pursuant to s 74A(2)(a), the report must include a statement as to whether or not in all the circumstances the Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to her prosecution for a specified criminal offence. They rely on the following circumstances in which Ms Cartwright retained Mr Maguire's parliamentary hard drive for over two years following his resignation from Parliament.
- 4.396. In August 2018, following his resignation from Parliament, Mr Maguire arranged for the IT Services section of the Department of Parliamentary Services to send a hard drive containing his parliamentary electronic data to Ms Cartwright.
- 4.397. During the public inquiry, Ms Cartwright initially gave the following evidence about what Mr Maguire told her to do with the hard drive:

[Counsel Assisting]: And what instructions did he give you in relation to that hard drive?

[Ms Cartwright]: To post, well, to post it. But, to post it but not, but, he said to post it but it gets lost in the post.

[Assistant Commissioner]: I'm sorry?

[A]: He asked me to post it to him.

[Q]: Yes.

[A]: And then he said it gets lost in the post.

[Q]: What do you mean?

[A]: That – I took it as not post it.

- 4.398. Ms Cartwright said that Mr Maguire gave her these instructions during a telephone conversation. She said she thought she called him following receipt of an email from the IT Services section advising that the hard drive was going to be given to her, or possibly, following receipt of the hard drive itself.

- 4.399. Initially, Ms Cartwright said that when Mr Maguire said to her “it gets lost in the post”, she took that to mean that she should not post it and, accordingly, she kept the hard drive. Ms Cartwright agreed that the gist of what Mr Maguire was asking her to do was to lose the hard drive and not to post it to him, but she said, “I just also want to state that I just didn’t want to be involved when I was given that and the phone call, I just put it aside and left”.
- 4.400. Ms Cartwright said she could not answer why she had not proffered information about the hard drive before her evidence in the public inquiry, saying, “It was something that was put in the office, I actually did even forget about it.” Although she agreed that she knew at the time that Mr Maguire did not want the hard drive to see the light of day, she initially denied that she had agreed to assist Mr Maguire in concealing potentially damaging material and not drawing it to the Commission’s attention, saying, “I did not think, I did not think I was doing that. I just put it away. I just put it away”.
- 4.401. A little later, Ms Cartwright conceded that she *had* agreed to assist Mr Maguire in attempting to keep from the Commission information that might implicate him, but she was insistent that she was not going to lose it and had not agreed to get rid of it. She conceded that she had agreed to conceal the hard drive and that she had no intention of drawing it to the Commission’s attention.
- 4.402. During further examination by Counsel Assisting, Ms Cartwright said that notwithstanding her understanding that Mr Maguire wanted her to get rid of the hard drive, she decided to keep it at Parliament House because she did not want to destroy parliamentary property. She conceded that she was troubled by what Mr Maguire was asking her to do and did not want to be involved and that was her reason for keeping it in the office.
- 4.403. In response to questions put to her on behalf of Mr Maguire, Ms Cartwright agreed that Mr Maguire had not told her to destroy the hard drive. She further agreed that a fair construction of the conversation was that Mr Maguire simply did not care about the hard drive anymore and did not want it.
- 4.404. Under questioning from her own counsel, Ms Cartwright gave the following evidence to clarify what was going through her mind at the time:
- The reason I was holding onto the hard drive was that Daryl didn’t sound in a very good state of mind, that he wanted to lose it in the post. I thought that didn’t seem the right thing to do, so I kept a copy of the computer, but it wasn’t to keep it from anybody, it wasn’t to keep it from anybody. I just kept it.*
- 4.405. In response to further questioning from Counsel Assisting, Ms Cartwright also clarified her earlier evidence about the effect of Mr Maguire’s instructions. She said he had not used the words “I don’t want the hard drive to see the light of day”, but had just said he did not want the hard drive sent to him. She did ultimately concede, however, that she understood from the words Mr Maguire used and the way he delivered them that he wanted her to ensure that the hard drive was not made available to the Commission or to anyone else who might choose to investigate it.
- 4.406. The following exchange then ensued between Counsel Assisting and Ms Cartwright:
- [Counsel Assisting]: So why didn’t you tell the Commission, “Look, I have this hard drive. It might possibly assist you in your investigation”?*
- [Ms Cartwright]: I can’t answer that question why I didn’t.*
- [Q]: Is the reason that you didn’t do it, you thought there might be information on the hard drive that may implicate Mr Maguire and you wanted to take steps to avoid Mr Maguire being implicated?*

[A]: Possibly, yes.

[Q]: Well, not possibly yes. The answer is yes, isn't it?

[A]: Yes.

- 4.407. The hard drive was kept by Ms Cartwright in the government whip's office and was ultimately produced to the Commission following a direction made under s 35(2) of the ICAC Act.
- 4.408. Counsel Assisting submitted that while Ms Cartwright's conduct, in keeping the hard drive and not informing the Commission of its existence, did not appear to amount to any offence under the ICAC Act, the evidence raised the possibility that Ms Cartwright committed an offence under s 315(1)(b) of the *Crimes Act 1900* (NSW) ("the Crimes Act"), which makes it an offence to do anything intending to hinder the discovery of evidence concerning a serious indictable offence committed by another person.
- 4.409. Ms Cartwright submitted in response that s 315 of the Crimes Act is directed to conduct that actively hinders an investigation and does not extend to conduct of the kind she engaged in in relation to the hard drive.
- 4.410. Ms Cartwright submitted that, as s 315(3) of the Crimes Act provides:
- It is not an offence against this section merely to refuse or fail to divulge information or produce evidence*
- she was under no legal obligation to volunteer the existence of the hard drive to anyone and her intention to do something that was not against the law can therefore have no relevance to s 315.
- 4.411. It was further submitted by Ms Cartwright that the intention attributed to her by Counsel Assisting, to assist Mr Maguire by hindering the discovery of evidence, is inconsistent with her conduct. She did not destroy, post or otherwise dispose of the hard drive, which would be consistent with the proposition that she sought to hinder an inquiry by the Commission or anyone else. She submitted that a better explanation for her conduct was given by her on several occasions during the public inquiry when she said she did not wish to be involved.
- 4.412. The Commission accepts Ms Cartwright's submissions. The Commission finds that Ms Cartwright was provided with a hard drive of Mr Maguire's parliamentary electronic data in August 2018. Following a conversation with Mr Maguire in which she understood the gist of his instructions to be to "lose" the hard drive and not to post it to him, she did not destroy it, nor send it in the post, nor otherwise cause it to become lost. Instead, she kept it in the government whip's office where she worked, and it remained there until it was secured by Commission officers on the day that Ms Cartwright gave evidence in the First Public Inquiry. The Commission is satisfied that her conduct was not consistent with an intention actively to hinder the discovery of evidence and that she kept the hard drive because she did not think it was the right thing to do to "lose" it in the post.
- 4.413. The Commission is satisfied that Ms Cartwright's failure to divulge the existence of, or produce, the hard drive to the Commission or anyone else prior to her evidence in the public inquiry is not conduct that would come within s 315(1)(b) of the Crimes Act having regard to the clear meaning of s 315(3).
- 4.414. The Commission is therefore not of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Ms Cartwright for any offence.

James Maguire

Section 88(2), ICAC Act: destruction of documents

- 4.415. During the course of a lawfully intercepted telephone call James Maguire made to Mr Maguire on 27 August 2018, James Maguire asked him whether he had his iPad with him. When asked why, James Maguire responded “Oh just tried getting rid of the emails from the computer”. When Mr Maguire told his son he had cleared all of his, James Maguire told him to ensure they were also deleted from the server.
- 4.416. Later, during the same telephone conversation, James Maguire instructed his father how to check his iPad’s mailbox settings to ensure that his deleted and archived emails would be removed from the server after one week. Mr Maguire also stated during the course of that telephone conversation that he had “got rid of” his “g8waydaryl” email account and that he should get rid of his parliamentary email too.
- 4.417. During the public inquiry, having been played this telephone conversation, James Maguire agreed that he provided some assistance to Mr Maguire in ensuring that emails were deleted, including deleted off mail servers. James Maguire said that to the best of his knowledge that telephone call was the only occasion on which he provided any assistance to his father regarding deleting or disposing of hard copy or electronic records.
- 4.418. Section 88(2)(a) of the ICAC Act provides that it is an offence for a person, with intent to delay or obstruct the carrying out by the Commission of any investigation, to destroy or alter any document or other thing relating to the subject-matter of the investigation.
- 4.419. Counsel Assisting submitted, and the Commission accepts, that the evidence does not establish that James Maguire assisted Mr Maguire on the occasion described above with the intention of interfering with the Commission’s investigation.
- 4.420. Accordingly, in all the circumstances, the Commission is not of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of James Maguire for any offence in connection with the deletion or destruction of hard copy or electronic records.

Chapter 5: Breach of the Disclosure Regulation

In this section of the report, the Commission considers whether Mr Maguire engaged in corrupt conduct by failing to disclose that he had an interest and a position in G8wayInternational, and also by failing to disclose his pecuniary interests and income received from that company although he was required to do so under the Disclosure Regulation.

The regulatory regime

The Constitution Act

- 5.1. At all relevant times, the Disclosure Regulation required that members of Parliament lodge returns with the clerk of the relevant House of Parliament which disclosed, amongst other matters:
 - 5.1.1. each source of income that the member received during the period (clause 9(1))
 - 5.1.2. the name and address of each corporation in which he or she had an interest or held any position (whether remunerated or not), and the nature of the interest or the description of the position held in each such corporation (clause 12(1)).
- 5.2. Members of Parliament are generally required to lodge returns under the Disclosure Regulation as follows:
 - 5.2.1. primary return: within three months after taking the pledge of loyalty required by s 12 of the Constitution Act (at the commencement of each Parliament, or otherwise following election)
 - 5.2.2. ordinary return: annually (by 1 October each year), covering pecuniary interests for the preceding financial year
 - 5.2.3. supplementary ordinary return: annually (by 31 March each year), covering the preceding 1 July to 31 December.
- 5.3. Members of Parliament may also lodge discretionary returns at any time before their next ordinary or supplementary ordinary return is due.
- 5.4. Part 2, clause 5 of the Schedule to the ministerial code requires ministers (including parliamentary secretaries for the purposes of this Part), to “comply with their obligations as a Member of Parliament under section 14A of the *Constitution Act 1902* and the Constitution (Disclosures by Members) Regulation 1983 in relation to the disclosure of their pecuniary and other interests to

the Parliament”. The ministerial code applied to Mr Maguire as a parliamentary secretary from its introduction in September 2014, however, the ministerial code was not an “applicable code” for the purposes of the ICAC Act in relation to parliamentary secretaries during the period the subject of the Maguire allegation.

- 5.5. The registers compiled and maintained under the Disclosure Regulation for the respective Houses of Parliament are open to public inspection and, too, to inspection by members of either House of Parliament.
- 5.6. Section 14A(2) of the Constitution Act has also been set out above, but is repeated for convenience. At all material times it has provided:

If a Member of either House of Parliament wilfully contravenes any regulation made under [s 14A(1)], that House may, in accordance with subsection (3), declare his seat vacant and the seat of the Member shall thereupon become vacant.

Breach of the Disclosure Regulation

- 5.7. The evidence concerning Mr Maguire’s breach of the Disclosure Regulation is set out in chapter 3 (“Jurisdiction”) and chapter 4 (“G8wayInternational – the inception”). In short, the evidence is that Mr Maguire did not want to be appointed formally as a director of G8wayInternational because he did not want to have to disclose that position in his returns under the Disclosure Regulation even though he knew he was obliged to do so.
- 5.8. Mr Maguire never disclosed his position in G8wayInternational under the Disclosure Regulation, or any income received from or in connection with that company. He knew at the time he was obliged to.
- 5.9. The consequence was that over the period of the Maguire allegation, from 2012 to 2018, and on every occasion when he was obliged to provide a return under the Disclosure Regulation, Mr Maguire never disclosed his position in G8wayInternational and never disclosed any income that he received that was associated with G8wayInternational.

Mr Maguire's admissions

- 5.10. Mr Maguire made the following admissions:
- 5.10.1. that he and Mr Elliott set up G8wayInternational in a way that Mr Maguire could put funds into the business to which he would have a claim at some point in time to avoid his disclosure obligations to Parliament
 - 5.10.2. that he wanted to keep his involvement in G8wayInternational “off the books”, because he wanted to conceal those payments and his involvement in that company
 - 5.10.3. that he wanted to conceal such payments because if it appeared in some formal record he might be exposed as someone who had not made a disclosure through the parliamentary system or to the premier when he was parliamentary secretary that he should have disclosed
 - 5.10.4. that Mr Elliott was content to treat Mr Maguire as if he were the person running G8wayInternational even though Mr Maguire was not formally appointed as the director
 - 5.10.5. that the “true state of affairs” was that he was acting as a director of G8wayInternational and that he was receiving “at least some money” through that organisation. Mr Maguire performed the role of a director in G8wayInternational from the time of G8wayInternational’s formation in 2012
 - 5.10.6. that he had an arrangement with Mr Elliott whereby he would formally be appointed a director of G8wayInternational after he retired from Parliament
 - 5.10.7. that part of his motivation for not wanting to be appointed formally as a director of G8wayInternational prior to his retirement was that he did not want to have to disclose that position in his returns under the Disclosure Regulation
 - 5.10.8. that as at June 2014, he saw G8wayInternational as a partnership involving himself, Mr Elliott and Ms Wang (among others) working together with a view to achieving a common goal of making some money
 - 5.10.9. that he never disclosed his position in G8wayInternational under the Disclosure Regulation, although he knew at the time he was obliged to
 - 5.10.10. that he failed to disclose his position in G8wayInternational “possibly” because he was concerned if he did, it might call into question the kinds of things that he was involved in on that company’s behalf
 - 5.10.11. that, while engaged in the Immigration Scheme with Ms Wang, considered in chapter 6, he received cash payments from Ms Wang, some of which he kept for himself.
 - 5.10.12. that he never disclosed any income he received either from or in connection with G8wayInternational such as the money that Ms Wang provided to him in cash in relation to the matter of immigration in any return under the Disclosure Regulation.
- 5.11. Based on the evidence as to Mr Maguire’s breach of the Disclosure Regulation as set out in chapter 3 (“Jurisdiction”) and chapter 4 (“G8wayInternational – the inception”), summarised above and Mr Maguire’s admissions, the Commission finds that:

- 5.11.1. in each of the returns lodged by Mr Maguire between October 2012 (the creation of G8wayInternational) and August 2018 (Mr Maguire’s resignation from the Legislative Assembly), Mr Maguire failed to disclose that he had an interest and a position in G8wayInternational, although he was required to do so under the Disclosure Regulation. Mr Maguire did so deliberately, knowing that he should have disclosed his interest and position in G8wayInternational in his returns but failed to do so because he wanted to conceal his relationship with that company while he was a member of Parliament
- 5.11.2. Mr Maguire failed to disclose that G8wayInternational and Ms Wang were sources of his income in any return submitted under the Disclosure Regulation that covered the period in which he received that money. Mr Maguire knew that he should have disclosed these entities as sources of his income but deliberately failed to do so because he wanted to conceal that aspect of his relationship with each of G8wayInternational and Ms Wang.

Mr Maguire’s submissions

- 5.12. Mr Maguire’s submissions concerning the question of whether he engaged in corrupt conduct in breaching the Disclosure Regulation went to the Commission’s jurisdiction to investigate such breaches. In summary, Mr Maguire contended:
 - 5.12.1. The Commission has no jurisdiction to investigate or make findings in relation to a breach of the Disclosure Regulation.
 - 5.12.2. The investigation by the Commission of breaches of the Disclosure Regulation was not lawful – only Parliament is empowered to investigate alleged breaches of the Disclosure Regulation.
 - 5.12.3. The Commission could not make the findings proposed, namely, that Mr Maguire’s conduct in signing and lodging (or authorising the lodgement of) ordinary and supplementary ordinary returns under the Disclosure Regulation, in which he failed to disclose his interest and position in G8wayInternational and/or all of the sources of his income, was sufficiently serious to constitute serious corrupt conduct pursuant to s 8(1)(b) and subsections 9(4) and 9(5) of the ICAC Act, nor could it make any other findings in relation to the Disclosure Regulation.
 - 5.12.4. It is a fundamental part of the separation of powers that the Parliament is responsible for the conduct of members including imposing sanctions such as declaring a seat vacant.
- 5.13. These submissions were considered, and rejected, in chapter 3 (“Jurisdiction”).

Corrupt conduct findings

Section 8(1)(b), ICAC Act

- 5.14. Section 8(1)(b) of the ICAC Act provides that “corrupt conduct” is:

any conduct of a public official that constitutes or involves the dishonest or partial exercise of any of his or her official functions.

5.15. For the purposes of s 8(1)(b), the “dishonest” element would appear to require determining whether the public official’s conduct was dishonest according to the standards of ordinary, decent people.¹⁴⁶ In the case of failure to act,¹⁴⁷ the question of whether such a failure is dishonest:¹⁴⁸

is usually answered by considering whether that failure was motivated by a desire to conceal the truth or to obtain an advantage to which the person concerned knew he or she was not entitled.

5.16. Based on the objective evidence as to Mr Maguire’s non-disclosure of his position in G8wayInternational under the Disclosure Regulation, or any income received from or in connection with that company, and his admissions as to those facts, the Commission finds that Mr Maguire engaged in conduct which constituted or involved the dishonest exercise of his official functions within the meaning of s 8(1)(b) of the ICAC Act in signing and lodging (or authorising the lodgement of) ordinary and supplementary ordinary returns under the Disclosure Regulation, in which he deliberately failed to disclose his interest and position in G8wayInternational and/or all of the sources of his income. His conduct constituted a dishonest exercise of his official functions within the meaning of s 8(1)(b) of the ICAC Act, for the following reasons.

5.16.1. Acts done to comply with the Disclosure Regulation are official functions of a member of Parliament, because compliance with the Disclosure Regulation is one of the duties attaching to that public office.¹⁴⁹ The ministerial code, which bound Mr Maguire in this respect from September 2014, required him to “comply with [his] obligations as a Member of Parliament under section 14A of the *Constitution Act 1902* and the Constitution (Disclosures by Members) Regulation 1983 in relation to the disclosure of [his] pecuniary and other interests to the Parliament”.¹⁵⁰

5.16.2. Mr Maguire’s failure to disclose his interest or position in G8wayInternational was, on his own admission, deliberate and motivated by a desire to conceal the truth. By the standards of ordinary people, such conduct is dishonest.

Section 9, ICAC Act

5.17. Subsection 9(1) of the ICAC Act provides that:

Despite section 8, conduct does not amount to corrupt conduct unless it could constitute or involve –

(a) a criminal offence, or

(b) a disciplinary offence, or

¹⁴⁶ See *Peters v The Queen* (1998) 192 CLR 493; [1998] HCA 7 (at [18]) per Toohey and Gaudron JJ.

¹⁴⁷ Noting that under the ICAC Act, “conduct” includes “neglect, failure or inaction”: see s 3(1), ICAC Act.

¹⁴⁸ *McCann v Switzerland Insurance* (2000) 203 CLR 579; [2000] HCA 65 (at [56]) per Gaudron J.

¹⁴⁹ See *Herscu v The Queen* (1991) 173 CLR 276; [1991] HCA 40 in which the majority (Mason CJ, Dawson, Toohey and Gaudron JJ) cited McHugh JA in *GJ Coles & Co Ltd v Retail Trade Industrial Tribunal (I)* (1986) 7 NSWLR 503 at 524, who observed that “the duties of a public office include those lying directly within the scope of the office, ‘those essential to the accomplishment of the main purpose for which the office was created and those which, although only incidental and collateral, serve to promote the accomplishment of the principal purpose’: *Nesbitt Fruit Products Inc v Wallace* (4) (1936) 17 F Supp 141 at 143”.

¹⁵⁰ NSW Ministerial Code of Conduct, Part 2, Standing disclosures of interests, clause 5.

- (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 Parliamentary Secretary or a member of a House of Parliament – a substantial breach of an applicable code of conduct.*

- 5.18. Although Counsel Assisting referred to Mr Maguire’s breach of the Disclosure Regulation as relevant to whether his conduct in relation to G8wayInternational could constitute or involve the criminal offence of misconduct in public office for the purposes of s 9(1)(a) of the ICAC Act, they did not identify it in that respect as constituting a freestanding head of that criminal offence. They did not submit it fell into either s 9(1)(b) or s 9(1)(c).
- 5.19. It also could not fall within s 9(1)(d), for the reason earlier noted, although provisions of the ministerial code applying to parliamentary secretaries now impose an express obligation on parliamentary secretaries to comply with s 14A of the Constitution Act and the Disclosure Regulation, the ministerial code was not an applicable code for the purposes of the ICAC Act in relation to parliamentary secretaries at the time of the Maguire allegation.
- 5.20. Such circumstances are dealt with by subsections 9(4) and (5) of the ICAC Act.
- 5.21. Subsection 9(4) provides:
- Subject to subsection (5), conduct of a Minister of the Crown or a Parliamentary Secretary or a member of a House of Parliament which falls within the description of corrupt conduct in section 8 is not excluded by this section if it is conduct that would cause a reasonable person to believe that it would bring the integrity of the office concerned or of Parliament into serious disrepute.*
- 5.22. Subsection 9(5) provides:
- Without otherwise limiting the matters that it can under section 74A(1) include in a report under section 74, the Commission is not authorised to include a finding or opinion that a specified person has, by engaging in conduct of a kind referred to in subsection (4), engaged in corrupt conduct, unless the Commission is satisfied that the conduct constitutes a breach of a law (apart from this Act) and the Commission identifies that law in the report.*
- 5.23. Subsections 9(4) and (5) were inserted into the ICAC Act by the *Independent Commission Against Corruption (Amendment) Act 1994* (“the 1994 Amending Act”). The object of the Bill which became that Act was to amend the ICAC Act to expand the jurisdiction of the Commission in relation to ministers of the Crown and members of Parliament.¹⁵¹
- 5.24. In its 2004 *Report on investigation into conduct of the Hon J. Richard Face* (Operation Wingate), the Commission said of these provisions:
- Section 9(4) and (5) were ... included by the 1994 amending Act. These provisions were not intended to cover the field with respect to available findings of corrupt conduct against Ministers of the Crown or Members of Parliament. It is clear from the words in s 9(4) that the provision was intended to catch conduct which fell within the description of corrupt conduct in s 8, but which would otherwise be excluded by s 9. This construction is supported by the presence in s 9(4) of the words “conduct ... which falls within the description of corrupt conduct in section 8 is not excluded by this section if...”. Clearly, if the conduct is caught by s 9(1), it will not be excluded by s 9. As a matter of construction, s 9(4) and (5) extend the*

¹⁵¹ NSW Parliament, *Parliamentary Debates*, Legislative Assembly, 22 September 1994.

range of permissible findings of corrupt conduct beyond those already contained in s 9(1) to those which would otherwise be excluded, but which fall within s 9(4) and (5).

It is noteworthy that s 9(5) places a restriction upon a finding of corrupt conduct arising from s 9(4). The Commission may not make a finding of corrupt conduct under s 9(4) “unless the Commission is satisfied that the conduct could also constitute a breach of a law (apart from this Act) and the Commission identifies that law in the report”.

... Section 9(5) qualifies s 9(4) only. Section 9(4) only comes into play when the conduct, although falling within s 8, would otherwise be excluded by s 9 ICAC Act.¹⁵²

- 5.25. The Commission’s interpretation of subsection 9(4), in particular, was confirmed in *D’Amore v ICAC* by McClellan CJ at CL who described the provision as “creat[ing] a limited ‘carve-out’ from the operation of s 9(1)” and said “[a]lthough this ‘carve-out’ is not subject to the limitation in s 13(3A), it is expressly subject to s 9(5)...”. His Honour identified both s 9(5) and s 13(3A) as jurisdictional facts.¹⁵³ At the time subsections 9(4) and (5) were inserted by the 1994 Amending Act, s 13(3A) was not yet part of the ICAC Act. It was inserted in 2005 by the *Independent Commission Against Corruption Amendment Act 2005*, Schedule 1, [9]. Section 13(3A) does not apply to conduct characterised as corrupt by the operation of s 9(4) and s 9(5).
- 5.26. Accordingly, the effect of s 9(4) and s 9(5) of the ICAC Act is that the Commission is not prevented from making a finding that a minister of the Crown or a parliamentary secretary or a member of a House of Parliament has engaged in corrupt conduct under s 8 of the ICAC Act, where there is no finding that the conduct could constitute or involve any of the categories described in s 9(1), provided that the conduct:
- 5.26.1. 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, and
- 5.26.2. 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 its report.
- 5.27. The Commission finds that Mr Maguire’s deliberate failure over a period of six years to disclose his interest and position in G8wayInternational and all the sources of his income as required by the Disclosure Regulation undermined the object of s 14A of the Constitution Act, being “the establishment of a scheme whereby members of Parliament can be seen to be above reproach”.¹⁵⁴
- 5.28. As the Hon DP Landa MLC said in the Second Reading Speech to the Constitution (Disclosures by Members) Bill in the Legislative Council:

The Government is firmly of the view that the public has a right of access to information of this nature. A pecuniary interests scheme will provide access to that information. It will also protect parliamentarians from those snide allegations of misconduct which can be so difficult for members to rebut.¹⁵⁵

¹⁵² At 45.

¹⁵³ [2012] NSWSC 473 at [22], [75]. This finding was not challenged on appeal: *D’Amore v ICAC* [2013] NSWCA 187 (at [51]).

¹⁵⁴ NSW Parliament, *Parliamentary Debates*, Legislative Assembly, 13 April 1981, 5710 (Premier Neville Wran).

¹⁵⁵ NSW Parliament, *Parliamentary Debates*, Legislative Council, 12 May 1981, p 6817.

- 5.29. Further, as explained in the Commission’s Operation Witney report, “[t]he purpose of the Register of Disclosures is to promote greater transparency, openness, and accountability in the parliamentary process. A failure by a member of Parliament to make disclosures, as required, calls the transparency, openness and accountability of the parliamentary process into question”.¹⁵⁶
- 5.30. Mr Maguire’s persistent non-disclosure is conduct of a serious kind that casts a blight on a highly important system intended to ensure the accountability of members of Parliament. Such conduct is corrosive of public confidence and of the integrity of the Parliament and its members. The “remedy” s 14A(2) of the Constitution Act provides for a member’s wilful contravention of the Disclosure Regulation is to declare vacant that member’s seat. That is an indication of the seriousness with which the legislature regarded such conduct. Further, s 14A was inserted in the Constitution Act following a referendum and received overwhelming public support.¹⁵⁷ It is apparent the electorate endorsed the legislature’s views about the seriousness of such a contravention.
- 5.31. The Commission accordingly finds that Mr Maguire’s conduct in failing to comply with the Disclosure Regulation would cause a reasonable person to believe that his conduct would “bring the integrity of the office of a member of Parliament into serious disrepute” for the purposes of s 9(4) of the ICAC Act.
- 5.32. Having regard to the evidence given by Mr Maguire, and by Mr Elliott, about the way in which G8wayInternational was established, the Commission concludes that Mr Maguire’s non-disclosure of his pecuniary interests was for his private advantage, to the detriment of the duties and obligations of his public office as a member of Parliament, and to the detriment of other public office holders and the electorate who were deprived of knowledge of Mr Maguire’s interests which may have been relevant to them. This is not a situation where the Disclosure Regulation was breached inadvertently or unintentionally. Rather, it was a wilful breach. Mr Maguire and Mr Elliott have accepted that the structure of G8wayInternational was designed to circumvent Mr Maguire’s disclosure obligations, while they agreed to preserve Mr Maguire’s claim to the money earned by G8wayInternational and permit him claim to a formal position in the company after his retirement from Parliament.
- 5.33. For the purposes of s 9(5) of the ICAC Act, the Commission is satisfied that Mr Maguire’s conduct which constituted or involved the dishonest exercise of his official functions within the meaning of s 8(1)(b) of the ICAC Act in signing and lodging (or authorising the lodgement of) ordinary and supplementary ordinary returns under the Disclosure Regulation, in which he deliberately failed to disclose his interest and position in G8wayInternational and/or all the sources of his income, constituted a breach of clauses 9 and 12 of the Disclosure Regulation.
- 5.34. Accordingly, the Commission’s finding that Mr Maguire engaged in corrupt conduct within the meaning of s 8(1)(b) of the ICAC Act, is not excluded by s 9 of the ICAC Act.

Section 74BA, ICAC Act

- 5.35. The Commission is satisfied, for the purposes of s 74BA of the ICAC Act, that Mr Maguire’s conduct in deliberately breaching the Disclosure Regulation in the manner found in this chapter is serious corrupt conduct for the reasons already set out above, but which in short are as follows.

¹⁵⁶ At 37.

¹⁵⁷ See A Twomey, *The Constitution of New South Wales* (2004) at 445.

- 5.35.1. Mr Maguire’s seniority and experience. Throughout the period of his non-disclosure, Mr Maguire held a position of high public office as a member of Parliament. He was a parliamentary secretary from 2014, and chair of the APFG from 2011. He had a duty as a representative of others to act in the public interest at all times and to elevate the public interest, particularly as it concerned his own constituents, above his private interest.
- 5.35.2. By not disclosing the nature of his relationship with G8wayInternational and Ms Wang, including the financial aspects of those relationships, Mr Maguire could continue to engage in the conduct referred to in chapter 4 (“G8wayInternational Pty Ltd”) and chapter 6 (“The Immigration Scheme”).
- 5.35.3. The non-disclosure occurred repeatedly, year on year between 2012 and 2018. It was done deliberately and motivated by a desire to conceal the truth that Mr Maguire was misusing his public office for the advancement of personal pecuniary interests.
- 5.35.4. The non-disclosure undermined the object of s 14A of the Constitution Act and is corrosive of public confidence in the integrity of the Parliament and the members thereof.
- 5.35.5. The non-disclosure called into question the transparency, openness and accountability of the parliamentary process for disclosure of pecuniary and other interests.
- 5.35.6. The remedy provided by s 14A(2) of the Constitution Act for a wilful contravention of s 14A, being that the member’s seat may be declared vacant, indicates the seriousness with which such conduct is regarded by the legislature.
- 5.35.7. The Commission has found that it was conduct such as would cause a reasonable person to believe that it would bring the integrity of the office of a member of Parliament into serious disrepute.

Corrupt conduct conclusion

- 5.36. The Commission finds that Mr Maguire engaged in serious corrupt conduct which constituted or involved the dishonest exercise of his official functions within the meaning of s 8(1)(b) of the ICAC Act in signing and lodging (or authorising the lodgement of) ordinary and supplementary ordinary returns under the Disclosure Regulation, in which he deliberately failed to disclose his interest and position in G8wayInternational and/or all the sources of his income.

Section 74A(2) statement

- 5.37. The Commission is satisfied that Mr Maguire is an “affected person” for the purposes of s 74A(2) of the ICAC Act in relation to the matters discussed in this chapter.
- 5.38. As earlier noted, Counsel Assisting made no submission that Mr Maguire’s breach of the Disclosure Regulation constituted a freestanding criminal offence, but rather submitted that it would form part of the matrix of fact placed before the DPP for the purposes of that office’s consideration of the offence of misconduct in public office in relation to Mr Maguire’s conduct in respect to G8wayInternational generally.
- 5.39. In such circumstances, the Commission is of the opinion that consideration should not be given to obtaining the advice of the DPP with respect to Mr Maguire’s prosecution for a specified

criminal offence in relation to the finding that he engaged in serious corrupt conduct by deliberately failing, when he signed and lodged (or authorised the lodgement of) ordinary and supplementary ordinary returns under the Disclosure Regulation, to disclose his interest and position in G8wayInternational and all the sources of his income in breach of the Disclosure Regulation.

Chapter 6: The Immigration Scheme

I didn't just, I didn't suddenly have an epiphany at some stage and say, "This is a scam." It was a, a gradual realisation that we were being sucked into something or, you know, one way or another getting involved in something. And, you know, definitely by the time the employees started and they weren't turning up and we were getting cash, et cetera, you know, I realised that we were involved in a scam. But at that stage I thought we'd already crossed the Rubicon. And what do you do? I don't know.– Angus McLaren

Introduction

- 6.1. Between 2013 and about 2017, Mr Maguire used his office as a member of Parliament to promote and facilitate an unlawful immigration scheme (“the Immigration Scheme”) for his own personal financial benefit and that of his associates, including Ms Wang and G8wayInternational.
- 6.2. The Immigration Scheme involved Mr Maguire introducing businesses, a number of which were owned by constituents from his Wagga Wagga electorate, to Ms Wang. Ms Wang would then seek to arrange for those constituents, through their businesses, to act as potential nominators or sponsors of Chinese nationals who might seek visas albeit, almost without exception, none of the Chinese nationals ever worked in the Wagga Wagga businesses as the legislation providing for such visas required. In return for so acting, the businesses were paid large amounts in cash. Mr Maguire also received large amounts in cash from Ms Wang in relation to a successful “placement”, in respect of what he ultimately agreed was, to his knowledge, a cash-for-visas scheme.
- 6.3. Mr Maguire’s conduct in this respect was a breach of public trust of the most serious nature. He took advantage of the trust his constituents placed in him, so that they were “sucked in” until, as business operator Angus McLaren, whose evidence appears above said, they had “crossed the Rubicon”. This was a most significant departure from Mr Maguire’s obligation “to act according to what [he] believe[d] to be in the public interest and the interests of the electorate and ... not use [his] position for the purpose of promoting [his] own pecuniary interests”.

The Immigration Scheme – the inception

- 6.4. G8wayInternational advertised on its website that it could provide assistance in matters of immigration:

G8wayinternational assists with immigration: G8way international has responded to demand for immigration services and assistance with the appointment of our specialist in that area. Contact us for more information.

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- 6.5. The “specialist”, according to Mr Elliott, was Ms Wang. Mr Maguire introduced her to Mr Elliott in 2012 or 2013 as someone who was able to provide immigration services. The circumstances in which they met appear in chapter 4.
- 6.6. On 17 October 2012, Mr Maguire texted Ms Wang, “Gday Maggie any chance you can come to a meeting this evening at Parliament house I have the principal of g8way international here in Sydney, we are finalising the net launch regards Daryl.” The meeting took place in the government whip’s office. Mr Elliott was also present.
- 6.7. The genesis of the idea of G8wayInternational providing immigration services appears to have emerged soon after Mr Maguire met Ms Wang. During the meeting she attended at Mr Maguire’s office in Parliament House on 17 October 2012, or soon after, there was discussion concerning the proposal for an Australian Wu’ ai International Trade Centre to be built in Wagga Wagga (discussed in chapter 4). The centre was to include “3,750 outlets, 250 room five star hotel accommodation, a business convention/entertainment centre and a variety of restaurants”.
- 6.8. During that discussion, Ms Wang mentioned the idea that if the project were to be successful there would need to be something like 100 families from China coming to live in the Wagga Wagga area. A discussion ensued about the necessity for the vendors and their families to have visas so they could stay in Australia. Ms Wang volunteered that it was possible she could assist. She agreed to make some enquiries as to what could be done by way of visas for the 100 families who might have to come over.
- 6.9. Ms Wang made enquiries regarding visas of a friend, Monica Hao, who told her there was no class of visa available for the proposed purpose. However, Ms Hao appears also to have told Ms Wang about the “significant investor stream” which was added to the Business Innovation and Investment (Provisional) visa (subclass 188) and the Business Innovation and Investment (Permanent) visa (subclass 888) in 2012.
- 6.10. Ms Wang described the significant investor visa as “quite hot in the market, in the whole Sydney. All the financial sectors got excited and quite a big thing at that moment.” She said it was “quite a hot topic in ... some financial sectors” and she “went to lots of seminars about this visa because almost every night that have seminars run by financial companies because this significant investment visa, the fund they need to be invest in through managed fund, so the financial company want, all wants get this business” (all as in original).
- 6.11. On 10 January 2013, Mr Maguire texted Ms Wang: “We are having a meeting at 1030 about a project Milk powder factory, migration will be part of it perhaps you should come along”

and “[y]ou need to ensure you are on top of the regulations for immigration under the new rules, you will be responsible for immigration”. Ms Wang responded, “That’s exciting! New S.I.V can be certainly part of it.” On 11 January 2013, Ms Wang sent a text message to Mr Maguire saying, “Hi Daryl, just realised I can’t give immigration advice in public as I don’t hold a migration license [sic] while my business partner does. I can get her come with me on Monday if needed. She is in charge of processing paperwork etc and I bring business to her ie clients, students, investors or employers etc. pls advise if required so I can arrange.”

- 6.12. On 14 January 2013, Ms Wang brought Ms Hao to a meeting at Parliament House with Mr Maguire. According to Ms Wang, the Significant Investment visa was the “only topic discussed”. Ms Wang brought Ms Hao to the meeting for the purposes of providing advice. While Ms Wang was friends with Ms Hao, she had not previously been involved in business with her whether in relation to matters of immigration or otherwise. Despite what she wrote on 11 January 2013, her evidence was that she and Ms Hao were not business partners, but Ms Hao paid her commission when she assisted in relation to matters of immigration, visas and the like. She said that in identifying Ms Hao as her “business partner”, she was lying to Mr Maguire “because I want to look good”. She was also lying when she told him that she “brought to Monica clients, students, investors or employers, etc.”.
- 6.13. By the end of the meeting, or at least by 16 January 2013, as is apparent from a text she sent Mr Maguire that day (“Thanks Daryl for helping out.... [sic] Any savings we will be sharing!”), Ms Wang had an understanding with Mr Maguire that if there were any profits to be made out of visas, she would share those with him.
- 6.14. This was the inception of what was to become the Immigration Scheme that was partially run through G8wayInternational.
- 6.15. The details of how to make a profit had to be nussed out.

The subclasses of visa sought as part of the Immigration Scheme

- 6.16. In order to understand how Mr Maguire and Ms Wang determined how to make a profit from the Immigration Scheme, as well as some of the evidence received in relation to individual participants, it is necessary to have an understanding of the two subclasses of visa ultimately relevant to that scheme: the Employer Nomination Scheme (Subclass 186) visa and the Regional Sponsored Migration Scheme (Subclass 187). The provisions referred to below were those in force in January 2013, the outset of the Immigration Scheme, and which continued in force, relevantly unaltered until the end of 2017.
- 6.17. Section 31(1) of the *Migration Act 1958* (Cth) (“the Migration Act”) provides that “[t]here are to be prescribed classes of visas”. Section 31(3) provides that “[t]he regulations may prescribe criteria for a visa or visas of a specified class...”.
- 6.18. Regulation 2.01(1)(a) of the Migration Regulations 1994 (Cth) (“the Migration Regulations”) identified the classes of visas prescribed by s 31 of the Migration Act relevantly as those set out in the respective items in Schedule 1. Pursuant to regulation 2.07(1)(a), the relevant item of Schedule 1 also sets out the approved form (if any) to be completed by an applicant.
- 6.19. Clause 1114B(4) of Schedule 1 identified the Subclass 186 (Employer Nomination Scheme) as a subclass of the clause 1114B Employer Nomination (Permanent) (Class EN) visa. Clause 1114B(1) identified the approved application form. Clause 1114C(4) of Schedule 1 identified the Subclass 187 (Regional Sponsored Migration Scheme) as a subclass of the clause 1114C Regional Employer Nomination (Permanent) (Class RN) visa. Clause 1114C(1) identified the approved application form.

- 6.20. Certain subclasses of visas, including Subclasses 186 and 187, formed part of a “stream”.¹⁵⁸ Where a subclass of visa formed part of a stream, there were specific criteria applicable to that stream (see regulation 2.03(1A)).
- 6.21. The “New S.I.V” of which Ms Wang wrote in her 10 January 2013 text to Mr Maguire was a reference to a new stream, the “significant investor stream”, added to the Business Innovation and Investment (Provisional) visa (Subclass 188) and the Business Innovation and Investment (Permanent) visa (Subclass 888) on 24 November 2012.¹⁵⁹
- 6.22. The criteria for applicants seeking to satisfy the primary criteria for a Subclass 188 visa in the Significant Investor stream included that the applicant had made a “complying investment” in Australia of at least \$5,000,000 and that the applicant had a genuine intention to hold the complying investment for at least four years.¹⁶⁰ “Complying investment[s]” included direct investments by an individual in an Australian proprietary company that met certain requirements.¹⁶¹
- 6.23. Initially, it appears Mr Maguire and Ms Wang discussed making money out of Significant Investment visas. Ms Wang told Mr Maguire that she had found out through the seminars she had attended that “that there were people within Australia who would say, in effect, if you bring an investor to my particular project I will give you a commission, perhaps a commission of \$50,000”.
- 6.24. Mr Maguire’s proposal was that he or G8wayInternational would assist Chinese nationals investing their money into Australia, and take a commission of \$50,000 in the event that it was successful. Ms Wang was critical of this proposal, telling Mr Maguire in a text exchange on 27 February 2013, “I only meant to make our plan more attractive we should NOT charge clients because in most cases majority managed funds will give us AT LEAST \$50K as commission” (original emphasis). While she was “genuinely hoping to make your plan work as it is a [sic] absolutely brilliant plan to me”, she observed to Mr Maguire that “overcharge could kill it”. His response was to say “I agree! So you guys sort it out! And come back with a plan Remembering [sic] we all share with g8 way international [sic].”
- 6.25. Ms Wang said that she did not “think Mr Maguire’s plan was an absolutely brilliant plan” but said so to make “him feel good” to preserve her opportunity to make some profits out of the immigration “business”. She wanted to keep a “good relationship” with him. At this stage she “understood G8wayInternational to be a vehicle through which Mr Elliott, Mr Maguire and [she] might make some money”.
- 6.26. Ultimately, the idea of pursuing profits through Significant Investment visas did not proceed. The focus shifted to the Regional Sponsored Migration Scheme visa, which Ms Wang said she learned about at a dinner with friends.
- 6.27. Schedule 2 to the Migration Regulations made provisions with respect to the grant of subclasses of visas. A number of “streams” applied to Subclass 186 and Subclass 187 visas including, relevantly, the “Direct Entry stream”. At all material times, similar criteria applied in relation to the grant of Subclass 186 visas in the Direct Entry stream as applied to Subclass 187 visas in that stream.¹⁶²

¹⁵⁸ Migration Regulations 1994 (Cth) regulation 2.03(1A), (1B).

¹⁵⁹ Migration Regulations 1994 (Cth) Schedule 2, clauses 188.25, 888.24.

¹⁶⁰ Migration Regulations 1994 (Cth) Schedule 2, clause 188.252.

¹⁶¹ Migration Regulations 1994 (Cth) regulation 5.19B(2).

¹⁶² See Migration Regulations, Schedule 2, clause 186.111.2 and clauses 186.21, 186.23, 187.111.2, 187.21 and 187.23.

- 6.28. In the case of both the Subclass 186 visa and the Subclass 187 visa in the Direct Entry stream, it was a criterion for the grant of such a visa that the application for the visa related to a position in respect of which the minister had approved a[n] (employer) nomination under the Migration Regulations.¹⁶³ The criteria for approval of an employer nomination in relation to a position included:
- 6.28.1. that “the employee will be employed on a full-time basis in the position for at least 2 years”;¹⁶⁴ and
- 6.28.2. that the terms and conditions of employment applicable to the position will be no less favourable than the terms and conditions that are provided or would be provided to an Australian citizen or Australian permanent resident for performing equivalent work in the same workplace at the same location.¹⁶⁵
- 6.29. Further, an employer nomination could only be approved in relation to one of two categories of position.¹⁶⁶ Those two categories may conveniently be described as the “skilled position” and the “regional position”. An Employer Nomination Scheme (Subclass 186) visa could at all material times be granted where the minister had approved an employer nomination for a “skilled position”;¹⁶⁷ a Regional Sponsored Migration Scheme (Subclass 187) visa might be granted where the minister had approved an employer nomination for a “regional position”.¹⁶⁸
- 6.30. In relation to applications for approval of an employer nomination in relation to a “skilled position”, it was a criterion for approval that:¹⁶⁹
- the tasks to be performed in the position will be performed in Australia and correspond to the tasks of an occupation specified by the Minister...*
- 6.31. In relation to the applications for approval of an employer nomination in relation to a “regional position”, the following criteria were required to be satisfied before an employer nomination could be approved in relation to such a position:
- (A) the position is located in regional Australia;*
- (B) there is a genuine need for the nominator to employ a paid employee to work in the position under the nominator’s direct control;***
- (C) the position cannot be filled by an Australian citizen or an Australian permanent resident who is living in the same local area as that place;*
- (D) the tasks to be performed in the position correspond with the tasks of an occupation at a skill level of ANZSCO [Australian and New Zealand Standard Classification of Occupations] skill level 1, 2 or 3;***

¹⁶³ Migration Regulations Schedule 2, clause 186.233(3) (Subclass 186) and clause 187.233(3) (Subclass 187).

¹⁶⁴ Migration Regulations 1994 (Cth) regulation 5.19(4)(d)(i).

¹⁶⁵ Migration Regulations 1994 (Cth) regulation 5.19(4)(e).

¹⁶⁶ Migration Regulations 1994 (Cth) regulation 5.19(4)(h)(i)(A).

¹⁶⁷ Migration Regulations 1994 (Cth) Schedule 2, clause 186.233(1)(a), (3).

¹⁶⁸ Migration Regulations 1994 (Cth) Schedule 2, clause 187.233(1)(a), (3).

¹⁶⁹ Migration Regulations 1994 (Cth) regulation 5.19(4)(h).

(E) the business operated by the nominator is located at that place;

(F) a body that is:

(I) specified by the Minister in an instrument in writing for this sub-subparagraph; and

(II) located in the same State or Territory as the location of the position;

has advised the Minister about [the terms and conditions of employment] and [about the matters in] sub-subparagraphs (B) (*genuine need*) and (C) (*position cannot be filled by Australian*). (Emphasis added)¹⁷⁰

- 6.32. In early 2013, Ms Wang mentioned the idea of getting Chinese nationals Regional Sponsored Migration Scheme visas (Subclass 187) to Mr Maguire. He thought it was a good idea and it would work. The arrangement with Mr Maguire ultimately extended to the Employer Nomination Scheme (Subclass 186) visas as well. Although the essentials of the idea were agreed between Mr Maguire and Ms Wang, G8wayInternational was the vehicle through which their plan was adopted. Ms Wang understood that Mr Maguire at least knew about the essential elements of the plan, which included the employer business receiving a substantial payment of tens of thousands of dollars and being reimbursed for wages and superannuation for three months, or perhaps more.
- 6.33. It was Mr Maguire who identified businesses which might be prepared to sponsor or nominate a Chinese national for a Subclass 186 or Subclass 187 visa, and made sure Ms Wang was put in contact with that business. He used his network to facilitate the plan he and Ms Wang had agreed, but ordinarily he identified people in the Wagga Wagga area as potential businesses. His role in this respect was critical as Ms Wang did not know the businesses. On at least one occasion, he identified the J Group Pty Ltd as a business which might be able to sponsor someone. The J Group was a predominantly construction business of which Joe Alha, a long-time close friend of Mr Maguire, was the managing director and owner. However, as far as Ms Wang was aware, it was she who explained the immigration scheme to those businesses.

How the Immigration Scheme worked

- 6.34. The basic arrangement was that:
- 6.34.1. a fee would be charged to the visa applicant which was split between Ms Wang, Mr Maguire and the employer
 - 6.34.2. the putative employer would receive a lump-sum payment funded by the visa applicant or their family sometimes referred to as a “training fee”, that was sometimes \$30,000, but could also be more or less than that figure; Ms Wang said the terminology of “training fee” was a contrivance, employed in order to make the illegitimate scheme look legitimate – “for looking good”
 - 6.34.3. sometimes, the putative employer would be paid \$1,000 as an “advance” (again, funded from money provided by the visa applicant or their family) to compensate the business for compiling documentation (which advance would be deducted from the lump-sum payment referred to above); it appears that sum was paid when the employer business signed the Application for Employer Nomination for Permanent Employment which, among other matters, authorised Ms Hao to be their migration agent

¹⁷⁰ Migration Regulations 1994 (Cth) regulation 5.19(4)(h)(ii).

- 6.34.4. the monies paid to the putative employer were always paid in cash to avoid any paper trail
- 6.34.5. the fees retained by Mr Maguire and Ms Wang (sometimes described as an “introduction fee”) were also retained in cash
- 6.34.6. the introduction fee was, as of 4 February 2013, contemplated to be a payment to G8wayInternational. That fee later increased from the proposed \$10,000 to \$20,000 (with a corresponding decrease in the employer payment from \$40,000 to \$30,000)
- 6.34.7. the “employer” would receive a reimbursement of wages and superannuation for the putative employee for a period of at least three months (again, from funds provided by the visa applicant or their family).
- 6.35. Ms Wang agreed that this arrangement was for all practical purposes a cash-for-visas scheme, as Mr Maguire also agreed. Although he said he objected to the idea of a “visa applicant wanting a visa but not actually wanting a genuine employment relationship”, he accepted that after he became aware of this, he had not taken steps to satisfy himself that it was not in the nature of a cash-for-visas scheme.
- 6.36. As to the division of fees between Mr Maguire and Ms Wang of monies coming from the visa applicant and their method of payment, the evidence was that:
- payments were delivered to Mr Maguire in cash; with Ms Wang’s understanding being that it would ultimately find its way to a G8wayInternational account
 - sometimes, payments were delivered to Mr Maguire’s office in Parliament House; Ms Wang said this happened on maybe half of the occasions the visa applicant was successful
 - on a number of occasions, the fee to be split between Mr Maguire and Ms Wang was \$20,000 but on some occasions the fee was “a little bit less”
 - when the fee was \$20,000, Ms Wang would receive \$5,000 and Mr Maguire would keep the balance of \$15,000
 - the amount given to Ms Wang was at the discretion of Mr Maguire and she trusted him to give her a fair amount. She received less than he did because, she said, “the biggest part is to get the business agree [sic] ... the hardest part of the whole thing”.
- 6.37. Ms Hao’s involvement in the Immigration Scheme was essential because Ms Wang was not a migration agent. A migration agent was needed to submit the paperwork to the relevant government department. Ms Hao also identified the visa applicants from her database of people who wanted visas in Australia, and who might be able to be part of the scheme. The people Ms Wang was looking for through Ms Hao were people who were in effect prepared to buy their own visas by paying a large amount of money and in exchange getting a Subclass 186 or Subclass 187 visa.
- 6.38. Ms Wang said she worked out the lump sum the visa applicant had to pay to be part of the scheme. That amount had to cover her and Mr Maguire’s fee, the lump-sum fee for the employer, plus reimbursement of wages for at least three months. Ms Hao then obtained that sum from the visa applicants and paid it to Ms Wang in cash. Ms Wang said that she was unaware of what financial arrangements Ms Hao herself had with the applicants.
- 6.39. Ms Wang agreed that in early 2013, she was aware that a requirement of a Regional Sponsored Migration Scheme visa was that there be evidence that the position could not be filled by an

Australian citizen or permanent resident and that, to demonstrate this, the usual course was to advertise the positions. However, she said that businesses seeking to participate in the scheme were told not to respond to any enquiries received in response to those advertisements. This was because there was never any intention to “employ” anyone other than the visa applicant identified through Ms Hao’s database.

- 6.40. When visa applicants were presented to prospective business sponsors, they were presented as the sole applicant: the arrangement was for the business to take on the particular visa applicant in order to obtain the lump-sum payment and wage reimbursements. Ms Wang agreed that she told representatives from a number of prospective business sponsors that there was at least a possibility that the visa applicant would not turn up to work at all. She also told Mr Maguire this was a possibility.

Lying to the Department of Immigration and Citizenship

- 6.41. Notwithstanding the requirements of Migration Regulation 5.19(4)(h)(ii), that “there is a genuine need for the nominator to employ a paid employee to work in the position under the nominator’s direct control”, on 4 February 2013, Ms Wang sent Mr Maguire a text explaining “In principle the person does NOT require to work in Wagga at all. But preferably 3 months or less, he would pay salary and super out of his own pocket. Employer would get 40k and introduction fee is 10k” (original emphasis). She was suggesting to Mr Maguire that the scheme needed to look like a genuine employment relationship, preferably for a period of three months or so, but she knew when she sent the text that it was not going to be a genuine employment relationship with respect to these visa applicants. Mr Maguire replied within half an hour texting, “I got the message thanks.” A few minutes later, Ms Wang texted Mr Maguire saying, “Employer has no obligation to hire the person at all” to which he responded also within a few minutes, “Ta”.
- 6.42. Counsel Assisting submitted that these text messages demonstrated that Mr Maguire was directly told by Ms Wang that she was proposing, in effect, a sham: a scheme through which significant amounts of money would be made through arrangements involving putative employers but where no genuine employment relationship existed. Mr Maguire was told that that scheme would have the following features: the payment of an incentive to (putative) employers, the payment of an “introduction fee”, that the visa applicant would pay “salary and super out of [their] own pocket”, that there would be no requirement on the applicant to work in Wagga Wagga “at all” and there would be no obligation on the employer to hire the applicant “at all”.
- 6.43. The Commission accepts that submission. Mr Maguire accepted that when Ms Wang sent him the text set out two paragraphs above, he was on notice that what she was proposing to him and what she was being involved in was a cash-for-visas scheme. However, he asserted that he took steps to correct that, and had a heated discussion with Ms Wang about not breaking the rules and about people having to turn up and honour the commitment and not putting at risk individuals who were taking on these workers. He asserted he was promised that the rules would be adhered to. He said he took no steps other than speaking to Ms Wang. He did not speak to any of the businesses even though he agreed that he was concerned that he was at risk as a member of Parliament, putting his constituents into a “dodgy” scheme.
- 6.44. Mr Maguire’s evidence in this respect is belied both by his responses to the 4 February 2013 text messages and also by the following.
- 6.45. As outlined below, in May 2013, Ms Wang and Mr Elliott, to Mr Maguire’s knowledge, were unsuccessful in getting the Wagga RSL Club and Tim Howe, an independent caterer who operated at the club, involved in the Immigration Scheme. The “major hurdle”, according to an

email Mr Elliott sent to Mr Maguire on 15 May 2013, was “the explanation by Maggie [Wang] and Monica [Hao] of how it works” which included “if immigration officials turn up he was told they probably won’t but on the off chance they do just tell them he [that is, the putative visa worker] is on leave/holidays/sick etc”. Mr Elliott added, “They really need to be careful.”

- 6.46. Mr Maguire acknowledged that when he saw this email it “fortified or underlined [his] concerns regarding the legitimacy of this scheme”. He agreed that if he had had the fierce argument with Ms Wang after the February text as he asserted had occurred, it had not had any effect on her.
- 6.47. Mr Elliott pointed out to Ms Wang in an email also sent on 15 May 2013 (and copied to Mr Maguire) why Mr Howe was not going to be involved, telling her “there were also concerns in regard to telling lies to immigration so perhaps that’s something you might work on with Monica in terms of your presentation”. Mr Maguire’s response did not address that issue at all – but merely gave Mr Elliott some advice about what Mr Howe should do with money Ms Wang had apparently provided to him in anticipation of his involvement. Mr Maguire suggested he “should encourage Tim to send the cash back to Maggie”.
- 6.48. At least one business spoke to Mr Maguire to express concern about the scheme. Peter Wood was part owner of a family business partnership in Wagga Wagga known as Creative Business Furniture. Mr Wood’s evidence was that when Xuedong Kang (Mr Wood’s “successful” visa applicant) did not turn up, he would have definitely told Mr Maguire that “nothing happened” (meaning that Mr Kang did not turn up). Bearing in mind Mr Wood’s visa nomination application was approved on 17 June 2013, any such conversation must have taken place approximately four months after the 4 February 2013 text exchange. If Mr Maguire had remonstrated with Ms Wang in the interim, as he asserted, Mr Wood’s advice must have demonstrated to him that she had not adhered to the promise he said she gave him.
- 6.49. An essential part of the scheme was lying to what was then known as the Department of Immigration and Citizenship (“the Immigration Department”) about whether there would be a genuine relationship of employment between the visa applicant and the employer, because Ms Wang expected that most of the individuals Ms Hao identified as visa applicants would not actually turn up to work on a full-time basis. As far as she was concerned, as long as the visa applicant got the visa and she got the money, her job was done.
- 6.50. When Ms Wang explained the scheme to prospective employers and told them that there was a possibility that the visa applicant would not turn up, she also explained what they should do in the event that immigration officials turned up. In effect, she told them they should lie to immigration officials by, for example, saying the visa applicant or visa grantee was “on leave or on holidays or sick or something like that”.
- 6.51. Ms Wang agreed that part of the reason that getting a business to agree was a more difficult exercise was because when the scheme was being explained to them it looked to them to be an illegitimate scheme and they did not agree to be involved in it.

Wagga RSL Club

- 6.52. As touched upon above, the issue with the possibility the visa applicant would not turn up, and the pall this cast over the legitimacy of the Immigration Scheme, was brought home to both Mr Maguire and Mr Elliott when, in about May 2013, they tried to get an independent caterer based at the Wagga RSL Club, Mr Howe, and the club itself, involved.
- 6.53. Mr Maguire said that Mr Elliott was principally responsible for trying to deal with the Wagga RSL Club because he was on the board of the RSL at that point in time and had the contacts.

- 6.54. According to Wagga RSL Club CEO Andrew Bell, Mr Elliott approached him regarding a visa scheme whereby Wagga RSL Club could employ a Chinese national through a visa application scheme at very little cost to the club. Mr Elliott told Mr Bell the proposal had been suggested by Mr Maguire.
- 6.55. Mr Howe, Mr Bell and Mr Elliott met Ms Wang to discuss the proposal. Mr Howe said that alarm bells start ringing in his mind when Ms Wang explained that if immigration officials turned up, he should “just tell him he’s [that is, the putative visa worker] not here”. He did not proceed. Mr Bell also recalled Ms Wang explaining the club should lie to immigration officials if they made enquiries, or turned up, and tell the immigration officials the person in question was on leave or sick leave or not working that day. Ms Wang agreed she had told Mr Howe and Mr Bell to lie to immigration officials.
- 6.56. Even before the meeting, Mr Bell had described the Immigration Scheme to Mr Elliott as looking “dodgy”. He thought this because he “believed if something looks too good to be true, it generally is, and to receive a free staff member for however many months, [was] strange” and also because of the idea someone might be “buying the visa”. As the meeting proceeded, he thought it “got dodgier”. He had probably decided the club should not proceed with the Immigration Scheme before he went to the meeting, but went to the meeting to assist Mr Howe. He also went because he wanted to be there to talk to Mr Howe about whether he was prepared to do it. He was concerned about reputational damage to the club if one of the caterers engaged in some unlawful activity, in which case there might be some blowback to the club itself.
- 6.57. Neither the Wagga RSL Club nor the two catering entities associated with it proceeded with the Immigration Scheme.

G8wayInternational’s role in the Immigration Scheme

- 6.58. As noted above, G8wayInternational advertised on its website that it could provide assistance in matters of immigration.
- 6.59. While Mr Maguire was interested in the Significant Investment scheme visa, his proposal was that he or G8wayInternational would receive the commission which accrued from assisting Chinese nationals investing their money into Australia to obtain that visa. After Ms Wang scuppered that plan in their text exchange on 27 February 2013, and they moved to the Subclass 186 and Subclass 187 visas, G8wayInternational was the vehicle through which the scheme was to be adopted. G8wayInternational was to be entitled to a fee for facilitating each immigration placement. A common amount of fee that G8wayInternational was entitled to was \$20,000 per placement, if the visa applicant got the visa. However, on occasions when Ms Wang delivered the money to Mr Maguire, he kept some rather than it going to G8wayInternational. When it did go to G8wayInternational he would take it back to Wagga Wagga and give it to Mr Elliott.
- 6.60. Mr Elliott, however, would keep payments to Mr Maguire off the books, a course Mr Maguire was happy with because as already explained in chapter 4, he wanted to conceal payments from G8wayInternational to himself. He was concerned that if such a payment appeared in some formal record, he might be exposed as someone who had not made a disclosure through the parliamentary system or to the premier, when he was a parliamentary secretary, that should have been disclosed. As earlier noted, he wanted to keep his involvement in G8wayInternational off the books both in terms of not being formally appointed as a director and not being shown in the records as someone who received any money.

- 6.61. Mr Elliott was also involved in the Immigration Scheme as director of G8wayInternational. As he understood it, the role of G8wayInternational in the Immigration Scheme was for he and Mr Maguire to identify businesses that might nominate or sponsor a potential visa holder, give that person Ms Wang’s telephone number and inform Ms Wang of their details. She would then approach their proprietor and try to convince them to be part of the scheme.
- 6.62. G8wayInternational received payments from Ms Wang as part of the arrangement for providing an “introduction” to the businesses as advertised on its website. Ms Wang was the “specialist” referred to in that advertisement. G8wayInternational would be entitled to a fee at the conclusion or placement of the particular person into a business. Mr Elliott understood the payments to have been sourced from the visa applicants themselves, with Ms Wang acting as the conduit for payment to G8wayInternational. To Mr Elliott’s understanding, the visa applicants themselves were sourced by Ms Wang.
- 6.63. As part of the arrangement, the sponsors would be entitled to receive, to Mr Elliott’s understanding, an “incentive” payment. Mr Elliott said he understood this to relate to a “wage-based subsidy” but he did not know the details – he did not know the entirety of the scheme. Mr Elliott accepted that he knew that the scheme involved incentive payments to sponsors and did not deny that he may have provided businesses with a figure, but said that he could not recall.
- 6.64. To Mr Elliott’s recollection, G8wayInternational received in the order of \$16,000 to \$18,000 in connection with its involvement in immigration matters, although he could not recall how many individual “introductions” that accounted for. Payments were received by Mr Elliott from Mr Maguire in cash, “most” of which Mr Elliott claimed he banked. As discussed below, that figure, even if accepted as accurate, is not indicative of the personal financial benefit that Mr Maguire himself derived from his involvement in the Immigration Scheme.
- 6.65. In essence, Mr Elliott attributed his limited knowledge of the details of the Immigration Scheme, albeit that he was director of G8wayInternational, to the fact that while he was its titular director, it was Mr Maguire who was actually pulling the strings.
- 6.66. Ms Wang also understood that that money, or some of the money from the visa applicant, was going to find its way to G8wayInternational, and then to herself by way of a distribution from G8wayInternational. She received one distribution from G8wayInternational in an amount of about \$1,000. However, she also received the cash Mr Maguire shared with her when she delivered it to him.

Recruiting the employer businesses

- 6.67. Mr Maguire agreed that he and Ms Wang were closely involved with the Immigration Scheme. Mr Maguire identified businesses, usually in or around the Wagga Wagga area, as potential nominators or sponsors of Chinese nationals who might seek visas. The particular businesses that he identified were all wanting to expand, either by exporting their products overseas or importing products from overseas, and having skilled people with technology and dual language would, in his view, have been beneficial to them.
- 6.68. Although, as Mr Elliott understood, it was Ms Wang’s role was to identify the visa applicants, in fact Ms Hao identified them from her database of people who wanted visas in Australia. She did so after Ms Wang had told her the amount the visa applicant had to pay to be nominated or sponsored by a business. This amount was calculated by Ms Wang and had to cover the visa applicant’s “wages” for a period of at least three months, a lump-sum incentive fee for the

business that was sometimes called a training fee which was sometimes \$30,000 and an additional lump-sum payment of, say, \$30,000 for Mr Maguire and Ms Wang. Ms Hao paid these monies to Ms Wang in cash.

- 6.69. Once Mr Maguire had identified the businesses which might sponsor or nominate a Chinese national for a Subclass 186 or Subclass 187 visa, Ms Wang would contact them and explain how the scheme worked. As Ms Wang understood it, Mr Maguire would ring the business, then tell her to contact it. She would do so and explain the scheme. She would keep Mr Maguire informed about what was going on, but, if she did not, he would get Mr Elliott to chase her up.
- 6.70. Mr Maguire's excitement about the potential he perceived could be gleaned from the Immigration Scheme can be seen from an email he sent Mr Elliott on 11 March 2013:
- Also Maggie tied up our first Nominated visa applicant and the applicant is very good. Peter wood [sic] is taking that person on his pay roll. I have also got another 3 placements as well as your 2 at \$ twenty thousand per placement for G8 way.*
- 6.71. By 12 April 2013, Mr Elliott was negotiating G8wayInternational's potential take from the Immigration Scheme with Ms Wang to \$30,000 which he described as "a nice payment in total" in an email he wrote to Mr Maguire. Mr Maguire responded, "\$30k is ok just nod and say thank you". Mr Elliott said he could not recall these negotiations when shown this email but acknowledged that what was written in it was correct.
- 6.72. However, by 15 May 2013, in the circumstances involving the Wagga RSL Club and Mr Howe, Mr Elliott knew the Immigration Scheme was a contrivance "in the sense that it wasn't an arrangement pursuant to which a visa applicant would have a genuine employment relationship with a business in or around the Wagga Wagga area". He identified two issues: the applicant may not turn up, and then may not be genuine because they lied to try to get the position. He also knew that an integral aspect of the Immigration Scheme, with which Ms Wang was involved, involved telling lies to the Immigration Department. He believed that Mr Maguire was aware of this as well. Despite knowing there was some illegitimacy in the Immigration Scheme, in light of what happened in the Wagga RSL Club scenario, Mr Elliott still attempted to identify other businesses for the scheme.
- 6.73. Mr Maguire wanted to confine participation in the Immigration Scheme to Ms Wang, Mr Elliott and himself as reflected in a text he sent Ms Wang on 31 October 2013: "gday Maggie make sure you only discuss jobs business with phil and me". That message may have reflected Mr Maguire's concern about the risk as the middleperson in the Immigration Scheme of being cut out, a risk inherent to the whole idea of being an introducer, such that, as he said, "you want to make sure you stay as the middleperson because otherwise you might get circumvented and not receive a fee".
- 6.74. As earlier noted, the businesses Mr Maguire recruited to the Immigration Scheme were largely based in Wagga Wagga. Their principals were Mr Maguire's constituents. At the time he recruited those businesses to the Immigration Scheme, he knew it was not a legitimate immigration scheme but, rather, it was a cash-for-visas scheme. He also agreed that Mr Elliott's email to him on 15 May 2013 made it clear to him that the Immigration Scheme involved lying to immigration officials.
- 6.75. As he ultimately agreed, proceeding with the Immigration Scheme was quite wrong for him to do, and was a breach of the public trust placed in him, but he did it in his own personal financial interests.
- 6.76. Mr Bell gave the following evidence regarding the influence of Mr Maguire's association with the proposal:

- [Counsel Assisting]: *Well, as I understand it, you were first introduced to this scheme by Mr Maguire through Mr Elliott, is that right?*
- [Mr Bell]: *Ah hmm. Yes.*
- [Q]: *Is the fact that it was introduced to you by Mr Maguire, then a Member of Parliament, as opposed to a random person off the street, did that influence your consideration as to whether that scheme was something worth pursuing or at least considering?*
- [A]: ***To a small extent. Someone in Mr Maguire’s position you hold an inherent trust of in some, in a lot of ways I believe.***
- (Emphasis added)

Documenting the Immigration Scheme

- 6.77. When Ms Wang got in touch with the employer businesses, she explained that once the visa had been granted, the employer business would receive a lump-sum fee in the tens of thousands of dollars, sometimes \$20,000, sometimes a little bit more. They would have to put someone through their books for at least three months, but she would reimburse them in relation to all of the expenses associated with that period. The source of that reimbursement was the visa applicant or their family.
- 6.78. Ms Wang would also assist the employer business in compiling the documentation that was necessary to go to the Immigration Department, although the actual drafting of the documents was done by Ms Hao or her office. Ms Wang would act as a sort of go-between getting documents from the employer business to Ms Hao and back, and getting the employer business to sign the documents that were necessary.
- 6.79. Ms Wang agreed that she copied and pasted signatures of business applicants onto some documents, sometimes with consent, but on at least one occasion without seeking consent. She also agreed that, on at least one occasion, she altered or made-up financial figures without the knowledge of the employer business.
- 6.80. Ms Wang agreed that she came up with the salary rates put forward as part of the applications and adopted higher incomes to meet the needs of Employer Nomination Scheme (Subclass 186) visas as she understood a fairly high income to be one of the requirements of that scheme. Although the availability of a high income is not in and of itself a criterion for the grant of an Employer Nomination Scheme visa, it was the effective consequence of the combination of two criteria: that it was for a “skilled position” corresponding to the tasks of an occupation specified by the minister and that conditions of employment were to be no less favourable to that which would be provided to an Australian citizen or resident.
- 6.81. Once she had determined how much money was needed from the visa applicant or their family, Ms Wang would tell Ms Hao, who would identify a possibility for the placement.
- 6.82. An important part of what Ms Wang was explaining and selling to the employer businesses was that their obligation at the absolute most would be three months and no more, whereas under the Subclass 186 and Subclass 187 visas, there had to be a guarantee of full-time employment for two years. To meet the three months period as explained, it appears Ms Wang had Ms Hao’s office prepare, and employer businesses sign, employment contracts with a three-month probationary period. When she realised this did not comply with the requirement that there be a guarantee of full-time employment for two years, she asked people again within Ms Hao’s office to prepare an alternative version of the same document that deleted the probationary three-month period.

- 6.83. Ms Wang hid from the employer businesses the fact that she had deleted the three-month probationary period clause because she wanted them to think that they were up for three months and no more, but she also wanted the Immigration Department to think that the employer businesses had agreed to employ people for two years or more.

The employer businesses

- 6.84. The Immigration Scheme was a constant activity of G8wayInternational, Mr Maguire, Mr Elliott and Ms Wang between 2013 and 2017. Not all approaches to businesses were successful as can be seen from the approach to the Wagga RSL Club and Mr Howe. However, according to Ms Wang, at least a dozen or so visas were obtained through the Immigration Scheme, and she paid cash to Mr Maguire in respect of each of them. That evidence is consistent with the evidence received by the Commission as to individual visas being issued,¹⁷¹ and not inconsistent with Mr Maguire's evidence of having introduced "quite a number of businesses" to Ms Wang as potential participants in the Immigration Scheme.
- 6.85. The Commission heard evidence from five of the employer businesses, some of which "employed" more than one visa applicant. As is not surprising, there were elements common to each of their involvement: an initial approach by Mr Maguire, him introducing them to Ms Wang, interactions with Ms Wang including an explanation of the Immigration Scheme and its documentation, their reliance on the fact Mr Maguire got them involved as to the integrity of the Immigration Scheme, then, in most cases, a dawning realisation they were involved in an illegitimate scheme and no real comprehension about how they could extract themselves from it.

Creative Business Furniture (Peter Wood)

- 6.86. As noted previously, Mr Wood was part owner of a family business partnership in Wagga Wagga known as Creative Business Furniture. The business makes furniture which it markets and sells in the Riverina area, including to nearly 400 schools. In 2013, Mr Wood had known Mr Maguire for many years. They were family friends, had served together on the Chamber of Commerce and "a few different things like that" and had travelled to China together on two occasions. His business sponsored a visa applicant, Mr Kang, in September 2013.
- 6.87. In early February 2013, Mr Maguire telephoned Mr Wood and asked him, "Are you interested in sponsoring a Chinese national over here? You get paid to do it. Are you interested in that?"
- 6.88. Mr Maguire introduced Ms Wang to Mr Wood. On 5 February 2013, Ms Wang texted Mr Maguire saying she had "not received a call from Peter woods [sic] today". Mr Maguire responded early on 6 February 2013 saying, "He is calling you today I think he will agree". That evening, Ms Wang texted Mr Maguire, "Just spoke with Peter. He will speak with his bro and ring me back tomorrow". Mr Maguire responded, "Ta Maggie let me know the result".
- 6.89. Mr Wood discussed Mr Maguire's query with his brother, and they thought "it would be handy to have this person doing, helping with accounts and promotion of our business, and if, if the work, enough work wasn't there, he could help out in the factory in some way".

¹⁷¹ Twelve issued visas have been referred to in the report: visas on the nomination of Creative Business Furniture (Peter Wood), Miller & James Real Estate (Angus McLaren), Redwin Farming Trust (Angus McLaren), Cottontail Wines (Gerard McCormick), D&M Electrical Communications (Shaun Duffy), Great Southern Electrical Pty Ltd (Shaun Duffy), Rundles Auctions Pty Ltd, "Nick", two companies in the J Group (Joe Alha) and at least two other companies involved in respect of which visas were issued, although Mr Maguire said that he did not recall making the introductions in relation to those companies.

- 6.90. Mr Wood's evidence was that Ms Wang explained to him that there would be an obligation to take the employee on for three months only (not two years), after which there would be no obligation, Ms Wang already had an individual in mind for the position and there would be a payment to the company of \$30,000 by way of incentive and to cover costs. She also indicated that the applicant may not turn up. That was the case: Mr Wood never met Mr Kang. Ultimately, Ms Wang told him that Mr Kang was not going to turn up.
- 6.91. Mr Wood said that he was not advised by Ms Wang of the requirements of Regional Sponsored Migration Scheme visas. After Ms Wang sent Mr Wood some paperwork, he and his brother went to their accountant, showed him everything and he advised them "any money you get, you, you put it through your work account, you pay the GST on it, and declare everything". That was what they did.
- 6.92. At that stage, Mr Wood was concerned the proposal looked "a bit dubious", but he was comforted by the facts that the documents Ms Wang presented looked like legitimate government-related paperwork. It also gave him some comfort in deciding to go further, that his introduction to Ms Wang came from Mr Maguire, a member of Parliament.
- 6.93. Mr Wood's nomination of Mr Kang as an appointment in the Regional Sponsored Visa Scheme was approved by the Immigration Department on 17 June 2013.
- 6.94. Notwithstanding the fact Mr Kang never turned up, in June 2013, Mr Wood was paid \$30,000 in cash given to him in a "big envelope" by Ms Wang at a meeting in Sydney. He took it back to the factory, put it through the books, and paid GST on it. Ms Wang did not ask that it be returned when Mr Kang did not appear, nor did he volunteer to do so.
- 6.95. Mr Wood was shown documents obtained from the Immigration Department in relation to the potential placement of Mr Kang. He agreed that a number of details contained within the documents were false. He further expressed concern over whether a number of signatures appearing on documents were his, and indicated that there were a number of documents he could not recall having seen previously, which confirmed some suspicions of dubiousness that he had in the past.
- 6.96. Mr Wood said he "would have definitely told [Mr Maguire] that nothing happened" (meaning Mr Kang did not turn up), although he acknowledged he couldn't remember the conversation properly.
- 6.97. Mr Maguire agreed that he introduced Mr Wood to Ms Wang as a potential participant in the Immigration Scheme. He also agreed that Mr Wood expressed concerns to him about the fact that his supposed employee did not turn up to work. He said he told Mr Wood to call Ms Wang, which he understood he did, although ultimately, he said Mr Wood told him the whole arrangement finished, or did not eventuate. His evidence in this respect is belied by his exchanges with Ms Wang in text messages on 4 February 2013 referred to above in which he did not quibble with her explanation that, "In principle the person does NOT require to work in Wagga at all" (original emphasis).
- 6.98. Ms Wang agreed that she assisted Mr Wood in relation to an application for approval of an employer nomination for Creative Business Furniture.

Miller & James (Real Estate) Pty Ltd and Redwin Farming Trust (Angus McLaren)

- 6.99. Angus McLaren is a real estate agent and farmer who came to know Mr Maguire in 1995, when Mr Maguire was franchisee of the Wagga Wagga Harvey Norman store. Mr McLaren was “formally introduced” to Mr Maguire by his brother, Julian McLaren, in about 2012 or 2013, or perhaps as late as 2014. Mr McLaren operates two businesses in and around Wagga Wagga – farming operations conducted through the Redwin Farming Trust and as a real estate agent through Miller & James (Real Estate) Pty Ltd (Miller & James Real Estate).
- 6.100. Mr McLaren’s original contact with Mr Maguire was in relation to him possibly doing business with Chinese investors. Mr McLaren said at that time they were starting to get a lot of enquiries from potential Chinese investors looking to purchase agricultural assets in Australia. His business was struggling to understand exactly what they wanted because “their culture, their language, all that type of thing was very difficult”. Mr Maguire said he had expertise in this area, and it was proposed he would put Mr McLaren in touch with “some of his friends”.
- 6.101. Mr McLaren travelled to China with Mr Maguire on a delegation in 2014, and among other matters, visited a sorghum distillery in Wuhan. However, this trip did not result in any deals.
- 6.102. In about March 2014, Mr McLaren became aware via an email from an employee in turn forwarding an email from Mr Maguire about Ms Wang being a person who might be able to help his business to service Chinese people. Mr Maguire suggested Mr McLaren get in touch with Ms Wang as a person with whom he could discuss an employment program.
- 6.103. Mr McLaren contacted Mr Maguire who “was reasonably vague about it” but gave Mr McLaren the “impression ... that we would have people embedded in our business that would have agriculture experience and ... be Chinese”.
- 6.104. Mr McLaren contacted Ms Wang and they met in Double Bay on 21 March 2014. She explained to him “a scheme that put Chinese nationals looking for visas into our business for three months, obviously so they could obtain a visa ... [at] no net cost to the business, and in fact, we would also be paid a fee for doing so”. She “made it clear to [him] that [his] obligation as a potential employer would be three months and three months only”.
- 6.105. Mr McLaren understood that the costs of employment would be paid for by the “immigration agency” with funds he assumed would be sourced from the visa applicant. The fee to be paid to the business was something over and above the wage costs so that the business “could make a profit out of it” and was \$30,000 per successful applicant.
- 6.106. At the time of their first meeting, Mr McLaren understood this to be a legitimate scheme in the sense that Ms Wang was suggesting that there would actually be an employee who would turn up on a full-time basis for a three-month period.
- 6.107. Mr McLaren was also aware that the visa class or category that Ms Wang was considering for the purposes of one or more of his businesses was the Regional Sponsored Migration Scheme, that under that scheme the position had to be located in regional Australia and that it was necessary for him to demonstrate a genuine need to employ a paid employee to work in the position under his direct control. Accordingly, he understood that a requirement of the proposed visa was employment with a regional business and another requirement was that he “fill out some paperwork to say [he was] going to employ this person”. However, he said Ms Wang did not make it clear to him that one of the criteria for grant of the proposed visa was that the employee be employed on a full-time basis for a period of two years. Rather, on Mr McLaren’s evidence, Ms Wang made it clear that the commitment would be limited to three months.

- 6.108. On 15 April 2014, Mr McLaren sent an email to Mr Maguire containing some information about rice farms for Chinese investors, and also advising him:

*On another matter, Maggie has accepted us for the visa intern program and it looks like we are going to get a placement sometime in the next couple of months. I am very excited about this development as it will potentially give us a great conduit into China attracting Chinese agri investment. **Thank you so much for arranging this for us.** (Emphasis added)*

- 6.109. Mr McLaren trusted Ms Wang to give him the advice necessary in relation to the requirements of the various visas. He left the requirements and the paperwork to the immigration agency. Accordingly, it was Ms Wang (or others with whom she worked) who took principal responsibility for organising the paperwork and drafting necessary documentation. Mr McLaren supplied information to assist in the process of drafting the documents and he signed at least some of the documents. The visa applicants were sourced by “Ms Wang’s organisation”. Coordination of the advertising process was handled by Ms Wang. When he received responses to advertisements, Ms Wang said “don’t worry about it”.

- 6.110. Mr McLaren nominated three applicants through the Immigration Scheme, all of whom were organised through Ms Wang: Steven Xu, whom he only ever met twice but who did very little work for his business; Daniel Ding, who was nominated by Redwin Farming Trust but who never turned up; and Karen Rong, who was nominated by Miller & James Real Estate but who also did not turn up.

- 6.111. Mr McLaren paid Mr Xu in the order of \$55,000 to \$60,000 ostensibly as wages and as superannuation over a three-month period. The money to pay those amounts came from Ms Wang – in \$50 and \$100 notes – and was recorded in the books of the business. These monies were paid into an account nominated by the visa applicant, so was it like a round robin in which they got their money back, minus tax. So far as anyone that looked at Mr McLaren’s accounts or audited his books was concerned, however, it looked as if there was a full-time employee for a three-month period of time being paid on a fortnightly basis or perhaps monthly basis.

- 6.112. The arrangements for the cost of wages being met were raised in an email sent by Mr McLaren to Ms Wang on 8 August 2014:

Thanks Maggie, I have sent the contract over to our solicitor to review. My only question is I estimate it would cost us \$50,000 to pay Mr Xu for 3 months.

Who covers the gap between what we receive from you, and what we pay him? I would prefer to pay Mr Xu less, and put him on commission so if he brings in clients who end up buying farms, then he gets a percentage of the commission. Your thoughts? Regards Angus

- 6.113. Ms Wang replied to Mr McLaren later that day:

*Dear Angus, just forwarded you the similar contract for Daniel Ding for your review. We will cover all employee related costs incl salaries, super and workcover, payroll tax if any. **Absolutely no extra costs for the business at all.** Thanks very much Maggie. (Emphasis added)*

- 6.114. Mr McLaren also received a payment of \$30,000 in relation to Mr Xu by way of a fee paid in instalments: “\$1,000 when you signed an agreement, right at the start and then maybe \$14,000 when the employment began and then \$15,000 at the end”. That money was also paid in cash by Ms Wang.

- 6.115. There was a document which recorded the payment of this fee, but Mr McLaren no longer had it at the time of the First Public Inquiry. He said it set out the fee schedule and described it as a “training fee” or “fee for training or some concept of that kind”. However, “there was no training required from our end”. He agreed with the proposition put to him by counsel assisting that the \$30,000 was effectively the “kickback” for his involvement in the Immigration Scheme.
- 6.116. As far as Mr McLaren was concerned, the effects of the Immigration Scheme were that he got an employee for three months, he didn’t have to pay for them, he got a fee on the top, he might get some Chinese contacts along the way and he might make some money from those contacts. However, it must be noted that when he sent the documents Ms Wang sent to him to his solicitor he was advised “not to touch it”. He understood the solicitor’s opinion was “it smelt a little bit fishy, [there was] potentially something wrong with it”. Mr McLaren put that down to “solicitors [being] generally very conservative”, whereas he had “always been a bit of a risk taker”. With the benefit of hindsight, he appreciated the solicitor was probably right and that the Immigration Scheme was in the nature of a scam – a cash-for-visas scheme.
- 6.117. That the Immigration Scheme was not legitimate was not something Mr McLaren appreciated from the outset. Rather, as he explained:

*I didn’t just, I didn’t suddenly have an epiphany at some stage and say, “This is a scam.” It was a, **a gradual realisation that we were being sucked into something** or, you know, one way or another getting involved in something. And, you know, definitely by the time the employees started and they weren’t turning up and we were getting cash, et cetera, you know, **I realised that we were involved in a scam. But at that stage I thought we’d already crossed the Rubicon. And what do you do? I don’t know.** (Emphasis added)*

- 6.118. Mr McLaren accepted that he understood by the time he was paying a large amount of money on a fortnightly basis, albeit money he was going to be reimbursed for to an employee who had not turned up, that he was involved in a scam.
- 6.119. He sought to allay his concerns both with Ms Wang and Mr Maguire:

[Assistant Commissioner]: Did you seek any reassurance from Ms Wang and the...?

*[Mr McLaren]: All the time I was seeking reassurance from her. And I can’t remember at what stage I contacted Mr Maguire about it. It was either when we had the first, first cash payment or when the employees didn’t turn up, but **I can remember ringing Daryl and saying, and I think it was when we had the first cash payment, and I said, “What’s going on here? We are getting paid in cash.” And Daryl said to me, “I don’t want to know about it,” and changed the subject.***

[Q]: And when you sought reassurance from Ms Wang, who had been introduced to you by Mr Maguire, did the fact that he had introduced her to you give any added weight to the reassurances you received from her?

[A]: Yeah, I, yeah, absolutely. I would have thought so.

[Q]: In what way?

[A]: Well, you know, you’ve been introduced to this person by a Member of Parliament. I suppose naively you would expect that they, it was a legitimate scheme but,

you know, as I said, after, after the first 12 months or so, when the cash started turning up, you know, I realised it wasn't.

(Emphasis added)

- 6.120. Mr McLaren thought his conversation with Mr Maguire occurred after the first cash payment because that was when he first thought, “this is quite strange”.
- 6.121. Although he appreciated the Immigration Scheme was a scam, Mr McLaren participated in it on two more occasions, once with Mr Ding and once with Ms Rong. He did so:

Because what happened there was that there were two or three contracts signed reasonably early on. So we were, we were, we were locked into them, locked into the process before the first person started, and then there was the lag time before they actually started, and it wasn't until they started that we realised that it was, yeah, dead-set a, a scam.

- 6.122. Mr Ding did not turn up to work, nor provide any assistance to any entity with which Mr McLaren was associated. Again, he appreciated this was very much a scam. Nevertheless, he still proceeded, because, as he explained:

[Mr McLaren]: *Like I said, we'd already signed it up. We were sort of locked into it, in one sense. So, okay, in my situation you've, you're locked into these things. You, you've realised that it's a scam. **You've gone back to the person that originally introduced you to the person who's running the scam. You've asked the question, you know, "What the hell's going on here?" and he's a Member of Parliament and he's told you to go away.** Where do you go next from there? I don't know. Maybe I should have called ICAC at that stage.*

[Counsel Assisting]: *Is it fair to say that the assurance from Mr Maguire was a significant factor in you deciding not to fess up until later? Or is that overstating it?*

[A]: *Well, I still knew it was a scam. The fact that he was basically agreeing with me that it was, I guess, yeah, I, I just didn't know what to think. It's not like I do this every day.*

...

[Q]: *Was a factor in you not coming forward before you did, regarding what you've now accepted was a scam, the fact that Mr Maguire had introduced you to Ms Wang? Was that a factor?*

[A]: *Oh, hundred per cent, because, I mean, if I'd rung Mr Maguire and he said, "Oh, God, what are you talking about? You need to, you know, talk to the relevant authorities and get the hell out of there," obviously, you know, that would have been a complete different...*

[Q]: *So dealing with that in parts, the fact that Mr Maguire referred you to Ms Wang was a factor that influenced your conduct, correct?*

[A]: *Correct.*

- [Q]: *The fact that when you rang Mr Maguire he said, “I don’t want to know anything,” that was a factor, correct?*
- [A]: *Yes, correct.*
- [Q]: *You might have done something different if Mr Maguire said, “Hang on, I thought this was a legitimate scheme.”*
- [A]: *Yes.*
- [Q]: *“If it’s not, let’s go and speak to the authorities ASAP.”*
- [A]: *Yep. Yes, yeah.*
- [Q]: *And would it be putting it too high to say that it wasn’t just a factor, it wasn’t just in the background, **it was a significant factor affecting your conduct and, in particular, whether you would continue with the scheme...?***
- [A]: *I would have thought, yes, yes.*
- [Q]: *...and perhaps report it to relevant authorities.*
- [A]: *Yes*
- (Emphasis added)

- 6.123. Mr McLaren proceeded with a similar arrangement in relation to Ms Rong. The arrangement in relation to Ms Rong did not proceed in whole, however, as Ms Rong returned to China and Mr McLaren only received the initial payment of \$15,000 in connection with her application.
- 6.124. Ms Wang agreed that she assisted Mr McLaren with three nomination applications in respect of his businesses.
- 6.125. Mr Maguire also agreed he had spoken to Mr McLaren about the immigration matter. He said he understood Mr McLaren had workers who were working for him, but offsite, as in not in Temora, which appears to be where Mr McLaren’s business activities were conducted. Mr Maguire did not deny that Mr McLaren had called him, in effect, to express surprise that Ms Wang was turning up with cash to pay their fees, rather, he said he could not recall that part of the conversation. He could not recall saying to any of these business owners who were, in effect, querying whether the Immigration Scheme was a scam, “I don’t want to hear about it, don’t tell me about it, deal with it yourself”. He said Mr McLaren “was happy”.

Cottontail Wines (Gerard McCormick)

- 6.126. Gerard McCormick is a director of Nashvin Pty Ltd, which trades as Cottontail Wines. His business sponsored a visa applicant named Daisy Li for a regional sponsored visa as part of an immigration scheme facilitated, he said at first, by Ms Wang rather than Mr Maguire.
- 6.127. Mr McCormick said he met both Mr Maguire and Ms Wang in 2012. He thought Ms Wang worked for the NSW Government as an interpreter. Although he had met Mr Maguire several times before 2012, he got to know him on a trip to Shenyang, in which he participated at the invitation of Julian McLaren. As has been previously explained, Mr Maguire had organised that trip. Mr McCormick said he got to know Mr Maguire a bit on the trip. He was full of gratitude for Mr Maguire because Mr Maguire had helped him with a difficult situation he was dealing with concerning his son, who was suffering from significant health issues. He said they were “sort of mates”.

Mr McCormick's first appearance

6.128. Mr McCormick initially gave evidence to the First Public Inquiry on 28 September 2020. He did not obtain legal representation in respect of that appearance.

6.129. Mr McCormick said his initial contact in relation to the migration matter, more generally, was Ms Wang's idea and that there was no connection that he knew of with Mr Maguire. The Commission rejects that evidence. It is inconsistent with the following message Mr Maguire sent to Ms Wang on 20 May 2013:

Maggie please Call Gerry McCormack, he is a great friend of mine in Wagga ! He has up to 10 employees 5 permanent! [telephone number redacted] he is expecting your call I explained the concept. Give him same as Peter Wood, gerry is selling wine in China and needs an accountant (All as in original)

6.130. After having his attention drawn to this text message on 28 September 2020, Mr McCormick asserted that even though Mr Maguire was "obviously ... talking to Maggie", he had not connected Mr Maguire with the "immigration side". He said, "I don't even remember speaking to Daryl about it." He said, "I talked to Daryl about the business in China but not about this immigration scheme because I was talking to Maggie."¹⁷²

6.131. Mr McCormick's evidence about not connecting Mr Maguire with the Immigration Scheme and the prominence of Ms Wang's role was effectively retracted on 29 September 2020 in circumstances discussed further below.

6.132. Mr McCormick said his understanding of what was explained to him in terms of sponsoring Ms Li as a visa applicant was that he would employ Ms Li until she obtained her visa and he was then under no obligation to continue employing her. Mr McCormick said that it was no part of his agreement with Ms Wang that he would provide full-time employment to Ms Li for a period of at least two years.

6.133. Mr McCormick said that Ms Wang had drafted all the paperwork that had to go to the Immigration Department, that he had seen and signed it, but "didn't look deeply enough". He signed papers saying that he was "going to employ Daisy as an accountant", even though he did not need an accountant. Mr McCormick agreed with the proposition put by Counsel Assisting that he was going to put some false information through to the Immigration Department to say, "I'm going to employ this person as an accountant," but with a view of using her and her contacts in order to get wine sales into China. Other false information was submitted to the Immigration Department in relation to Ms Li's application which Mr McCormick could not recall having seen, but admitted it was possible he had seen, before it was submitted.

6.134. Mr McCormick said that at some stage, he found out it was quite possible that Ms Li would not turn up at all. He said, he "thought, I've been sucked in here".

6.135. Mr McCormick admitted he had "done the wrong thing". He agreed he became involved because he "saw some dollar signs" and said, "I really regret it".

6.136. The reference to "dollar signs", was a reference to the fact that Mr McCormick said he became involved in the Immigration Scheme because Ms Wang was essentially offering that if he provided assistance which would allow a Chinese national to get a visa in Australia, they would assist him, either themselves or through family or other connections, to open the door in terms of wine

¹⁷² The reference to talking with Mr Maguire about "the business in China" was a reference to attempts Mr Maguire made to assist Mr McCormick establish his wine business in China.

sales in China. He said the orders did come through and that he had “got over \$270,000 from the exercise”.

- 6.137. Ms Li did not physically turn up in Wagga Wagga to work and she was, to Mr McCormick’s understanding, living in Eastwood in Sydney. On 28 September 2020, Mr McCormick claimed to have been offered money in the order of \$30,000 by Ms Wang for his involvement in sponsoring Ms Li, which he said that he knocked back because he was not interested in the cash, but in Chinese sales of his wine.
- 6.138. Mr McCormick later said he had accepted a cash payment of \$5,000, which he had banked, and also some funds in Chinese renminbi (RMB). He said he received that payment in a context where he was complaining to Ms Wang that he had spent money to fix up accommodation for Ms Li and then it was made clear to him that she was not going to work in Wagga Wagga. He said that when he asked Ms Wang what was going on, she said he would be paid \$5,000 “for his time”. It was at that stage he said he realised “This is a scam.” He said he emailed Ms Wang about the payment and when she contacted him told her “Don’t pay me any more money.” He said he banked the \$5,000 and treated it in his books as “[i]ncome from the restaurant”.
- 6.139. This evidence given on 28 September 2020 contradicted answers Mr McCormick gave during an earlier interview between himself and Commission officers on 31 October 2018 that he had never received any payments in relation to Ms Li.
- 6.140. On 28 September 2020, Mr McCormick agreed that evidence was false to his knowledge as at the date of the October 2018 interview. He said he had lied to the Commission officers because he was concerned that the truth might implicate him. He said that he “didn’t realise that this was a, really a, such a large scam ... and I happened to be a pawn in the thing and that, I thought, hang on, this is getting too big for me”. He said he was concerned “that fessing up to the \$5,000 payment might put [him] in the scam deeper than what [he] might otherwise have been”. He said he was telling the truth on 28 September 2020.
- 6.141. On 28 September 2020, Mr McCormick gave the following evidence:
- [Counsel Assisting]: Other than the \$5,000 payment in cash and the benefit by way of the wine sales that you’ve talked about, did you receive any other cash in relation to, or other money in relation to the immigration scheme?*
- [Mr McCormick]: I, when I attended Yantai, Daisy’s mother gave me 10,000 RMB, which is about two grand, for expenses and, you know, personal expenses and things like that, which I spent on personal effects in China. Then on the second trip, when I went in 20 August 2014, she gave me another 10,000 RMB, which is sitting in my safe at home. I haven’t spent it.*
- ...
- [Q]: Is that the whole universe of payments, that’s all the payments you got?*
- [A]: Yes.*
- 6.142. He denied having received any reimbursement in relation to “[m]onies going out by way of a fortnightly salary to [Ms Li]”.

- 6.143. Mr McCormick's examination concluded on 28 September 2020, although he was not discharged from his summons to attend, against the possibility he may be required to attend on another occasion during the public inquiry

Mr McCormick's second appearance

- 6.144. Solicitors acting for Mr McCormick contacted the Commission the following morning to indicate that Mr McCormick had reflected overnight on the evidence that he had given the previous day and wished to say certain things about it. He was recalled and gave evidence by way of video link, on this occasion with legal representation.
- 6.145. It is important to note that one of the lies Mr McCormick told on 28 September 2020 was in response to the question "Have you been telling the truth today?", to which he responded, "Yes." On 29 September 2020, Mr McCormick was again asked "Have you been telling the truth today?", to which he responded, "Yes, I have". He accepted he was not telling the truth on some critical matters on 28 September 2020. He explained his change of heart overnight by agreeing he "gave false evidence yesterday, felt ashamed about that overnight, and ... therefore sought to correct the record as soon as [he could]".
- 6.146. In the light of the admissions that he had lied on two previous occasions, and notwithstanding Mr McCormick's assertion on 29 September 2020 that he told the truth on that day, his evidence must be approached with considerable caution.
- 6.147. Mr McCormick's change of evidence on 29 September 2020 went to critical aspects of the investigation of the Maguire allegation, particularly as to Mr Maguire's involvement in Mr McCormick's recruitment, to Mr McCormick's receipt of cash in the order of \$30,000 as in the case of the other businesses recruited to the Immigration Scheme, being in the nature of an incentive fee for sponsoring a visa applicant "employee" and in Mr McCormick being reimbursed for the monies "paid" to the "employee" he put through his company's books.
- 6.148. The extent and significance of Mr McCormick's lies requires a comparison of his evidence on 28 September 2020 with that he gave the next day.

The incentive fee and reimbursement

- 6.149. On 29 September 2020, Mr McCormick was asked "Is there any matter that you wish to correct or clarify in relation to that evidence", referring to his evidence the previous day. He then proffered the response that he "gave the best recollection of, in my evidence, of the events that occurred" except that he admitted he "did not tell the whole truth on the money received". He apologised for his "misleading evidence", which he accepted was "knowingly false". In relation to his claimed receipt of funds, which he agreed was the "whole universe of payments", Mr McCormick agreed that evidence was knowingly false in the sense that he did not disclose certain further payments he received in relation to the Immigration Scheme. He also admitted that he was "being creative" and that his evidence on that issue was "absolutely false".
- 6.150. Mr McCormick then said he had received "reimbursement of the wages and ... a lump sum of I assume to be 30,000". He could not "verify" the latter amount, however, and ultimately accepted he received a significant sum – in the tens of thousands of dollars – as an "incentive fee" and that this was received from Ms Wang, in cash. He also agreed that he received cash payments from Ms Wang for the reimbursement of wage payments that were recorded in books of his company.
- 6.151. Insofar as the incentive fee was concerned, Mr McCormick said its payment, if the visa application was successful, was discussed with Ms Wang when they were setting up his involvement in the Immigration Scheme. He said the agreement as to reimbursement in relation to "wages and

superannuation” was that he would be reimbursed for as long as he had the “employee” on the books, the effect being that he was not out of pocket for those amounts.

- 6.152. However, Mr McCormick said the receipt of money was the only respect in which he wished to “set the record straight” arising from his evidence the previous day.

Mr Maguire’s involvement

- 6.153. It was not until the Commission sought to probe further the evidence Mr McCormick had given the previous day, concerning Mr Maguire’s involvement in recruiting Mr McCormick to participate in the Immigration Scheme, that his evidence in that respect also altered substantially.
- 6.154. Mr McCormick gave evidence on 28 September 2020 that, although he had previously known Mr Maguire as his local member of Parliament, he got to know him “a bit” in 2012 on a business trip to China organised by Julian McLaren. He said that on that trip, Mr Maguire had been trying to assist him with developing a relationship with a businessperson in China. In addition, Mr Maguire had, through his role as a member of Parliament, assisted in securing supervised accommodation for Mr McCormick’s son, who was suffering from significant health issues.
- 6.155. On 28 September 2020, Mr McCormick asserted he was introduced to the Immigration Scheme by Ms Wang. As earlier noted, he said his initial contact in relation to the migration matter was Ms Wang’s idea, and that there was no connection that he knew of on Mr Maguire’s part with Ms Wang’s contact, and that he never had any discussions with Mr Maguire regarding the matter of immigration. Indeed, he said he had met Ms Wang before he met Mr Maguire. However, he said he met them both “around 2012”.
- 6.156. On 28 September 2020, Counsel Assisting put to Mr McCormick a number of text messages concerning how he came to be involved in the Immigration Scheme. The first in time was the text dated 20 May 2013 from Mr Maguire to Ms Wang set out above asking Ms Wang to contact Mr McCormick. Mr McCormick accepted that message seemed to suggest that Mr Maguire had some involvement in making sure the initial communication took place, but said he could not “remember talking to Daryl about it ... I talked to Daryl about the business in China but not about this Immigration Scheme because I was talking to Maggie”. He added that he “[ouldn’t] recall Daryl ever having anything to do with the immigration side of it. He must have, obviously. I’ve spoken to him about it. But I didn’t make that connection, that he was promoting it or whatever.”
- 6.157. On 29 September 2020, Mr McCormick initially took a similar approach to the question of Mr Maguire’s involvement in the Immigration Scheme as he had the previous day, saying, “I didn’t relate the Immigration Scheme in any way to Mr Maguire. It was Mrs, Ms Wang that, that introduced me to the scheme and spoke about it and, yeah, I, I might have had conversations with Mr Maguire at some stage later on, but I was of the opinion that it was solely upon her instigation.” He also said, “I didn’t think he was the instigator or the boss Commissioner, and I still don’t think that to this day.” He did acknowledge it was a fair assessment to say that he saw Mr Maguire “as somehow involved in [the Immigration Scheme] at least to the extent of his relationship with Ms Wang so that [he] could express any concerns [he] had about it to him”.
- 6.158. During his evidence on 28 September 2020, Mr McCormick was shown another message, this time sent at 5.09 pm on 22 May 2013 from Ms Wang to himself, which commenced “Was great to talk to you, Gerry”, then gave Ms Wang’s email address. After he was shown that text, Mr McCormick agreed that it was consistent with his recollection that it was around May of 2013 that he started the discussions with Ms Wang about his potential involvement in an immigration matter. Ms Wang’s text was sent two days after Mr Maguire’s text asking her to contact Mr McCormick.

- 6.159. Mr McCormick was also shown a text between Mr Maguire and Ms Wang in which she wrote at 5.17 pm on 22 May 2013, “Hi Daryl. Just spoke to Gerry, all good. He will send me the financial reports tomorrow.” It was put to Mr McCormick that that text suggested Mr Maguire had some involvement in either introducing to him or suggesting to Ms Wang that he “might be a person who might be interested in the migration scheme” and asked if this jogged his memory. His response was, “No, I, I didn’t put any connection with Daryl to the immigration. So this is news to me as such, but I don’t even remember speaking to Daryl about it.”
- 6.160. On 28 September 2020, Mr McCormick was also shown a text from Ms Wang to him, sent on 27 May 2013, saying, “I’ve spoken to Daryl this morning. I totally understand your position. Just wondering how you go with accountant?” He said the text did not ring any bells about there having been a discussion between him and Mr Maguire in about May 2013 which had been communicated to Ms Wang. When this text was put to him later again that day, and he was asked a similar question, he linked the message to the possibility that he was dissatisfied with a person Ms Wang was trying to arrange as a visa applicant and, explained, “rather than tell Maggie, I would have told Daryl, listen. This is what, this is what I’m about with this job, you know.” He would have communicated with Mr Maguire because “Daryl knew Maggie much better than I did...”. He then accepted that there must have been “some communications with Mr Maguire in relation ... to this migration matter”. The Commission finds that the fact Mr McCormick thought it appropriate to contact Mr Maguire to resolve an issue he was having with Ms Wang about a possible visa applicant indicates an appreciation on his part that Mr Maguire was playing an important role in the Immigration Scheme.
- 6.161. After being pressed on 29 September 2020 about his understanding of the relationship between Mr Maguire and Ms Wang, and acknowledging he understood Ms Wang “worked for him as far as I knew or worked for the government”, Mr McCormick gave the following quite different account from his earlier evidence of how he came to be involved in the Immigration Scheme:

[Counsel Assisting]: **So is it right to say that at the time that you agreed to be part of what we’ve called the immigration scheme, you understood that Mr Maguire and Ms Wang had some form of relationship with each other, perhaps as employer and employee? Is that what you’re saying?**

[Mr McCormick]: **Yes, that was my understanding.**

[Q]: **And so that’s why you were speaking to Mr Maguire because he had some involvement, as you understood it, in relation to what Ms Wang was offering. Is that right?**

[A]: **That’s correct Mr Robertson.**

[Q]: **Did the fact that Mr Maguire appeared to have some involvement in this question of immigration, was that a factor that you took into account in deciding to be involved?**

[A]: **Yes.**

[Q]: **And how did that weigh as a factor in deciding to be involved?**

[A]: **Well, I guess Maggie had been regularly attending Wagga Wagga for various reasons, not only coming to see me, and *she was working through the office of Daryl Maguire office in Wagga Wagga so the natural association, I thought, oh, it’s got to be legit as she’s um, you know, working with***

Daryl who I respected. He was the local member and I thought, well, you know, it's got to be above board but it wasn't, it as um...

[Q]: *So are you saying that Mr, I'm so sorry, finish your answer, I'm sorry.*

[A]: *Well, it wasn't a legitimate scheme you know, that became obvious and I felt entrapped and I might have even spoken to Daryl about it but um, I certainly felt that I'd been coerced into something that I wouldn't legitimately normally get involved with.*

[Q]: *So you've said you felt entrapped or coerced. Why did you feel entrapped or coerced?*

[A]: *Well, it was just a series of I suppose steps where Maggie gained my confidence, she was working through the local member's office, she was bringing up things like, "This is all legit, I've got it, I've got the immigration down pat". I just assumed that things were working through, but it wasn't as if she came to me and said, "Oh, do you want to do this," like, she, like she worked through a bit of a process, you know.*

[Q]: *And so are you saying that because there was some connection with the local member or perhaps the local member's office, you thought at least initially that this scheme was likely to be above board, to use your phrase. Is that a fair summary of what you're seeking to explain?*

[A]: *Yes. Yes, Mr Robertson.*

[Q]: *But you now realise that what you were involved in was not, again to use your phrase, a legitimate scheme?*

[A]: *Absolutely, and I've got to live with that for the rest of my life.*

[Q]: *But you got involved in it in the time that you did in part because of the connection with the local member, then Mr Maguire. Is that right?*

[A]: *Yes.*

(Emphasis added)

- 6.162. Counsel Assisting submitted that caution should be taken in relation to the reliability of this evidence having regard to the fact that it was given after Mr McCormick had admitted to giving false evidence the previous day and in circumstances where Mr McCormick had been expressly told of the potential penalties for giving false evidence, the day before and during the earlier interview with the Commission officer. They submitted that on those two occasions, Mr McCormick exhibited a preparedness to give an account that was (by his own admission) otherwise than honest, and for his own perceived benefit. They drew attention to the contrast between this evidence and his evidence given on 28 September 2020 as to Mr Maguire's involvement in the Immigration Scheme.
- 6.163. In those circumstances, Counsel Assisting suggested Mr McCormick may have realised the gravity of the situation that he was in and been predisposed on 29 September 2020 to giving evidence he thought the Commission wanted to hear – and evidence that shifted some responsibility onto another, namely, Mr Maguire – as opposed to giving an open and honest account.

- 6.164. Nevertheless, Counsel Assisting argued the Commission should accept Mr McCormick's evidence of 29 September 2020 as extracted above as honest and accurate in part because it was consistent with Mr Maguire's text to Ms Wang on 20 May 2013 in which Mr Maguire asked Ms Wang to call Mr McCormick and "Give him same as Peter Wood." They also contended that Mr McCormick's evidence that he was influenced by Ms Wang's association with Mr Maguire's office to believe the Immigration Scheme was "legit" accorded both with common sense and the evidence to like effect from others embroiled in the Immigration Scheme about the effect of Mr Maguire introducing the scheme to them. As they also observed, it was likely that Mr McCormick would place some stock in an introduction made by his local member of Parliament in weighing up either the legitimacy of a proposal, or the wisdom in proceeding with such proposal. This accorded both with evidence received from other witnesses and with common sense.
- 6.165. Counsel Assisting also submitted that to the extent Mr McCormick's evidence on 28 September 2020 sought to paint Mr Maguire out of the picture in relation to matters of immigration, that was explicable by Mr McCormick seeking to minimise his own association with any suggestion of a misuse of public office (as he sought to minimise his involvement in the acceptance of cash) and, potentially, with Mr McCormick attempting to shield Mr Maguire out of a sense of loyalty for what Mr Maguire had done for his son.
- 6.166. The Commission agrees that the evidence given by Mr McCormick on 29 September 2020 about his understanding of the relationship between Mr Maguire and Ms Wang, as set out above, should be accepted as honest and accurate as it is consistent with the objective facts. As earlier explained, Mr Maguire's principal role in the Immigration Scheme was to persuade the business to participate. That this was Mr Maguire's role in respect to Mr McCormick is apparent from the text of 20 May 2013. As Mr Maguire wrote, he had explained "the concept" to Mr McCormick and suggested he be given the "same as Peter Wood" – a clear reference to Mr Wood's involvement in the Immigration Scheme. The Commission finds that in these communications, Mr Maguire was conveying to Ms Wang that he had given Mr McCormick at least some explanation of how the scheme operated and was at least suggesting, if not directing, Ms Wang to make the same kind of arrangements around incentive payments as had been offered to Mr Wood.
- 6.167. The Commission has considered that Mr Maguire was equivocal when asked whether he had introduced Mr McCormick to Ms Wang, saying "perhaps". He explained his equivocation by saying, "[b]ecause my recollection is that some of these people were met at functions and, you know, events and things and I can't be clear that I introduced directly, but in some way, shape or form, through my network they would have been introduced".
- 6.168. In addition, the references in Mr Maguire's text to Ms Wang on 20 May 2013 to the number of Mr McCormick's employees ("He has up to 10 employees 5 permanent!") could only sensibly have been to the concept of the Immigration Scheme. That that text concerned getting Mr McCormick involved in that scheme is also consistent with the messages exchanged on 22 and 27 May 2013 from which it is apparent Mr Maguire and Ms Wang were in contact in relation to Mr McCormick's involvement.
- 6.169. Nevertheless, the contemporaneous text record of Mr Maguire's engagement with Mr McCormick's recruitment clearly demonstrates Mr Maguire's direct involvement. The Commission finds that it was Mr Maguire who recruited Mr McCormick to the Immigration Scheme, explained the concept to him, and told Ms Wang to make the same arrangements with Mr McCormick about incentive payments as she had with Mr Wood.
- 6.170. The Commission finds that Mr McCormick's conduct in lying on at least two occasions, when interviewed by Commission officers and on 28 September 2020 was, as Mr McCormick said, an attempt not to inculcate himself.

6.171. At the end of Mr McCormick's examination by Counsel Assisting, there was the following exchange:

- [Counsel Assisting]: Have you been telling the truth today, Mr McCormick?*
- [Mr McCormick]: Yes, I have.*
- [Q]: But you accept that you weren't telling the truth on some critical matters yesterday, correct?*
- [A]: Yes and it really concerned...*
- [Q]: Why did you decide to tell lies yesterday but tell the truth today?*
- [A]: I was ashamed.*
- [Q]: So after giving your evidence yesterday...?*
- [A]: ...Ashamed of my, I'm ashamed of that action, and I, it played on my mind all the way through, and I thought well, if the other guys that were involved in the scheme had the, the guts to own up to their mistakes, then I've got to be man enough to do the same.*
- [Q]: Was that it, or were you concerned that there may be other evidence deployed before this Commission that suggested that you were telling lies yesterday?*
- [A]: No. There's nothing, the other evidence that I gave was true to my recollection of events completely in every aspect, as far as I know. I guess I can't guarantee the sales, the later sales in China, but it was my understanding that they, they came through this association. But I guess the fact is that I received recompense by way of cash makes that immaterial anyhow, because I had, I was reimbursed for the money. But I did take it and the ongoing sales I took it as being as a result of my efforts and the efforts of these, these people in China that's the only thing I'm unsure of. Everything else is true to my recollection and you won't...*
- [Q]: And so is it a fair summary of what you've just explained, that you gave false evidence yesterday, you felt ashamed about that overnight, and you've therefore sought to correct the record as soon as you can?*
- [A]: Yes, I, I rang my solicitor at 6.30 this morning, and he said that he's away on holidays at South West Rocks and he was so obliging to be able to get in touch with you, he said he couldn't get in touch with you till 8.30 and I was just waiting and waiting and waiting for that to occur and I'm sorry.*

Conclusion

6.172. The Commission finds that the evidence given by Mr McCormick on 28 September 2020, from which he resiled on 29 September 2020, was a false narrative and was a product of deceit. Rather, the evidence he gave on 29 September 2020 concerning his participation in, and "benefits" received from, the Immigration Scheme was internally consistent and consistent with objective evidence and the evidence of other witnesses as to that scheme's operation. The Commission accepts Counsel Assistings' submission that Mr McCormick's imperfect recollection of events on 29 September 2020 was explicable by the passage of time. It also finds that the evidence

Mr McCormick gave at the conclusion of his evidence set out above was a genuine expression of his contrition about having lied about his involvement in the Immigration Scheme.

D & M Electrical Communications and Great Southern Electrical Pty Ltd (Shaun Duffy)

- 6.173. Shaun Duffy is an electrical engineer by trade and, at all relevant times, was a manager of both Judean Pty Ltd (which traded as D & M Electrical Communications) and Great Southern Electrical Pty Ltd.
- 6.174. Mr Duffy knew Mr Maguire as his member of Parliament but became better acquainted with him after they were introduced by a mutual acquaintance, Richard Allsopp. After that introduction, he travelled to China with Mr Maguire in July 2011 as part of a group that included Mr Allsopp. The hosts of the 2011 trip were Ms Zhang and Mr Xu.
- 6.175. Mr Duffy also travelled to China with Mr Maguire and others in November 2011. Both trips were in part tourism, but also opportunities for Mr Duffy to explore the possibility of sourcing electrical components for his business from China.
- 6.176. Mr Duffy travelled to China again in October 2012, on this occasion on a trip during which Ms Zhang took him to electrical component suppliers in Qingdao and Taizhou. She acted as an interpreter for him. While he was in Taizhou, Ms Zhang introduced him to a businessman, whose daughter, Susan Song, had just finished university in Australia and was looking for a work visa.
- 6.177. In December 2012, Mr Duffy employed Ms Song under a “training agreement” whereby she was paid “\$20 an hour or something” which was reimbursed by Ms Zhang. He explained the agreement (from the perspective that he understood that Ms Zhang had) in the following terms:
- If you employ her for as long as it takes to get a visa, I will pay you to employ her.*
- 6.178. Mr Duffy told Commission officers in a record of interview, in December 2018, that Ms Song came to work for him, for about five weeks in December 2012, but left when she said her visa had come through. However, during the First Public Inquiry, he said she actually was employed for a 12-month period until November 2013 and that he had travelled to China with her in May of that year. This was apparently a purchasing trip.
- 6.179. Ms Song was what Mr Duffy’s business wanted because she was able to get him contacts in China and to speak the language. Also, she was an accountant and was doing calculations for him. Ms Song’s pay was recorded in D&M Electrical’s books and was then reimbursed by Ms Zhang by credit or debit card in response to an invoice raised, although Mr Duffy understood this to have ultimately been sourced from Ms Song’s family. Mr Duffy agreed with the proposition that Ms Song was “funding her own employment”.
- 6.180. Mr Duffy was introduced to Maggie Wang by Mr Maguire at a function at Parliament House in late 2012. Mr Maguire introduced her as someone who was “involved in immigration”.
- 6.181. On 16 January 2013, Mr Maguire sent a text to Ms Wang saying, “Maggie! I met with shaun Duffy of D and M electrical he is expecting your call after 430, he understands what you want! He has already a staff member on a similar scheme.” Mr Duffy could not recall speaking with Mr Maguire in January 2013 in relation to Ms Wang. However, he recalled going to Mr Maguire’s office apparently in early January 2013, and talking to him about a range of things, so he agreed it was possible there could have been a conversation during which Mr Maguire told him that Ms Wang was involved with immigration. This recollection is consistent with Mr Maguire’s text to Ms Wang on 16 January 2013. In another text the same day, six minutes after his first message

and a minute after Ms Wang acknowledged its receipt, Mr Maguire texted Ms Wang, "I told him you were in the g8way organisation", which is consistent with there having been a broad-ranging conversation between him and Mr Duffy.

- 6.182. Mr Duffy said he did not understand Mr Maguire to be involved with G8wayInternational, but he thought insofar as Mr Maguire introduced him to Ms Wang, that "Daryl was just helping local people as a, as a, as a local member, as a politician".
- 6.183. Ms Wang accepted that she was introduced to Mr Duffy by Mr Maguire, consistent with the arrangement she had in place with Mr Maguire that he would introduce her to businesses and then she would go and speak to the individual businesses. Mr Maguire also agreed that he introduced Mr Duffy to Ms Wang as a potential participant in the Immigration Scheme.
- 6.184. Ms Wang gave evidence that she spoke to Mr Duffy following Mr Maguire's introduction and explained the arrangement of the Immigration Scheme insofar as the employer was concerned, including the entitlement to a lump-sum payment upon the visa being granted. She said that she would further have explained the need to put the visa applicant "through the books" of the company and pay them for a period of at least three months, for which the employer would be reimbursed. She also gave evidence that she had similar discussions with all employers who participated in the Immigration Scheme.
- 6.185. Mr Duffy could recall discussing the prospect of immigration placements with Ms Wang in 2013. The details discussed included: a proposed employment period of three months; the reimbursement of wages to the employer; and a fee to be paid to the employer of either \$30,000 or \$50,000 that may have been dependent upon the form of visa being sought.
- 6.186. Mr Duffy nominated the first visa applicant, Shanghui Zong, with whom he was concerned in January 2014. He entered into an Agreement for Training with Ms Wang in relation to Ms Zong, pursuant to which he was entitled to \$50,000 in respect of training Ms Zong. However, Ms Zong never "showed up". Nevertheless, Ms Wang paid Mr Duffy \$50,000 in cash in respect of her "employment". When he asked Ms Wang if he could give her a receipt, "she sort of brushed that question". He appreciated at the time he received the \$50,000 that as he had not provided any training to Ms Zong, he was not entitled to any funds and "was quite uncomfortable about it". He said he asked Ms Wang to "take it back", but she refused saying, "it's got nowhere to go".
- 6.187. Mr Duffy accepted that in circumstances where he was involved in an arrangement concerning applicants for visas, where the proposal was to effectively pay them out of their own money, it was "not a correct employment relationship". It "could only really be intended to create a charade for some purpose".
- 6.188. Mr Duffy entered a similar arrangement with supporting documents submitted to immigration authorities in support of a visa application for a Zhen Liao. He admitted that those documents also contained some false and/or misleading details. In the case of Mr Liao, the visa application was refused, and Mr Duffy was only paid \$1,000.
- 6.189. The third visa applicant with whom Mr Duffy was involved was Jingjing (Amber) Hu in 2017. She was sponsored by Great Southern Electrical under the Regional Sponsored Migration Scheme. Part of the requirements for that class of visa was that there was a genuine need for the nominated business to employ a paid employee to work in the business under the employer's direct control. While there was a genuine need for Great Southern Electrical to employ a paid employee in the role of assistant management accountant at the time of the visa application in April 2017, Mr Duffy knew that Ms Hu was not truly going to be a paid employee because a key part of the arrangement was that she pay her own wage. Accordingly, he falsely answered "yes" to the

question in the Application for Employer Nomination for a Permanent Appointment, “Will the business organisation be paying the nominated person’s salary?” He also lied when he signed a document entitled Re Nominated Position Assistant Management Accountant addressed to the Department of Immigration and Border Protection in which he said an “attempt had been made to fill the nominated position locally however there was [sic] no suitable local candidates”.

- 6.190. Mr Duffy received \$30,000 in total by way of incentive payment, in cash paid by Ms Wang in connection with the placement of Ms Hu, leaving aside the salary. Mr Duffy met Ms Hu, albeit that only occurred after he had made an employer nomination with respect to her visa. Ms Hu attended Mr Duffy’s business premises for an induction on 5 July 2018. However, that was the only day upon which she turned up for work. Mr Duffy “paid” Ms Hu a “salary” that was recorded in the books of Great Southern Electrical and generated payslips for her over a period of three months from July through October 2018. Ms Hu’s “salary” was reimbursed (in advance) by way of a lump sum cash payment that Mr Duffy received from Ms Wang.
- 6.191. By the time Ms Hu did not turn up, Mr Duffy realised he was involved in an illegitimate and likely illegal scheme.

Other businesses

- 6.192. A range of other businesses were involved in the Immigration Scheme as outlined below.
- 6.193. In addition, there is evidence from Ms Wang of at least two other companies being introduced to the Immigration Scheme and visas being issued as a result. Mr Maguire said that he did not recall making the introductions in relation to those companies.

Richard Allsopp

- 6.194. Mr Allsopp was the managing director of Rundles Auctions Pty Ltd before his retirement in 2016. Part of his business included importing goods from China which entailed dealing with Chinese suppliers. He was not called at the First Public Inquiry but gave evidence at a compulsory examination on 4 February 2020.
- 6.195. Mr Allsopp got to know Mr Maguire through his role as the local member of Parliament in Wagga Wagga. He had a good rapport with him. He may have been introduced to Ms Wang by Mr Maguire at a function but said that he could not specifically recall. Mr Allsopp appreciated that there was an association between Ms Wang and Mr Maguire – that Ms Wang was “part of that Daryl Maguire circle” – and that Ms Wang would “drop Daryl’s name” for what Mr Allsopp perceived were “credibility” purposes.
- 6.196. Ms Wang explained to him that she could introduce employees from China who were looking for work after university who could speak to his business’s suppliers in Chinese and facilitate bringing goods in from China as well as get cheaper freight or cheaper prices in China.
- 6.197. As Mr Allsopp understood Ms Wang’s explanation, she was involved with an agency that gave Chinese students or people who were finishing university work experience in Australia and was a gateway to them potentially getting a visa. The fact that Mr Maguire’s name was brought up all the time lent the scheme credibility.
- 6.198. At Ms Wang’s behest, Mr Allsopp signed a contract of employment in respect of Tianyu Song in March 2015. He was paid \$46,000 in cash by Ms Wang for his involvement. Rundles Auctions was going to pay a salary to people who were to work for it through Ms Wang’s scheme and be reimbursed for that salary. Tianyu Song never came to work for his business.

6.199. Mr Maguire agreed that he introduced Mr Allsopp to Ms Wang as a potential participant in the Immigration Scheme. Ms Wang's evidence was that she assisted in a placement for Mr Allsopp of the same general structure she described in relation to, for example, Mr Duffy.

“Nick”

6.200. Mr Maguire also introduced “Nick”, who was the owner of certain stores in Wagga Wagga and Cootamundra, to the scheme. On 9 November 2013, Mr Maguire texted Ms Wang saying, “I will find and send .good news I spike to my frirnd he has 2 businesses.ge said should be ok for 2 placements I will confirm today” (all as in original). A few minutes later, he sent another text to Ms Wang saying, “Nick [redacted] [telephone number redacted] he ownes [redacted] shops I in Eagga and I in cootamundara so he can take 2employees you need to explain to him his nephew is married to s chinese girl so hes sympathetic .I told him 20to 25 he was happy with that so more for you .I will talk about that with you just deal with Nick and me no one else” (all as in original). Ms Wang responded “I c. That's great result! Fantastic! When do you think I can ring him?”, to which Mr Maguire replied, “just remember only speak to him and me no one else”.

6.201. On 10 November 2013, Mr Maguire texted Ms Wang saying, “remember I said 20 to 25 for his help that way you can make a little more that's why I said only talk to him and me”. Mr Maguire agreed that the intent of his comment was to keep as few people involved as necessary to maximise the profit share of those involved.

Joe Alha

6.202. As earlier noted, Mr Alha is the managing director of the J Group, a company predominantly involved in construction. Mr Alha is also involved in property development through special purpose vehicles. Mr Alha is a close friend of Mr Maguire, having met him in around 2002. Mr Maguire's recollection was that they met at a networking function and that each had, to some degree, taken the other under their wing and been a mentor. They had a mutual relationship of trust in both directions. Mr Alha had been appointed executor of Mr Maguire's will.

6.203. Mr Maguire introduced Ms Wang to Mr Alha as someone who may be able to assist him in matters of immigration. Mr Alha spoke to Ms Wang who explained to him certain features of a scheme in which he could “sponsor” a visa applicant and receive a fee of \$50,000. He thought that she was going to introduce him to property investors from China. As Ms Wang “sold” the Immigration Scheme to him, it was about assisting someone getting a visa for Australia, and in exchange he would get access to a rich family in China. However, she made it clear to him that the sponsored individual was not actually going to come out to work for him, but was to be treated as an employee for three months “or whatever it was” and put through the books, and paid “wages and PAYG”, in which respect he would be reimbursed.

6.204. Mr Alha participated in the Immigration Scheme through the nomination of two visa applicants for which he was paid a fee in cash by Ms Wang on each occasion, the first of which at least was \$50,000. In both cases, the “employees” were “paid wages” that were recorded in the books of the relevant company. He received that reimbursement in cash from Ms Wang on one occasion and she also dropped it off to his office.

Mr Maguire's evidence

- 6.205. Mr Maguire made a number of admissions in connection with the Immigration Scheme, the gist of which is as follows:
- 6.205.1. that one of the business activities associated with G8wayInternational was to facilitate Chinese nationals being issued with Australian visas
 - 6.205.2. that that was a business activity that he and Ms Wang were closely involved with
 - 6.205.3. that his role in the Immigration Scheme “was to identify businesses, usually in or around the Wagga Wagga area, as potential nominators or sponsors of Chinese nationals who might seek visas”
 - 6.205.4. that he did this either by introducing the individuals involved in the Immigration Scheme directly, or by linking them up at a function that he arranged
 - 6.205.5. that he understood that the arrangement was that G8wayInternational would be entitled to a fee for each immigration placement and a “common fee” or “success fee” was \$20,000 per placement, of which Ms Wang received \$5,000; the amount each received depended on what each person was contributing to the arrangement
 - 6.205.6. that he received cash from Ms Wang in connection with the Immigration Scheme, some of which (unbeknownst to Mr Elliott) he kept for himself and some of which he passed on to Ms Wang and some he took back to Wagga Wagga and gave to Mr Elliott (for the benefit of G8wayInternational); there was no logic as to whether a “matter” went through G8wayInternational or was just one which he and Ms Wang dealt with as between themselves
 - 6.205.7. that none of the cash he received in relation to the Immigration Scheme was disclosed in accordance with his formal disclosure obligations
 - 6.205.8. that he introduced, at least, Mr Wood, Mr Duffy, Mr Allsopp and Mr Alha to the Immigration Scheme
 - 6.205.9. that he understood that the wages of the participants would be, to use Mr Maguire's term, “subsidised” for three months (which was a benefit to the businesses) – the businesses would be paid by Ms Wang with money sourced from the applicants
 - 6.205.10. that he understood that, under the scheme, the businesses were to receive an extra bonus called a “training fee” or a “placement fee” which varied from business to business
 - 6.205.11. that the effect of the scheme was that the applicant had to pay their own wages for a period of time, a “training fee” and an additional amount of money in order to pay his fee or G8wayInternational's fee
 - 6.205.12. that he knew that an essential aspect of the scheme was that visas needed to be obtained but that the applicants may not turn up and work
 - 6.205.13. that Ms Wang made it clear to him on 4 February 2013 (that is, before anyone was introduced by Mr Maguire to the Immigration Scheme) that a particular visa applicant may not turn up in Wagga Wagga at all to work

- 6.205.14. that Ms Wang made it clear to him on 4 February 2013 that the businesses had no obligation to employ the applicant at all
- 6.205.15. that an essential element of the scheme was potentially lying to immigration officials, as potential nominators or sponsors of Chinese nationals who might seek visas
- 6.205.16. that he was aware that an essential element of the scheme involved potentially lying to immigration officials, and suspected it was not legitimate, and that he nonetheless continued to introduce further businesses because he was making money out of it and there was potential money for him in the event that he continued to refer businesses to the Immigration Scheme
- 6.205.17. that lying to immigration officials was brought to his attention by at least 15 May 2013 (that is, before any visas associated with the Immigration Scheme were applied for or issued) yet he nonetheless continued to introduce further businesses
- 6.205.18. that he realised at the time that he was referring at least some businesses that it was in the nature of a cash-for-visas scheme
- 6.205.19. that he agreed that he took no steps to satisfy himself it was anything other than a cash-for-visas scheme and was content to proceed as he was making money out of it
- 6.205.20. that he attempted to keep as few people involved as possible to maximise the profit share to himself and Ms Wang
- 6.205.21. that his involvement in the Immigration Scheme was “quite wrong”, noting that a number of the business participants were his constituents
- 6.205.22. that it was a breach of the public trust placed in him to proceed with the Immigration Scheme and that he did it in his own personal financial interests.

Epilogue

- 6.206. Ms Wang’s evidence was that a dozen or so visas were obtained through the Immigration Scheme and that she paid cash to Mr Maguire in respect of each of those visas. That evidence is consistent with the evidence received by the Commission as to individual visas being issued, and not inconsistent with Mr Maguire’s evidence of having introduced “quite a number of businesses” to Ms Wang as potential participants in the Immigration Scheme and his admission that G8wayInternational would be entitled to a fee for facilitating each immigration placement.
- 6.207. The Immigration Scheme “operated” from 2013 to 2017. As far as the Commission’s investigations reveal, the last visa connected to the scheme was issued on 3 October 2017 to Ms Hu, who was nominated by Mr Duffy.
- 6.208. Both Mr Maguire and Ms Wang acknowledged that \$20,000 was the common fee G8wayInternational would be entitled to under the Immigration Scheme. It appeared to be common ground, in the sense that this evidence was not challenged, that Ms Wang would receive \$5,000 of the \$20,000 she delivered to Mr Maguire.
- 6.209. Counsel Assisting submitted that the amount Mr Maguire received in relation to the Immigration Scheme should be calculated in the following manner. Twelve or so visas were obtained through the Immigration Scheme and cash was paid to Mr Maguire in relation to each of those visas. Ms Wang was not challenged on her evidence that she received in the order of \$5,000 per placement, nor was Mr Elliott challenged over his claim that he received approximately \$16,000

to \$18,000 in cash in connection with immigration placements. Deducting their claimed payments from the approximately \$240,000 in cash that would have resulted from 12 placements at or around the common fee of \$20,000 each, would leave in the order of \$162,000 in cash (although noting the evidence that the fee was on occasion “a little less”). On this basis Counsel Assisting submitted the Commission should find that Mr Maguire personally received and retained in excess of \$100,000 in cash in connection with his involvement in the Immigration Scheme.

- 6.210. Mr Maguire did not dispute that calculation in his written submissions responding to Counsel Assisting’s submissions.
- 6.211. The Commission accepts that these calculations are based on evidence as to which a degree of imprecision is attached in the sense that while Mr Maguire and Ms Wang had a clear recollection of the sum of \$20,000, Ms Wang suggested at times it was less. In addition, Mr Maguire’s evidence as to the times and amounts he did not deliver to Mr Elliott was necessarily imprecise. At best, as Counsel Assisting in effect submit, it can be concluded that Mr Maguire received most probably an amount in excess of \$100,000 in cash in connection with his involvement in the Immigration Scheme, and not more than \$162,000. However, it is also relevant in gauging the nature of Mr Maguire’s conduct to note that the Immigration Scheme reaped approximately \$240,000 in cash. To the extent Mr Maguire did pass some of those monies to Mr Elliott for G8wayInternational, he was also entitled to receive some of those monies.

The Australian Border Force

- 6.212. Between 17 August 2018 and 26 August 2021, the Commission made seven disseminations of material to the Australian Border Force under s 16(3) of the ICAC Act which contained evidence assembled by the Commission which has assisted the Department of Home Affairs in determining that breaches of Commonwealth Legislation have occurred.
- 6.213. The Commission has been advised by the Australian Border Force that Ms Wang has been charged with 23 offences under s 234(1)(c) and one offence under s 280(1) of the *Migration Act 1958* (Cth) in relation to her involvement in the submission of false or misleading information within visa applications made to the Department of Home Affairs and providing immigration assistance when she was not a registered migration agent, following on the Operation Keppel investigation.
- 6.214. The Commission has also been advised by the Australian Border Force that Mr Maguire has been charged with conspiring with Ms Wang to cause to be furnished false or misleading information within visa applications made to the Department of Home Affairs (s 11.5(1) of the Criminal Code (Cth), s 234(1) of the *Migration Act 1958*).
- 6.215. The Commission has also been advised by the Australian Border Force that Mr Duffy has been charged under s 400.6(1) of the Criminal Code (Cth) with dealing with the proceeds of indictable crime.

Corrupt conduct findings

Mr Maguire

Section 8(1)(c), ICAC Act

- 6.216. Mr Maguire agreed that, as Counsel Assisting submitted, the Commission could conclude on the evidence relating to the Immigration Scheme that Mr Maguire's conduct "was of a kind that constitutes one or more federal offences". He submitted that the Commission should take the course recommended by Counsel Assisting which was, having regard to the Commission's functions under state law, focused on the investigation of "corrupt conduct" by or affecting state public officials, for the Commission to exercise its power in s 14(1)(b) of the ICAC Act to furnish evidence relevant to the Immigration Scheme to the Department of Home Affairs or such other agency identified by a responsible officer of that department, to be dealt with as that department or other agency sees fit.
- 6.217. However, Counsel Assisting also recommended first, that the Commission should conclude Mr Maguire engaged in conduct that involved a breach of public trust, and therefore corrupt conduct for the purposes of s 8(1)(c) of the ICAC Act, by misusing his role as a member of Parliament to advance his own financial interests, as well as the commercial interests of his associates in connection with an immigration scheme that he advanced to his constituents and others connected with his electoral district. Secondly, they recommended that the Commission should conclude that Mr Maguire's conduct in connection with the Immigration Scheme is not excluded by s 9 of the ICAC Act because it involved conduct of a kind that constitutes or involves a criminal offence, namely, the offence of misconduct in public office.
- 6.218. Counsel Assisting submitted that Mr Maguire was in a position similar to that of Mr Deany, the member of Parliament the subject of *Horne v Barber*, of whom Knox CJ and Gavan Duffy said in a passage referred to in chapter 3, "[s]o long as he remained a Member of Parliament he could not, in our opinion, effectively divest himself of that character in dealing with the Minister and the Board, and he in fact made no attempt to do so".¹⁷³ In addition, Isaacs J wrote in like terms in *Horne v Barber*, when he said, "[w]hen a man becomes a member of Parliament, he undertakes high public duties. Those duties are inseparable from the position: he cannot retain the honour and divest himself of the duties."¹⁷⁴
- 6.219. To make good their point about the analogical significance of *Horne v Barber*, Counsel Assisting drew attention to Mr Maguire's evidence to like effect that "Oh, you, once you're a member of Parliament, you can't divorce yourself from that." In another revealing statement, Mr Maguire said, "[Y]ou can never stop acting as a member of Parliament ... to be a private citizen and do things is almost impossible". They submitted that in order to divest himself of his status as a member of Parliament when engaging in the dealings with his constituents in relation to the Immigration Scheme, Mr Maguire would have had to explicitly draw their attention to the fact that he and/or C8wayInternational (a company of which he was in substance a director and in respect of whose profits he had an arrangement to share) stood to gain in the event that visas were issued.
- 6.220. Mr Maguire submitted that while his conduct "was of a kind that constitutes one or more federal offences", it did not follow that the impugned conduct constituted the offence of misconduct in public office. He contended that to conclude that such conduct constituted the offence of

¹⁷³ *Horne v Barber* (at 499).

¹⁷⁴ *Horne v Barber* (at 500); see also *R v Boston* (at 403) per Isaacs and Rich JJ.

misconduct in public office, the Commission must be satisfied that he used his office as a member of Parliament to promote and facilitate an unlawful immigration scheme, and that that was not established by the fact that he was a member of Parliament.

- 6.221. Mr Maguire sought to distinguish *Horne v Barber* on the basis that Mr Deany was employed for a fee to assist in the sale of a property to the Victorian Government, and in so doing, “had urged on the Minister on two occasions the desirability of the property as a suitable one, once when I first introduced the property and once when I asked him to inspect. I had about a dozen attendances on the Board hustling them up.”¹⁷⁵
- 6.222. In contrast, Mr Maguire submitted, whilst he spoke to friends and acquaintances about participating in the scheme, at no stage was he using his position as a member of Parliament. He argued that the fact that some participants may have had a personal view that his involvement in the Immigration Scheme lead them to think it was legitimate was not evidence of him using his position as a member of Parliament.
- 6.223. The Commission rejects that submission. The observations made in *Horne v Barber* about the inseparability of a member of Parliament’s office from his general dealings were not confined to the particular activities in which Mr Deany engaged. Rather, they recognised the fundamental obligation of a member of Parliament as being “to serve and, in serving, to act with fidelity and with a single-mindedness for the welfare of the community,” and not to act for “motives of personal gain”.¹⁷⁶
- 6.224. Mr Maguire’s admissions about the inability to divest himself of his character as a member of Parliament is telling. On his own admission, he was clearly acting as such when he involved his constituents in the Immigration Scheme. He made no attempt to divorce himself from that role when introducing Mr Wood, Mr Duffy, Mr Allsopp, Angus McLaren and Mr McCormick to the scheme. Each of them gave evidence of their beliefs of the significance of his role as their local member of Parliament in their involvement: it gave some comfort (Mr Wood), gave added weight to Ms Wang’s reassurances (Mr McLaren), meant the scheme was above board (Mr McCormick), added credibility (Mr Allsopp) and his introduction to the scheme for Mr Duffy was part of him “helping local people as ... a local member, as a politician”.
- 6.225. Mr Maguire knew that his position as a member of Parliament would be seen by the constituents he introduced as an imprimatur by him of the Immigration Scheme, and no doubt that they would rely on his position as such in the various ways they described in their evidence. That is why he received the lion’s share of the fee he divided with Ms Wang. As noted above, their division of those spoils depended on what each person was contributing to the arrangement. Introducing the businesses was obviously the most important step.
- 6.226. The Commission accepts Counsel Assistings’ submission that Mr Maguire would have had to explicitly point out to his constituents that he was not wearing his hat as a member of Parliament in introducing them to the Immigration Scheme and explain his role in it, and the benefits he was receiving, at the very least in order to divorce his conduct in that respect from the parliamentary role in which they were accustomed to regarding him. He did not do so.
- 6.227. The Commission concludes that Mr Maguire used (and abused) his position as a member of Parliament to take advantage of the trust his constituents placed in him when he got them involved in the Immigration Scheme. In doing so, Mr Maguire preyed on the trust of his

¹⁷⁵ *Horne v Barber* (at 497).

¹⁷⁶ See *Obeid v R 2017* (at [62]–[73]) per Bathurst CJ.

constituents to embroil them in a scheme he knew was illegitimate and leveraged his parliamentary office for private financial gain.

- 6.228. Mr Maguire's conduct in this respect was wilful and in bad faith. He knew it was misconduct because, as he admitted in relation to the Immigration Scheme, his involvement was "quite wrong", and it was also a breach of the public trust placed in him to proceed with the Immigration Scheme and he did it in his pecuniary interests. Yet he persisted in it, notwithstanding.
- 6.229. The Commission finds that Mr Maguire engaged in conduct which constituted or involved a breach of public trust within the meaning of s 8(1)(c) of the ICAC Act, by misusing his role as a member of Parliament to advance his own financial interests, as well as the commercial interests of his associates in connection with an immigration scheme that he advanced to his constituents and others connected with his electoral district.

Section 9(1)(a), ICAC Act

- 6.230. As explained below, Mr Maguire's conduct in connection with the Immigration Scheme is not excluded by s 9 of the ICAC Act because it involved conduct of a kind described in s 9(1)(a) of the ICAC Act that could constitute or involve a criminal offence, namely, the offence of misconduct in public office.
- 6.231. The elements of this offence have been set out in chapter 3.
- 6.232. Mr Maguire, as a member of Parliament, was a public official throughout the period of the Immigration Scheme. As found in relation to s 8(1)(c), his conduct in relation to the Immigration Scheme was in the course of, or connected to, his public office in the sense that he used his public office to involve his constituents in the scheme to advance his pecuniary interests, and/or the pecuniary interests of those with whom he was closely associated (that is, the interests of G8wayInternational, through which he was a beneficiary, and Ms Wang).
- 6.233. As set out in relation to s 8(1)(c), Mr Maguire's conduct was wilful and in bad faith. He knew it was misconduct because, as he admitted, his involvement in the Immigration Scheme was "quite wrong", and it was also a breach of the public trust placed in him to proceed with the scheme, and he did it in his pecuniary interests. Yet, he persisted in it, notwithstanding.
- 6.234. Further, as Counsel Assisting submitted, on his own admission, Mr Maguire was aware that he had an obligation not to use his position to promote his own pecuniary interests or those of persons close to him in circumstances where there was a conflict, or a real or substantial possibility of conflict, between those interests and his duty to the public. Yet Mr Maguire referred constituents and others connected with his electoral district to the Immigration Scheme in breach of that duty because there was potential money in it for him and in circumstances where he would not have engaged in that conduct but for his personal profit motive.
- 6.235. Mr Maguire's admissions should also be understood in the context of his admission in relation to G8wayInternational that he knew his conduct in offering his services as a member of Parliament to promote his own pecuniary interests, and those of persons close to him, was wrong and a breach of his duties and obligations as a member of Parliament to act only in accord with what he believed to be in the public interest and the interests of the electorate. Yet he chose to do so over the course of the six years the subject of the Maguire allegation.¹⁷⁷ The Immigration Scheme, to the extent G8wayInternational was the beneficiary of the fees Mr Maguire earned from it, was a subset of the G8wayInternational scheme, albeit that as far as the Commission's investigation

¹⁷⁷ See *Obeid v R* 2017 [2017] NSWCCA 221 at [28].

reveals, the last visa connected to the Immigration Scheme was issued on 3 October 2017 to Ms Hu, who was nominated by Mr Duffy.

- 6.236. There was no reasonable excuse or justification for Mr Maguire’s conduct in acting to advance his personal pecuniary interests. Mr Maguire did not suggest otherwise, nor could he in light of his admissions referred to above.
- 6.237. The Commission finds that, having regard to the fundamental obligations of members of Parliament as outlined in chapter 3 to act in the public interest, and the nature and extent of Mr Maguire’s departure from those obligations as found in this chapter, Mr Maguire’s conduct is serious and could merit criminal punishment. As earlier noted, Mr Maguire’s conduct in embroiling his constituents in an illegitimate cash-for-visas immigration scheme was a most significant departure from Mr Maguire’s obligation “to act according to what [he] believe[d] to be in the public interest and the interests of the electorate and ... not use [his] position for the purpose of promoting [his] own pecuniary interests”.
- 6.238. All the findings in this chapter point to that conclusion. Two matters, some might think at opposite ends of the spectrum, help underline the point.
- 6.239. First, to Mr Maguire’s knowledge, the Immigration Scheme involved systematic deception of immigration authorities, not least by the constituents Mr Maguire had lured into it. Mr Maguire’s initial belief, on his evidence, that the Immigration Scheme was legitimate was confounded by him becoming aware that the visa applicant may not actually do any work for the businesses sponsoring them and that Ms Wang was telling the business sponsors to lie to immigration officials about the whereabouts of those applicants should they come knocking. Yet he persisted in the scheme because of the pecuniary benefits he was reaping. Mr Maguire also understood that the Immigration Scheme was an illegitimate cash-for-visas scheme, yet, again, he persisted in it for his pecuniary benefit.
- 6.240. Secondly, but no less importantly, Mr Maguire gained Mr McCormick’s gratitude because of the assistance he provided in relation to Mr McCormick’s son, who was suffering from significant health issues. Yet he then misused that relationship by involving Mr McCormick in what Mr Maguire knew was an illegitimate cash-for-visas scheme.
- 6.241. The Commission finds, for the purposes of s 9(1)(a) of the ICAC Act, that, if the facts as found in relation to Mr Maguire’s conduct in respect of the Immigration Scheme were to be proved on admissible evidence to the requisite standard of beyond reasonable doubt and accepted by an appropriate tribunal, there would be grounds on which such a tribunal could reasonably conclude that Mr Maguire committed the offence of misconduct in public office. Accordingly, that conduct could constitute or involve a criminal offence within the meaning of s 9(1)(a) of the ICAC Act.

Section 13(3A), ICAC Act

- 6.242. The Commission is satisfied for the purposes of s 13(3A) of the ICAC Act, that, if the facts it has found in relation to the Immigration Scheme were to be proved on admissible evidence and accepted by an appropriate tribunal to the requisite standard of beyond reasonable doubt, there would be grounds on which such a tribunal would find that Mr Maguire engaged in conduct that constitutes the offence of misconduct in public office.
- 6.243. Accordingly, the Commission is satisfied that the jurisdictional requirements of s 13(3A) of the ICAC Act are satisfied.

Section 74BA, ICAC Act

- 6.244. The Commission is satisfied, for the purposes of s 74BA of the ICAC Act, that Mr Maguire's conduct in relation to the Immigration Scheme is serious corrupt conduct for the reasons already set out above, but which in short are:
- 6.244.1. The Immigration Scheme "operated" from 2013 to 2017, almost the entire period of the Maguire allegation. During that period, Mr Maguire was receiving cash from Ms Wang in consideration of him introducing his constituents to her as participants in what he knew to be an illegitimate cash-for-visas immigration scheme, and knowing it involved those participating in it lying to immigration authorities if necessary.
 - 6.244.2. To Mr Maguire's knowledge, the scheme involved systematic deception of immigration authorities, including by those constituents he had lured into it. He persisted in his own involvement despite his understanding that it was an illegitimate cash-for-visas scheme, and he embroiled his constituents in misconduct for his own pecuniary benefit.
 - 6.244.3. Mr Maguire made no attempt to divorce himself from his position as a member of Parliament, was clearly acting as such when he involved his constituents in the Immigration Scheme and knew that his position would be seen by those constituents as giving his imprimatur of the scheme. In this way, he took advantage of the trust his constituents placed in him, to embroil them an illegitimate scheme for his own personal gain.
 - 6.244.4. Mr Maguire's conduct was wilful, in bad faith, deliberate and repeated over the period between 2013 and 2017. During that period, the Commission has found that Mr Maguire received an amount most probably more than \$100,000 in connection with what he knew was an illegitimate scheme.
 - 6.244.5. Throughout the period of this misconduct, from 2013 to 2017, Mr Maguire held positions of high public office as a member of Parliament, chair of the APFG and, from 2014, as a parliamentary secretary. He had a duty, which he breached, as a representative of others always to act in the public interest and to elevate the public interest, particularly as it concerned his own constituents, above his private interests. Mr Maguire's conduct represents a significant departure from those responsibilities. It was a significant breach of public trust.
 - 6.244.6. Mr Maguire's conduct struck at the heart of the state's system of representative parliamentary democracy. It is corrosive of, and apt to undermine, public confidence in the Parliament, its members and public administration.

Corrupt conduct conclusion

- 6.245. The Commission finds that Mr Maguire engaged in serious corrupt conduct which constituted or involved a breach of public trust within the meaning of s 8(1)(c) of the ICAC Act, by misusing his role as a member of Parliament to advance his own financial interests, as well as the commercial interests of his associates, in connection with an immigration scheme that he advanced to his constituents and others connected with his electoral district.

Section 74A(2) statements

- 6.246. The Commission is satisfied that each of Mr Maguire, Mr McCormick, Ms Wang, Ms Zhang, Angus McLaren, Mr Duffy, Mr Allsopp and Ms Hao is an “affected person” for the purposes of s 74A(2) of the ICAC Act as substantial allegations have been made against them concerning their involvement in the Immigration Scheme.

Daryl Maguire

- 6.247. Mr Maguire’s evidence was the subject of a declaration under s 38 of the ICAC Act and cannot be used against him in criminal proceedings, except in relation to prosecution for offences under the ICAC Act. However, evidence of witnesses other than Mr Maguire such as the constituents involved in the Immigration Scheme would likely be available in any prosecution of him for the offence of misconduct in public office. That, coupled with the substantial documentary evidence that is available and is evident from the references to it in this chapter, warrants consideration being given to obtaining the advice of the DPP with respect to the prosecution of Mr Maguire for misconduct in public office in relation to his activities in respect of the Immigration Scheme.

Gerard McCormick

- 6.248. Any jurisdiction in relation to possible offences under federal law lies with Commonwealth authorities. As earlier noted, between 17 August 2018 and 26 August 2021, the Commission made seven disseminations of material to the Australian Border Force under s 16(3) of the ICAC Act which contained evidence assembled by the Commission which may assist the Department of Home Affairs in determining if breaches of Commonwealth Legislation have occurred.
- 6.249. This part of the report accordingly addresses possible breaches of the ICAC Act by Mr McCormick.
- 6.250. As is apparent, s 74A(2) confers a broad discretion on the Commission to be exercised by reference to “all the circumstances” as to whether to seek the advice of the DPP with respect to a particular person.

Section 80(c), ICAC Act: Obstruction of Commission – making a false statement to an officer of the Commission

- 6.251. Counsel Assisting submitted in this respect that the Commission should state that it is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr McCormick for an offence of making a false statement to attempt to mislead an officer of the Commission under s 80(c) of the ICAC Act in connection with his participation in the voluntary interview with officers of this Commission on 31 October 2018.
- 6.252. Shortly after the commencement of that interview, Mr McCormick read out a jurat in which he acknowledged that he would be liable to prosecution in the event that he wilfully stated anything which he knew to be false or did not believe to be true. Counsel Assisting submitted the evidence given during the First Public Inquiry concerning the payments Mr McCormick had received from Ms Wang in relation to the Immigration Scheme, disclosed that Mr McCormick may, by his responses during the interview, have committed an offence under s 80(c) of the ICAC Act.
- 6.253. On that basis, Counsel Assisting also submitted that the Commission should state that it is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr McCormick for an offence of making a false statement to attempt to mislead an officer of the Commission under s 80(c) of the ICAC Act in connection with this conduct.

- 6.254. Section 116 of the ICAC Act deals with proceedings for offences against the Act or the regulations. Section 116(4) provides, relevantly, that proceedings for an alleged offence under s 80(c) may be commenced within three years after the commission of the alleged offence.
- 6.255. It would, accordingly, be otiose for the Commission to consider obtaining the advice of the DPP in respect to the prosecution of Mr McCormick pursuant to s 80(c) in relation to his voluntary interview with officers of this Commission on 31 October 2018, as the limitation period in respect of any s 80(c) offence in relation to him expired on 1 November 2021.

Section 87(1), ICAC Act: false and misleading evidence

- 6.256. Counsel Assisting submitted that powerful, but competing, considerations arose in relation to whether the Commission should state that it is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr McCormick pursuant to s 87(1) of the ICAC Act in relation to the “whole universe of payments” evidence he gave on 28 September 2020, which he admitted the following day was false to his knowledge.
- 6.257. Those considerations were that while Mr McCormick had given false evidence in relation to a key component of the Commission’s investigation of the Immigration Scheme, he had promptly approached the Commission of his own volition to correct the record, such that the investigation was not significantly derailed or delayed by his false evidence.
- 6.258. Counsel Assisting submitted that on the state of the material before the Commission, it would reasonably be open to the Commission to adopt either course depending upon how it weighed the competing public interest considerations. They further submitted that the Commission should invite submissions from Mr McCormick as to the course that it should take with respect to him and weigh the competing public interest considerations in light of those submissions. Mr McCormick was given the opportunity to address Counsel Assisting’s submissions. His response is considered below.

The Commission’s Cooperation Policy

- 6.259. Before turning to Mr McCormick’s submissions, it is relevant to set out the terms of the Commission’s Cooperation Policy, which deals with the circumstances in which a witness resiles from previous testimony as follows:

Where a person, who has given false or misleading evidence to the Commission, voluntarily returns to the Commission and cooperates by providing a full and truthful account, we will take that cooperation into account when deciding whether consideration should be given to obtaining the advice of the DPP with respect to a prosecution for an offence under s 87 of the ICAC Act of giving false or misleading evidence. In exercising our discretion we will take into account:

- *whether the person has on their own volition approached the Commission to change their evidence;*
- *whether the person has provided a full and truthful account;*
- *the stage of investigation at which the person approached the Commission to change their evidence; and*
- *whether the change is likely to materially affect the progress and outcome of the investigation.*

Mr McCormick's submissions

- 6.260. Mr McCormick submitted that the following factors (the first four of which are drawn from the Commission's Cooperation Policy) weighed against the Commission obtaining the advice of the DPP with respect to his prosecution:
- 6.260.1. the circumstances in which Mr McCormick may have committed an offence against s 80(c) and s 87 of the ICAC Act
 - 6.260.2. Mr McCormick, of his own volition, approached the Commission to change his evidence
 - 6.260.3. the timeliness in which Mr McCormick approached the Commission to change his evidence
 - 6.260.4. Mr McCormick provided a full and truthful account during his examination on 29 September 2020
 - 6.260.5. the evidence given by Mr McCormick on 29 September 2020 is likely to materially progress and affect the outcome of the inquiry
 - 6.260.6. Mr McCormick has been subject to adverse action taken by the Department of Home Affairs in relation to the evidence he gave at the First Public Inquiry
 - 6.260.7. Mr McCormick has suffered reputational damage in his local community.
- 6.261. One of the circumstances Mr McCormick also relied on as relevant to the Commission's exercise of its discretion was the facts that Mr McCormick was aware that Mr Maguire had some involvement in relation to the Immigration Scheme and that Mr Maguire had previously helped Mr McCormick's son, who suffers from significant health issues. Mr McCormick also relied upon the facts that he respected Mr Maguire as his local member and thought that the scheme was legitimate or "above board", which was a factor he took into account in deciding to become involved in the scheme.
- 6.262. Insofar as the adverse action submission is concerned, Mr McCormick attached to his submissions a notice from the Australian Border Force dated 7 January 2021 to Nashvin, the company of which Mr McCormick is a director and which trades as Cottontail Wines. The notice advised Nashvin that the minister for home affairs and minister for immigration, citizenship, migrant services and multicultural affairs ("the minister") was considering taking action against it under s 140M of the *Migration Act 1958* in relation to a potential breach of regulation 2.90 (Provision of false or misleading information) of the Migration Regulations.
- 6.263. The notice referred to the evidence Mr McCormick had given in the First Public Inquiry concerning the false statements he had made in the documentation submitted to the immigration authorities in relation to the nomination of Ms Li under the Regional Sponsored Migration Scheme for a position of an accountant (general). The notice gave Mr McCormick the opportunity to respond by 21 January 2021 to avoid the various adverse actions it was open to the minister to take in relation to the provision of false and misleading information.
- 6.264. Also annexed to Mr McCormick's submissions was a letter dated 29 January 2021 from the Australian Border Force advising of the decision of the author as delegate of the minister to cancel Nashvin's approval as a standard business sponsor, and to bar the company for five years from making applications for approval as a standard business sponsor or temporary activities sponsor.
- 6.265. Mr McCormick submitted that the effect of this decision was that his company was unable to sponsor any further visa applicants or visa holders for temporary work visas and that this would

have a deleterious effect on Mr McCormick's business, which it was contended relied heavily upon foreign workers to operate effectively.

- 6.266. Finally, Mr McCormick's submissions contended that he had suffered reputational harm because of the publication in the *Sydney Morning Herald* and *The Daily Advertiser* (the local newspaper in Wagga Wagga) of articles about his involvement in the Immigration Scheme and the lies he had told the Commission. No copies of such articles were provided, but the Commission has no doubt such were written.

Consideration

- 6.267. On each occasion when Mr McCormick was either interviewed by Commission officers, or gave evidence during the First Public Inquiry, he swore to tell the truth. On two of those occasions, on his own admission, he did not do so. Although the Commission cannot refer Mr McCormick to the DPP in respect of a possible offence under s 80(c), because any such offence is statute-barred, that does not mean it cannot take into consideration in exercising the s 74A(2) discretion, the circumstance that, on his own admission, he lied to Commission officers in relation to the extent of the monies he had received with respect to his involvement in the Immigration Scheme and Mr Maguire's involvement in the scheme. As Counsel Assisting submitted, Mr McCormick's falsehoods on both 31 October 2018 and 28 September 2020 related to a key component of the Commission's investigation of the Immigration Scheme.
- 6.268. However, the Commission accepts that Mr McCormick was genuinely remorseful about having given false evidence on 28 September 2020 and acted speedily to set the record straight. As earlier noted, his legal advisers (who he had not retained to represent him on 28 September 2020) contacted the Commission early on 29 September 2020 to advise that Mr McCormick had reflected overnight on the evidence that he had given the previous day and wished to say certain things about it.
- 6.269. The Commission has found that the evidence given by Mr McCormick on 29 September 2020 should be accepted as honest and accurate and was both internally consistent and consistent with objective evidence and the evidence of others embroiled in the Immigration Scheme as to that scheme's operation. It cured not only the vice of the falsehoods he told on 28 September 2020, but also the lie in his record of interview on 31 October 2018.
- 6.270. Mr McCormick's evidence on 29 September 2020 assisted the Commission in determining the extent of Mr Maguire's involvement in the Immigration Scheme. Counsel Assisting accepted that Mr McCormick's prompt correction of the record was such that the investigation was not significantly derailed or delayed by his false evidence. The Commission accepts that that is the case, as illustrated not least by the fact Mr McCormick's evidence concluded at 3.40 pm on 28 September 2020, his solicitors contacted the Commission early the next morning to advise that he wished to give further evidence and that that evidence was taken on the resumption of the First Public Inquiry that morning.
- 6.271. The Commission also accepts Mr McCormick's submission that his conduct in attempting to minimise Mr Maguire's involvement in the Immigration Scheme was an attempt to shield Mr Maguire out of a sense of loyalty for what Mr Maguire had done for his son. This was also a proposition Counsel Assisting advanced. In addition, it might be noted that Mr McCormick said that once it became apparent to him that what he had become involved in was not a legitimate scheme, he felt entrapped and felt that he had been coerced into something that he would not normally get involved with.
- 6.272. Mr McCormick was not the only one of Mr Maguire's constituents who he recruited to the Immigration Scheme who expressed a sense of entrapment once they realised what it in fact

entailed. Angus McLaren also felt that, once ensnared, there was no going back. As found elsewhere in this report, Mr Maguire preyed on the trust of his constituents to embroil them in a scheme he knew was illegitimate.

- 6.273. The consequences of that are reflected not least in the action the Australian Border Force has taken against Mr McCormick's business.
- 6.274. In considering the public interest in forming the opinion whether consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr McCormick for a breach of s 87(1) of the ICAC Act, the Commission is of the view that an important factor is that to express that opinion could deter other witnesses who have given false evidence from taking the significant step of promptly changing their evidence and telling the truth if they could still face prosecution for lying despite having decided to "come clean".
- 6.275. Such a factor underpins the matters to which the Commission has regard in considering the application of its Cooperation Policy. In the Commission's opinion, the circumstances in which Mr McCormick resiled from his false evidence attract the application of that policy to his benefit. Both that application and the other matters discussed above weigh against the Commission stating that it is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr McCormick for an offence under s 87 of the ICAC Act.
- 6.276. In these circumstances, the Commission has determined to exercise its discretion to conclude that it is not of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr McCormick for the offence of giving false and misleading evidence in relation to evidence he gave during the First Public Inquiry on 28 September 2020.

Maggie Wang

- 6.277. Counsel Assisting submitted that there is evidence available to the Commission in respect of a number of Ms Wang's responses to questions asked during compulsory examinations in which she participated on 11, 12 and 15 October 2018, and 10 to 11 August and 25 September 2020, which discloses that Ms Wang may have given evidence that was false or misleading in a material particular, knowing it to be false or misleading, or not believing it to be true and may therefore have committed offences under s 87(1) of the ICAC Act.
- 6.278. Counsel Assisting acknowledged that Ms Wang did ultimately give a detailed account of events that was of material assistance to the investigation in several respects. They accepted that it appeared to have been a truthful account which correlated both with objective evidence obtained during the investigation and with accounts given by other witnesses.
- 6.279. Counsel Assisting accepted that the last-mentioned circumstance was sufficient to engage consideration of the Commission's Cooperation policy in terms of considering taking any further steps in relation to Ms Wang's evidence in this respect. However, they submitted that there are significant considerations weighing against giving Ms Wang the benefit of that policy. These included the late stage at which Ms Wang's apparent cooperation was forthcoming, the number of occasions upon which Ms Wang gave inconsistent accounts and the extent to which earlier, inconsistent accounts given by Ms Wang had the capacity to frustrate the investigation.
- 6.280. Taking those matters into consideration, Counsel Assisting submitted that, on balance, the Commission should state that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Ms Wang for one or more offences of giving false or misleading evidence under s 87(1) of the ICAC Act.

- 6.281. Ms Wang made extensive submissions responding to each of the instances about which Counsel Assisting advanced this submission.
- 6.282. This section of the report deals with the evidence Counsel Assisting relied upon to make their submission and Ms Wang's submissions in response.

False or misleading evidence (s 87, ICAC Act)

- 6.283. The passages in Ms Wang's evidence to which Counsel Assisting referred are set out below.
- 6.284. During a compulsory examination on 11 October 2018, Ms Wang gave evidence to the effect that she denied:
- having any business relationship with Mr Maguire
 - trying to establish any business relationship with Mr Maguire
 - having some arrangement with Mr Maguire whereby they would both look out for business opportunities from which they both might benefit.
- 6.285. During the course of evidence given across a series of compulsory examinations, Ms Wang gave evidence to the effect that she denied:
- that Mr Maguire received any money in relation to the work of matching up visa applicants with businesses, or that he had any role in it at all
 - having an agreement with Mr Maguire that, if any of the visa applications went ahead, he would get some money
 - that she paid any money or shared a financial benefit with Mr Maguire.
- 6.286. During a compulsory examination on 10 August 2020, Ms Wang gave evidence to the effect that each of the Wagga Wagga immigration arrangements with which she was involved were genuine employment arrangements.

Ms Wang's submissions

- 6.287. Ms Wang's response to each of the instances about which Counsel Assisting submitted she may have knowingly given false or misleading evidence contended that there was no reasonable prospect that the DPP would conclude that she should be prosecuted for offences under s 87 of the ICAC Act. Ms Wang also submitted, more generally, that she had been denied procedural fairness by the Commission as she was not given the opportunity to specifically respond to imputations of giving false or misleading evidence knowingly, deliberately or intentionally.
- 6.288. In addition, Ms Wang submitted that the Commission could not be satisfied that her evidence was relevantly false or misleading, having regard to her medical issues, cultural and language issues and fragile state of mind. She submitted that these issues also constituted contributing extenuating circumstances relevant to the Commission's Cooperation Policy and public policy considerations. Ms Wang's specific and general submissions are addressed below.
- 6.289. In considering Ms Wang's submissions, the Commission notes that she had legal representation on all occasions when she gave evidence both during the compulsory examinations and public inquiry.
- 6.290. Ms Wang submitted that the evidence she gave under compulsory examination on 11 October 2018, in relation to a "business" relationship with Mr Maguire, was not false or misleading, but may have been unreliable. She submitted that she struggled to understand some of the questioning,

which led to a lack of clarity in her answers. She further submitted that in its questions, the Commission used an oversimplified definition of “business” (as distinct from a “social” or “friendly”) relationship, whereas her understanding of “business”, influenced by relevant cultural factors, was essentially different and she therefore misunderstood what was being asked.

- 6.291. Ms Wang submitted that when she maintained in her evidence in 2018 that her relationship with Mr Maguire was social and not for the purpose of sharing any financial benefits or fees with him, that was her understanding of the relationship at the time. She submitted that, in 2018, she did not believe that her relationship with Mr Maguire was capable of classification as a “business” relationship because she did not think that she would make money out of the arrangement and there was no kind of agreement entered between the two. She submitted that by the time she gave evidence in August 2020, the Commission’s “meaning and interpretation” of the term had become clearer to her and she did accede to “the possibility of being in business with Mr Maguire”.
- 6.292. The Commission does not accept Ms Wang’s submissions on this point. There is evidence that from very early in their communication, Mr Maguire and Ms Wang discussed business opportunities, including, for example, when Ms Wang sought Mr Maguire’s assistance in accessing his consular network to identify a potential supplier of nickel. In a text message from Ms Wang to Mr Maguire on 21 September 2012, Ms Wang thanked Mr Maguire for speaking to a consul-general at her request, saying “hopefully it’s a good start of our business together :)”. Ms Wang had no difficulty using the term in her communication with Mr Maguire in the context of a business dealing she asked him to assist her with at that time.
- 6.293. As outlined earlier in this chapter, by at least 16 January 2013, Ms Wang had an understanding with Mr Maguire that if there was any profit to be made out of visas, she would share those with him. In her compulsory examination on 15 October 2018, Ms Wang readily agreed with the proposition put to her by the presiding Commissioner that the text messages between herself and Mr Maguire obtained by the Commission “really do suggest that you and Mr Maguire were seeking to find business opportunities and profit from them”, saying, “Yes, I agree with that”. Ms Wang demonstrated no difficulty comprehending what “business opportunities” meant in that context.
- 6.294. The Commission is satisfied that when Ms Wang gave evidence in 2018, effectively denying a business relationship with Mr Maguire, or an arrangement with him whereby they would both look out for business opportunities from which they both might benefit, that evidence was false or misleading in a material particular.
- 6.295. Ms Wang submitted that when questioned about paying Mr Maguire, or whether Mr Maguire received money for various arrangements they were both involved in, her answers were unreliable, but not false or misleading. She again submitted that she struggled to understand some of the questioning, which led to a lack of clarity in her answers.
- 6.296. Ms Wang submitted that during her evidence in 2018, she failed to grasp the concept that she was actually paying Mr Maguire and in several instances during her compulsory examination denied making payments to Mr Maguire because it was her belief at the time that their informal arrangements involving money were not “payments”. Instead, she received money from various businesses and gave this to Mr Maguire, after which he paid her an arbitrary figure. She submitted that by the time she gave evidence in 2020, she had developed an understanding that the “arrangements involving money and payments were in fact payments that were capable of being characterised differently to her initial understanding”, which explains the inconsistency between her 2018 and her 2020 evidence.

6.297. The Commission does not accept these submissions. There is no evidence of any confusion on Ms Wang's part about what "payment" meant when giving the impugned evidence. Indeed, Ms Wang appeared to have no difficulty with the concept of "payment". For example, in a compulsory examination on 11 October 2018, Ms Wang was asked about a text message she sent to Mr Maguire on 16 January 2013, relatively early in the genesis of the Immigration Scheme, in which she told him, "Thanks, Daryl, for helping out. Any savings we will be sharing." The following exchange occurred:

[The Commissioner]: Do you agree that the words you used seem to suggest that you were promising Mr Maguire that he might get a payment?

[Ms Wang]: I don't agree with that.

[Q]: Well, what do you say the words mean?

[A]: It could be, you know, you know, could be sharing in lots of ways.

[Q]: What ways?

[A]: Not money. Because I didn't pay him any money.

6.298. As is apparent, Ms Wang had no difficulty relating the concept of "payment" to giving Mr Maguire money in relation to the Immigration Scheme, a proposition she baldly denied and, as is apparent from the following, continued to do so until the First Public Inquiry almost two years later.

6.299. During her compulsory examination on 11 October 2018, Ms Wang was asked and answered the following questions:

[The Commissioner]: Did Mr Maguire receive any money in relation to that work, that is matching up students with businesses?

[Ms Wang]: No.

[Q]: Are you absolutely sure about that?

[A]: Yeah, yeah. No.

[Q]: He had no role in it at all?

[A]: No.

6.300. That denial was sustained during her compulsory examination on 15 October 2018, when Ms Wang responded to questions as follows:

[The Commissioner]: No, I understand that, but listen to the question because we've seen reference to immigration matters, to wine, to oil, to gold and to real estate developments. What I want to know is did you on any occasion in respect of any of those matters share some financial benefit with Mr Maguire or did he share with you, did you get any money?

[Ms Wang]: No.

[Q]: Never?

[A]: Never.

6.301. Ms Wang’s denial was maintained during her compulsory examination on 10 August 2020, as the following exchange indicates:

[Counsel Assisting]: And is it also your evidence that in relation to those businesses, so the businesses identified for you by Mr Maguire, you didn’t pay any money to Mr Maguire, Mr Elliott, or G8way International?

[Ms Wang]: Oh, except for that one \$2,000 I mentioned before.

[Q]: So the one you referred to before was an example of where Mr Elliott identified the business rather than Mr Maguire, is that right?

[A]: Yes.

[Q]: And you agreed with Mr Elliott that you would pay \$2,000 to Mr Elliott, is right?

[A]: Yes

...

[Q]: And if we ignore that example for the moment, that was the only example in which any money was paid by you to Mr Maguire, Mr Elliott, or G8way International in relation to businesses referred by Mr Maguire, is that right?

[A]: Yeah. Yes

[Q]: Is that your honest evidence?

[A]: Yep.

6.302. As set out earlier in this chapter, and as ultimately admitted by Ms Wang during the public inquiry only one month after her August 2020 compulsory examination evidence, it was Mr Maguire who identified businesses which might be prepared to sponsor a Chinese national for a relevant visa and used his network to facilitate the Immigration Scheme that she and he had agreed. As was apparent from Ms Wang’s evidence in the First Public Inquiry, Mr Maguire’s role in this respect was critical as she did not know the businesses. It is implausible that Ms Wang could have forgotten Mr Maguire’s key role, yet she denied his involvement in the scheme over two years during which she gave evidence at compulsory examinations on four occasions.

6.303. Again, as explained earlier in this chapter, the Immigration Scheme involved charging a visa applicant a fee that would be split between Ms Wang, Mr Maguire and the putative employer. Payments were delivered to Mr Maguire by Ms Wang in cash, and on maybe half of the occasions that the visa applicant was successful, she delivered payments to Mr Maguire’s office in Parliament House. The amount Ms Wang would receive of the fee was at Mr Maguire’s discretion and less than his portion because his role in getting the business to agree was “the hardest part”.

6.304. The Commission is satisfied that when Ms Wang gave evidence during the compulsory examinations in October 2018 and August 2020, effectively denying Mr Maguire’s involvement in the visa scheme and that she had any arrangement to share a financial benefit with him or paid him any money in connection with the scheme, that evidence was false or misleading in a material particular. It was materially inconsistent with the evidence she finally provided in the First Public Inquiry in September 2020. The Commission rejects Ms Wang’s submission that she did not understand the concept of “payment”, when she admitted delivering large sums of cash to Mr Maguire in relation to the Immigration Scheme in consideration for him introducing the business participants. It defies credulity.

6.305. Ms Wang submitted that her evidence in respect of the authenticity of the employment arrangements connected with the Wagga Wagga immigration arrangements she was involved in was not false or misleading. She submitted that she became overwhelmed and flustered when trying to recall the precise details of those employment arrangements. Ms Wang submitted that this was the reason that her evidence at the First Public Inquiry was inconsistent with that she gave during her compulsory examinations.

6.306. The Commission does not accept this submission. The impugned evidence was given in Ms Wang's compulsory examination on 10 August 2020. The following exchange indicates no confusion on her part about the questions being put to her:

[Counsel Assisting]: Are you saying that each of the Wagga Wagga arrangements with which you were involved were genuine employment arrangements?

[Ms Wang]: Yes.

[Q]: In other words, the business genuinely employed those individuals?

[A]: Yes.

6.307. The following exchange a little later likewise indicates no sense of an inability to recall the precise details of those employment arrangements because of becoming overwhelmed or flustered:

[Counsel Assisting]: At least one of the arrangements that you sought to arrange with a Wagga Wagga business was in circumstances where it was clear that the employee, or the pretend employee, wasn't going to turn up at all. Do you agree?

[Ms Wang]: No, no, no, no. Absolutely not. All of them genuine, I guarantee that. All of them genuine.

6.308. Only a month later, in the First Public Inquiry, Ms Wang finally told the truth about the scheme, readily agreeing with these propositions put to her by Counsel Assisting:

[Counsel Assisting]: Well, inherent to the scheme is a visa applicant or the family of a visa applicant having enough money to pay their own wages for at least three months, and to pay a fee in the tens of thousands of dollars to you. Correct?

[Ms Wang]: Yes.

[Q]: Which fee you then share with Mr Maguire and share with the employer, is that right?

[A]: Yes...

[Q]: Essential to the scheme was lying to the Immigration Department about whether there would be a genuine relationship of employment. Correct?

[A]: Correct.

[Q]: You expected that, if not all of these individuals, then at least most of them wouldn't actually turn up to work on a full-time basis, correct?

[A]: Correct.

- 6.309. For the reasons set out in this chapter, and as ultimately admitted by Ms Wang, the Wagga Wagga immigration arrangements with which she was involved were not legitimate employment arrangements. The Commission is satisfied that Ms Wang gave false or misleading evidence to the Commission during her compulsory examination when she insisted they were “all genuine”.

Denial of procedural fairness

- 6.310. Ms Wang submitted that the rule in *Browne v Dunn*,¹⁷⁸ which is essentially a rule of fairness, requires that, if some kind of imputation is to be made against a witness, then at some stage ultimately the precise nature of the imputation should be made clear to the witness so that she is given the opportunity to meet it. It was submitted that Counsel Assisting should have put to Ms Wang in cross-examination that she had deliberately given false or misleading evidence if Counsel Assisting proposed to submit that her evidence should not be accepted or that a particular construction should be placed on her conduct.
- 6.311. Ms Wang submitted that she has been denied procedural fairness in that Counsel Assistings’ submissions did not contain sufficient particulars to inform her of the gist or substance of the accusation made against her in respect of the necessary mental element to establish a contravention of s 87 of the ICAC Act. She submitted that at no time was it put to her during her examination that, at the point in time she allegedly gave false or misleading evidence, she knew, recklessly did not care, or deliberately intended, to give false or misleading evidence, therefore denying her any opportunity to respond to the imputation, which contravenes the principle established in *Browne v Dunn*.
- 6.312. Ms Wang submitted that a general assertion that she had provided false or misleading evidence is not sufficient to comply with the principle in *Browne v Dunn* and that she was not able to clear any misconceptions about her evidence which may have resulted from her genuine belief in the facts at the time of her questioning, exacerbated by her desire to conclude her examination at the public inquiry due to her fragile state of mind.
- 6.313. The Commission does not accept these submissions.
- 6.314. As Basten JA observed in *Duncan v ICAC*,¹⁷⁹ the Commission has an undoubted obligation to afford procedural fairness to persons who may be adversely affected by its findings, but in considering the scope of that obligation, it is necessary to bear in mind the separate fact-finding and characterisation functions of the Commission. It is also necessary to have regard to the statutory powers of the Commission including, where exercised, the powers with respect to the conduct of a public inquiry.¹⁸⁰
- 6.315. In this context, his Honour said, “...the statutory function being exercised by the Commission in the course of the public inquiry was, in a fundamental sense, investigative. It bore no relation to a civil or criminal trial before a court with jurisdiction to resolve factual and legal issues in a dispute between contending parties. Using the term ‘adversarial’ in the limited sense of such a judicial proceeding, an inquiry conducted by the Commission is not adversarial”.¹⁸¹

¹⁷⁸ (1893) 6 R 67 at 70–71.

¹⁷⁹ [2016] NSWCA 143.

¹⁸⁰ at [688].

¹⁸¹ at [690].

6.316. Section 17(1) of the ICAC Act provides that the Commission is not bound by the rules or practice of evidence and can inform itself on any matter in such manner as it considers appropriate. It is explicitly stated in the Commission's *Standard Directions for Public Inquiries* that the Commission will not apply the rule in *Browne v Dunn* save as set out, relevantly, at clause 17 of those directions, as follows:

The Commission expects that, where it is to be invited to reject or not accept the evidence of a witness on a material fact or issue, on the grounds the witness deliberately gave false evidence, the evidence is unreliable, or the witness has made a mistake on a significant issue, the material grounds of such contention must be put to the witness to allow the witness an opportunity to offer an explanation.

6.317. Further, s 17(2) of the ICAC Act provides that the Commission shall exercise its functions with as little formality and technicality as is possible, and, in particular, the Commission shall accept written submissions as far as is possible and compulsory examinations and public inquiries shall be conducted with as little emphasis on an adversarial approach as is possible.

6.318. Counsel Assisting squarely put to Ms Wang during the public inquiry that in her earlier compulsory examinations in 2018, she had given false evidence about the Immigration Scheme, her involvement in it and her knowledge that it was illegitimate. She agreed that she had. In the course of putting these allegations to Ms Wang, Counsel Assisting also put to her a series of propositions about what was motivating her to give false evidence, thereby addressing the requisite mental element of the offence. The following exchanges are relevant:

[Counsel Assisting]: *And you gave false evidence about the immigration scheme during the course of those appearances. Is that right?*

[Ms Wang]: *Yes.*

[Q]: *You were concerned at that point in time as to what might happen in the investigation and how it might implicate you. Is that right?*

[A]: *Yes.*

[Q]: *You gave in October of 2018 a series of false answers about your involvement in the immigration scheme. Is that right?*

[A]: *Yes.*

[Q]: *And you sought to say to this Commission that it was a legitimate scheme involving legitimate training arrangements. Is that right?*

[A]: *Yes.*

[Q]: *And you were concerned though having given that false evidence that other people who were connected with the scheme like Mr Duffy might tell a different story which might implicate you. Is that right?*

[A]: *Yes.*

6.319. The Commission is satisfied that, to the extent that the rule in *Browne v Dunn* applies to the Commission's proceedings, the material grounds of the contention that Ms Wang had deliberately given false evidence were put to her by Counsel Assisting during the First Public Inquiry.

6.320. In any event, even were Counsel Assistings' propositions in the public inquiry insufficient to afford procedural fairness, in written submissions Counsel Assisting submitted that Ms Wang may be an affected person, may have committed offences under s 87(1) of the ICAC Act and indicated the instances and respects in which she may have done so.

6.321. The submissions process is an important part of the Commission's investigative process, a process that does not conclude when the public hearing concludes. The Commission's Public Inquiry Procedural Guidelines, issued pursuant to s 31B of the ICAC Act, provide (at [7.5]) that:

*Counsel Assisting should bring to the attention of any affected person, either through the process of examination of the affected person or other witnesses, the tendering of documentary or other evidence in the course of the public inquiry **or by way of submissions**, potential adverse findings against the affected person that Counsel Assisting contends should be made by the Commission, and the substance of the evidentiary grounds for such findings. (Emphasis added)*

6.322. In *Duncan v ICAC*, Basten JA noted two central propositions at the heart of the appellants' complaints of procedural unfairness that are apposite to Ms Wang's submissions:

*...the first was that it was not until final submissions by counsel assisting the Commission that the attention of the affected parties was directed to any particular offences which might have been committed by the conduct revealed in the evidence. Secondly, and no doubt by way of an inevitable consequence of the first complaint, the appellants were not questioned, nor able to give evidence, as to the elements of the offences.*¹⁸²

6.323. Basten JA observed that McDougall J, the primary judge, had quite appropriately dealt with the two limbs of the appellants' complaints as inter-related and, also, that he had taken as a relevant statement of general principle the approach of Wood J in *Glynn v ICAC*.¹⁸³

6.324. In *Glynn v ICAC*, relevantly for Ms Wang's submission, Wood J, referring to *Dainford Ltd v ICAC*,¹⁸⁴ accepted that an ICAC inquiry was not to be "shackled by formal rules of pleading and particulars and confining parties to particulars as would happen in adversary proceedings in a court of law". He continued:

Inevitably such an inquiry will expand and move into new or different areas, within its terms of reference, as it progresses. What is necessary is that by the end of the hearing, a party potentially affected by an adverse finding have the opportunity to meet it by submission and, if necessary, by evidence. The argument of the plaintiff in this regard seems to proceed on a misconception that after the evidence is received, the nature of the inquiry changes and it ceases to be investigative. I can see no basis for such a view.

*If in the course of submissions, it becomes apparent that there is an area not previously raised for consideration, which does call for investigation, then it may be necessary for the Commission to stop and permit its further investigation by the evidence and addresses. To take any other view would be to fail the purpose for which the Commission was created, but the cost may be an interruption and delay to ensure that natural justice is done.*¹⁸⁵

¹⁸² At [692].

¹⁸³ (1990) 20 ALD 214 (*Glynn v ICAC*).

¹⁸⁴ (1990) 19 ALD 207 (Young J).

¹⁸⁵ *Glynn v ICAC* at [218]–[219].

- 6.325. Relying on these passages from *Glynn v ICAC*, and rejecting the proposition that it was not a matter for the parties represented before the Commission to take steps to “cure” the breach of procedural fairness, McDougall J made the following relevant observations, with which Basten JA appeared to agree:

[215] In the present case, the public hearing took evidence over many days. Counsel assisting the Commission then prepared written closing submissions which were distributed to all interested parties. In those submissions, Counsel assisting identified in detail the corrupt conduct findings that, in their submission, the Commission should make. As a necessary part of that process, they identified the criminality said to have been involved.

[216] At that point, those against whom findings were sought knew what the case against them was. They were in a position to answer it, by submissions on the evidence. If they believed that they had been denied the opportunity to lead (or to test) evidence on a particular topic or topics, because their significance had not been apparent at the time, they could have made application to reopen the public hearing. As Wood J said, they were entitled to the opportunity to meet the case put against them “by submission, and if necessary, by evidence”.

[217] There were complaints made to the Commission of denial of natural justice. However, none of the plaintiffs now complaining of a denial of natural justice made any application to the Commission to reopen the public hearing so that they could adduce further evidence. None of them identified, in submissions before me, the further evidence that might have been available.

[...]

[219] It is correct to say that it was not put to any of the individual plaintiffs, in terms, that he had committed the offences that, in the Commission’s view, could be made out. Nor was any of them cross-examined in detail on the elements of those offences. Nonetheless, each of them was cross-examined at length, in particular on all the relevant facts that underlaid the Commission’s findings. Each of them had the opportunity, both through his own counsel and in cross-examination, to deal with the facts.¹⁸⁶

- 6.326. The Commission is satisfied that, both from the questions put to her by Counsel Assisting in the public inquiry cited above and through the submissions process, Ms Wang knew the case against her and was provided with the necessary opportunity to answer it and to offer an explanation as to why the impugned evidence was not false or misleading or was not deliberately so. By her extensive submissions on the matter, she took that opportunity and has not been denied procedural fairness.

Medical, cultural and language issues

- 6.327. Ms Wang submitted that she was not aware she was giving false or misleading evidence in the instances in which Counsel Assisting submitted she was and that she had no intention to falsify or mislead. She admitted that some of her evidence was inconsistent, difficult to follow and not always responsive. However, she submitted that her medical, cultural and language issues and her fragile state of mind were all contributing factors to her giving evidence which, while it may have appeared inconsistent, false or misleading, was likely the result of honest mistakes, inadvertence and carelessness when responding to questions during hearings.

¹⁸⁶ *Duncan v ICAC* at [694].

- 6.328. These submissions sit very uncomfortably with Ms Wang's admissions in the First Public Inquiry, set out above. On that occasion, Ms Wang unequivocally agreed that she had given false evidence during earlier compulsory examinations because she was concerned about the Commission's investigation and how it might implicate her. She also agreed that she was concerned that having given that earlier false evidence, she might be implicated if other people told the Commission a different story.
- 6.329. Ms Wang submitted that she suffers from a number of mental health conditions which she has had since 2010, arising out of a significant and traumatic life event. She has been treated with certain medications for those conditions that have a range of potential side effects. Ms Wang provided to the Commission a number of medical records, including a psychologist's report, hospital and GP notes, as well as medication information, on which she relied to submit, in summary, that her long-standing mental health conditions, and their treatment, affected her and were heightened during the Commission's investigation.
- 6.330. Ms Wang submitted that, as a consequence, her ability to satisfactorily answer questions from the Commission, as she had intended, was relevantly impacted. She submitted that the difficulties under which she was labouring during the investigation included exacerbated memory loss, anxiety and stress (conditions for which she was being treated and/or side effects of the medication she was taking).
- 6.331. Ms Wang submitted that during the public inquiry, once she had a chance to refresh her memory and receive ongoing support for her health conditions, she corrected details in her poor recollection which may have been perceived as false or misleading due to her understanding of Counsel Assisting's questions at that time. It was also and somewhat inconsistently submitted that at times, Ms Wang was merely affirming questions put to her when she did not fully understand the implications of her evidence and that this was a response to her mental health issues and her belief that, if she agreed with the questions put by Counsel Assisting, the questioning would stop, and she would get relief from her mental anguish and distress.
- 6.332. It is unclear from Ms Wang's submissions whether she now seeks to resile from the admissions she made in the public inquiry, although it was those "admissions" that were provided as an example of affirmative evidence she gave to get Counsel Assisting's questions to stop.
- 6.333. The Commission has considered the medical material Ms Wang provided to the Commission as annexures to Ms Wang's submissions and the submissions that rely on it. The Commission accepts that Ms Wang has suffered a number of significant mental health conditions arising from a traumatic event in 2010 and that she has been treated for these with medication and psychological treatment since that time, including during her compulsory examinations in October 2018 and August 2020 and the public inquiry in September and October 2020. The Commission accepts that Ms Wang's involvement in the Commission's investigation has placed her under considerable pressure and has likely exacerbated her psychological distress.
- 6.334. However, none of the material that Ms Wang provided to the Commission in support of her submission that her medical issues have adversely affected her ability to satisfactorily answer questions before the Commission can be accepted as expert evidence that may assist the Commission in its deliberations. None of this material addresses the effect of Ms Wang's conditions and their treatment on her memory or on her capacity to give truthful evidence.
- 6.335. In particular, the Commission cannot accept the medication information provided by Ms Wang in support of the submission that there are a number of potential side effects to the medication she was taking at the time she gave evidence to the Commission, including confusion and loss of memory, and that these side effects provide an insight into her condition and state of mind when

giving evidence. There is no independent medical evidence that Ms Wang did in fact suffer these side effects when giving evidence before the Commission and there can be no weight given to the existence of merely potential side effects of medication she happened to be taking.

- 6.336. Likewise, the psychological report dated 4 May 2022 on which Ms Wang relies, records Ms Wang's self-reported symptoms of psychological pressure during and as a consequence of the Commission's investigation but does not address whether her conditions or their treatment may have objectively affected her memory or capacity to give truthful evidence at the times she gave this evidence.
- 6.337. The Commission cannot accept the submission that Ms Wang's medical issues contributed to her ability to understand questions, recollect events or give truthful evidence during her compulsory examinations in 2018 and 2020 and in the public inquiry in the absence of independent expert evidence addressing those matters.
- 6.338. In addition to her medical issues and fragile state of mind, Ms Wang submitted that her evidence should be considered and assessed against her cultural and language issues. She submitted that as a person of Chinese heritage for whom her first language is Mandarin Chinese, her background, nationality and associated language difficulties caused a number of issues for her during her compulsory examinations and the public inquiry. She submitted that it was plain to a reasonable observer that she struggled throughout the examinations with her comprehension of English and the language barrier also posed an obstacle to her comprehension of the complexity of the nature of Mr Maguire's business dealings.
- 6.339. Ms Wang also submitted that the concept of "saving face" is an intrinsic component of Chinese culture. It was a concept that extended to what she perceived as the wrongdoing of others and she was embarrassed and uncomfortable with disclosing details of the relationship and any arrangement she had with Mr Maguire, because she did not believe it to be a formal business relationship and considered him a personal or social acquaintance.
- 6.340. The Commission does not accept these submissions. Ms Wang was legally represented at all times during which she gave evidence before the Commission. Opportunities were provided to her legal representative to clarify aspects of her evidence during compulsory examinations. Significantly, an interpreter was provided to Ms Wang at her first compulsory examination. At the end of the first day, it was agreed by all parties, including Ms Wang's legal representative, that an interpreter was no longer required due to Ms Wang's command of English. At no other time during compulsory examinations or her evidence in the public inquiry did Ms Wang request an interpreter. In addition, there is evidence before the Commission that Ms Wang has held several positions in Australia requiring a good level of English language proficiency, including as an administrative assistant with the police and as a Chinese/English interpreter from time to time for Mr Maguire.
- 6.341. Accepting for present purposes the underlying premise of this submission, the Commission does not accept that any cultural concerns or sensitivities about "saving face" displace Ms Wang's obligation, as an Australian citizen, to tell the truth, as she was repeatedly reminded.
- 6.342. The Commission is satisfied that on each of the identified occasions and in the identified respects outlined above, Ms Wang gave evidence that was false or misleading in a material particular, knowing it to be false or misleading. The Commission is satisfied that she did so intentionally, for the purpose of trying to avoid being implicated in a scheme she knew was illegitimate.

Destruction of documents: s 88(2), ICAC Act

- 6.343. Counsel Assisting submitted that the Commission should state that it is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Ms Wang for an offence pursuant to s 88(2) of the ICAC Act.
- 6.344. Section 88(2) provides, relevantly, that:
- A person who, with intent to delay or obstruct the carrying out by the Commission of any investigation –*
- (a) Destroys or alters any document or other thing relating to the subject-matter of the investigation...*
- is guilty of an offence.*
- 6.345. Counsel Assisting submitted that Ms Wang gave evidence that, while she was in China, in 2018 and following Mr Maguire appearing before the Commission on 13 July 2018, Mr X passed on to her a message he had received from Mr Maguire to the effect that she should delete messages between herself and Mr Maguire. Ms Wang agreed that she complied with Mr Maguire's request to delete messages. Ms Wang also admitted that she complied with Mr Maguire's request out of a concern that those messages might implicate Mr Maguire. She admitted that she knew at the time that she was assisting in keeping evidence from this Commission.
- 6.346. Ms Wang submitted that the evidence was insufficient to make out the elements of knowledge and intent required for an offence under s 88(2) of the ICAC Act. She conceded that she had deleted messages and emails between herself and Mr Maguire and that these communications related to the subject matter of the Commission's investigation. Ms Wang submitted, however, that the evidence did not establish that she had knowledge of the Commission's investigation at the time she deleted these messages on Mr Maguire's direction.
- 6.347. Ms Wang submitted that the deletion of the messages and emails occurred on or around 18 July 2018, after she had arrived in China on 16 July 2018. She submitted that at this time, she had no knowledge or suspicion that the Commission's investigation in relation to Operation Keppel had commenced. She conceded that she was aware, however, that on 13 July 2018, Mr Maguire had appeared before the Commission in connection with its investigation concerning Canterbury City Council (Operation Dasha).
- 6.348. Ms Wang submitted that by the time she left Australia for China on 15 July 2018, she was of the belief that Operation Dasha had already concluded following Mr Maguire's appearance before the Commission. She was not aware of any ongoing investigation by the Commission in Operation Keppel, let alone its significance.
- 6.349. Ms Wang submitted that her belief and misunderstanding that Operation Dasha was not an ongoing investigation was exacerbated by her English language barriers and being overseas at the time. She submitted that when she deleted messages and emails, she gave no thought to the reason for deleting them. She submitted that she followed Mr X's instructions without question because he was at the time a senior Chinese diplomat and a long-standing family friend. She was motivated by cultural respect for a senior figure, in relation to whom it would be expected and usual for her to follow his direction, and she trusted that he had her interests in mind.
- 6.350. Ms Wang submitted that she cannot be said to have deleted the messages with the intent to delay or obstruct the carrying out of any investigation by the Commission as she lacked any knowledge of any investigation.

6.351. Ms Wang submitted that her medical, cultural and language issues and fragile state of mind were all contributing factors to her giving unclear evidence in the public inquiry as to her understanding of the status of any investigation by the Commission. She further submitted that, after three hours of questioning, she gave answers in a way she thought might bring the investigation to an end sooner, in an attempt to ease her fragile state of mind during highly stressful conditions. Her responses were also motivated by her desire to fully cooperate with and assist the Commission despite the contributing factors limiting her ability to do so.

6.352. The Commission does not accept these submissions. Ms Wang clearly admitted the requisite knowledge and intention in the following exchange:

[Counsel Assisting]: You agreed to delete those messages so as to conceal them from this Commission or any other body that might investigate Mr Maguire. Correct?

[Ms Wang]: I just complying what he said.

[Q]: Yes, but the reason you complied with what he had to say was that you knew that those messages might implicate Mr Maguire. Correct?

[A]: Yes.

[Q]: And so you were assisting Mr Maguire to keep evidence away from this Commission. Do you agree?

[A]: I didn't think that it's serious.

[Q]: Whether or not you thought it was serious what you were assisting in, and you knew this at the time, what you were assisting in is keeping evidence away from this Commission. Do you agree?

[A]: Yes.

6.353. Ms Wang was legally represented at the public inquiry when she gave this evidence. She was not examined by her counsel to clarify or correct this evidence, or as to whether she had been telling the truth when admitting to this conduct or was just trying to bring the questioning to an end.

6.354. Ms Wang's general submissions in relation to the adverse impact of her medical, cultural and language issues and fragile state of mind on her ability to understand Counsel Assisting's questions and her ability to assist the Commission's investigation have been addressed previously in relation to her false and misleading evidence. The Commission does not consider these factors sufficient to displace Ms Wang's obligation to tell the truth.

6.355. The Commission accepts Ms Wang's admissions in the public inquiry as truthful. The Commission is satisfied that she deleted emails and messages between herself and Mr Maguire on Mr Maguire's direction on or around 18 July 2018, while the Commission's investigation into Mr Maguire's conduct was ongoing. The Commission is satisfied that she did so to keep that evidence away from this Commission.

The Commission's Cooperation Policy

6.356. As earlier noted, Counsel Assisting submitted that given Ms Wang's ultimately truthful account in the First Public Inquiry, while consideration could be given to the application of the Commission's Cooperation Policy, (the relevant section of which has been set out above in relation

to Mr McCormick), in Ms Wang's case, there are significant considerations weighing against an exercise of the discretion not to recommend consideration of prosecution.

- 6.357. Those considerations included the late stage at which Ms Wang's cooperation was forthcoming, the number of occasions upon which Ms Wang gave inconsistent accounts and the extent to which earlier, inconsistent accounts given by Ms Wang had the capacity to frustrate the investigation. On balance, Counsel Assisting submitted that the Commission should state that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Ms Wang for one or more offences under s 87 of the ICAC Act.
- 6.358. Ms Wang submitted that the Commission should exercise its discretion not to recommend consideration be given to obtaining the advice of the DPP. She submitted that her "full cooperation" in 2020 to further the Commission's investigation does not mean that she was "late" when regard is had to the significant nature of the assistance she provided. She submitted that her "traumatic experience" before the Commission in 2018 should be understood to have made it difficult for her to facilitate a return to the Commission any sooner than she did in 2020.
- 6.359. The difficulty with this submission is that, as set out above, the Commission is satisfied that Ms Wang gave false and misleading evidence to the Commission during her compulsory examination in August 2020, not just during her 2018 compulsory examination. This was only a month before the First Public Inquiry. For that reason, the Commission accepts that her cooperation with the Commission was forthcoming, albeit at a late stage.
- 6.360. Further, it is unclear what the "traumatic experience" in 2018 is that Ms Wang submitted prevented an earlier return to the Commission. There is nothing in the medical material Ms Wang provided to the Commission to support this submission. It is also relevant to note that when she ultimately "returned" to the Commission and gave a truthful account, she did not do so voluntarily, as Mr McCormick did, but was required to appear before the Commission under summons.
- 6.361. Ms Wang submitted that the Commission should not take into account, as Counsel Assisting submitted it should, that she gave inconsistent evidence on a number of occasions and that the earlier inconsistent accounts frustrated the investigation, because of the extensive assistance and fundamental significance of her evidence at the First Public Inquiry. She submitted that by the time of the First Public Inquiry, the Commission had refined its investigation and she understood more readily the questions put to her, which allowed her to provide evidence of material assistance to the Commission.
- 6.362. This submission sits uncomfortably with other submissions made by Ms Wang in relation to the admissions she made in the public inquiry to the effect that even on that occasion, Ms Wang gave certain answers in a way that she thought might bring the investigation to an end sooner, despite the difficulties she likely had understanding what was being asked. Such a submission was specifically made in relation to her significant and material admissions in the public inquiry that she had given false evidence about the Immigration Scheme, her involvement in it and her knowledge that it was illegitimate and that she had deleted messages on Mr Maguire's direction, to keep that evidence from the Commission.
- 6.363. While not necessarily amounting to a retraction of those admissions, the submissions that characterise Ms Wang's evidence as mere affirmative responses designed to get the questioning to stop might cast doubt on the quality and reliability of those admissions save to the extent they are consistent with other objective evidence and accounts given by other witnesses. That could raise questions about whether, in fact, Ms Wang was fully cooperating with the Commission's investigation by the time she gave evidence in the public inquiry.

- 6.364. Ms Wang also requested the Commission consider her medical issues in light of the potential for any proceedings brought by the DPP to continue for an extended period of time and the likely ongoing serious impact a delay in prosecution would have on her already unstable mental health.
- 6.365. The Commission is satisfied that Ms Wang ultimately provided an account in the public inquiry that appears to have been truthful and that correlates both with objective evidence obtained during the investigation and with accounts given by other witnesses. The Commission accepts that her ultimately truthful account was of significant assistance in a number of respects, including her admissions that her previously given evidence about the legitimacy of the Immigration Scheme and her and Mr Maguire's involvement in it was false, and that she had deleted evidence on Mr Maguire's direction to keep it from the Commission.
- 6.366. The Commission notes, however, that Ms Wang maintained evidence the Commission is satisfied was false and misleading as late as her compulsory examination in August 2020, only a month before the commencement of the First Public Inquiry. Her truthful evidence given at the First Public Inquiry cannot be described as anything other than "late" in the circumstances.
- 6.367. The Commission does not accept the submission that it was the Commission's refinement of its investigation coupled with Ms Wang's greater ability to understand Counsel Assisting's questions that led her to provide evidence that was of material assistance to the Commission in the public inquiry. The same Counsel Assisting questioned her during her compulsory examination in August 2020. There is no evidence available to the Commission that when giving evidence to the Commission, Ms Wang could not readily understand what she was being asked such that she was incapable of giving truthful and reliable evidence during her compulsory examinations in 2018 and 2020. The Commission finds that Ms Wang's earlier evidence was in significant respects untruthful, inconsistent and unreliable, and frustrated the Commission's investigation.
- 6.368. Finally, Ms Wang has not provided any expert medical evidence that her health would be affected to a greater degree than any other person potentially facing criminal charges. The Commission does not consider any hypothetical delay between the Commission obtaining the advice of the DPP and the DPP potentially commencing proceedings against Ms Wang to be a relevant factor in the Commission's deliberations about whether to consider obtaining the advice of the DPP.
- 6.369. The Commission accepts the value of Ms Wang's ultimately truthful account in the public inquiry, however, it considers this cooperation to have come late and only after having previously given extensive evidence that the Commission finds was in significant respects untruthful, inconsistent and unreliable, and frustrated the Commission's investigation. Ms Wang did not return of her own volition to give evidence to the Commission but under summons. Certain submissions made by Ms Wang now appear to call into question the extent and reliability of some of her admissions during the public inquiry. In addition, Ms Wang had a central rather than a merely peripheral role in the conduct of Mr Maguire that the Commission has found to be corrupt and she was also a beneficiary of that conduct in financial terms even if, on her evidence, the amounts she received were at Mr Maguire's discretion.
- 6.370. In all the circumstances, the Commission has determined not to exercise its discretion not to consider obtaining the advice of the DPP with respect to the prosecution of offences under s 87 of the ICAC Act in relation to Ms Wang's earlier false or misleading evidence.
- 6.371. In all the circumstances set out above, the Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Ms Wang for the offences of breaches of s 87(1) and s 88(2) of the ICAC Act.

Lydia Zhang

- 6.372. Counsel Assisting submitted that there is evidence, in relation to the Immigration Scheme, that suggests that Ms Zhang may have committed, or been complicit in, one or more offences under federal immigration law.
- 6.373. In October 2012, during a trip to China, Ms Zhang introduced Mr Duffy to a Chinese businessman (Mr Song) whose daughter had just finished university in Australia and was looking for a work visa. As explained earlier in this chapter, Mr Duffy came to employ Ms Song under a “training agreement” the purpose of which was to assist Ms Song obtain a visa. Ms Song’s pay was recorded in the books of D & M Electrical and was then reimbursed by Ms Zhang by credit or debit card although ultimately sourced, to Mr Duffy’s understanding, from Ms Song’s family. In effect, Ms Song was funding her own employment.
- 6.374. As also noted above, between 17 August 2018 and 26 August 2021, the Commission has made seven disseminations of material to the Australian Border Force under s 16(3) of the ICAC Act which contained evidence assembled by the Commission which has assisted the Department of Home Affairs in determining that breaches of Commonwealth legislation have occurred.
- 6.375. The Commission is accordingly not of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Ms Zhang for any offence as these matters have now been referred to the appropriate federal agency.

Peter Wood, Angus McLaren, Shaun Duffy, Richard Allsopp and Monica Hao

- 6.376. Counsel Assisting submitted that there is evidence in relation to the immigration scheme that suggests that one or more of Mr Wood, Mr McLaren, Mr Duffy, Mr Allsopp and Ms Hao may have committed one or more offences under federal law.
- 6.377. As noted above, the Commission has disseminated material to the Australian Border Force containing evidence assembled by the Commission which has assisted the Department of Home Affairs in determining that breaches of Commonwealth legislation have occurred. The Australian Boarder Force has advised the Commission that charges have been brought against Ms Wang and Mr Maguire for offences under s 234(1) of the *Migration Act 1958* and conspiracy in relation to these offences under s 11 of the Criminal Code (Cth).
- 6.378. In addition, the Commission has been advised by the Australian Border Force that Mr Duffy has been charged under s 400.6(1) of the Criminal Code (Cth) with dealing with the proceeds of crime \$10,000 or more.
- 6.379. The Commission is accordingly not of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Wood, Mr McLaren, Mr Duffy, Mr Allsopp and Ms Hao for any offence as these matters have been referred to the appropriate federal agency.

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Chapter 7: NSW Parliament Asia Pacific Friendship Group (“the APFG”)

MAGUIRE: So, so [country C] is definitely a go.

ELLIOTT: That's good, we need a result.

MAGUIRE: Mmm, so which is really good.

ELLIOTT: We need a result. Got to get a bit of cash flow back in the tin.

- 7.1. Mr Maguire was the chair of the NSW Parliament Asia Pacific Friendship Group (“the APFG”) from 21 June 2011 until his resignation from Parliament on 3 August 2018. This chapter considers Mr Maguire’s activities in using his APFG position to leverage, or seek to leverage, his position for private financial gain. Some of these activities occurred in relation to engagement with countries in the Pacific region. To the extent that conduct on Mr Maguire’s part occurred while outside Australia, by virtue of s 8(5) of the ICAC Act it may nevertheless amount to corrupt conduct under s 8 of the Act.
- 7.2. Parliamentary friendship groups are “groups of members [of Parliament] who meet to raise awareness of and promote particular issues or stakeholder groups”. Friendship groups are always bi-partisan and are open to members of both the Legislative Assembly and Legislative Council. They are established with the approval of the President of the Legislative Council and the Speaker of the Legislative Assembly (collectively, the Presiding Officers).
- 7.3. At the time Mr Maguire became chair of the APFG, the Parliamentary Friendship Groups Policy had just been published in May 2011. Its objects included “provid[ing] a framework and guidelines for the approval of Parliamentary Friendship Groups by the Presiding Officers” and “protect[ing] the reputation of the Parliament by establishing membership, record keeping and reporting requirements to enhance the accountability of approved parliamentary friendship groups”. The APFG developed relationships between representatives from NSW and those from nations throughout the Asia-Pacific region, with a move to develop deeper links with the state’s close neighbours for the benefit of NSW.
- 7.4. One of the criteria for approval of a parliamentary friendship group was that “the Group must not undertake activities of a commercial nature (other than obtaining sponsorship for charitable donations)”. This criterion was repeated in subsequent iterations of the policy published in April 2015 and August 2017. Approvals of a parliamentary friendship group operated for the term of the Parliament. The 2015 and 2017 iterations of the policy bore at the bottom of each page, the injunction, “Compliance with this policy is mandatory”.

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- 7.5. The APFG was founded in December 1999. Its focus was “an opportunity for interaction of Members of Parliament and the Consular Corps, and a high interest in the nations surrounding Australia, with a particular interest in assistance to underprivileged areas”.
- 7.6. According to Mark Coure MP, the secretary of the APFG from 2011 and throughout the relevant period under investigation, the APFG was “created to foster relationships with those community groups from the Asia Pacific area that reside here in New South Wales”.
- 7.7. One of the activities that the APFG was been involved in over the relevant period, between 2011 and August 2018, was cultivating relationships with the consular corps from the Asia Pacific region based in NSW. The APFG commonly organised functions and the like for those consular corps. In Mr Coure’s view, office bearers within the APFG had closer access to consular officials than would a “backbencher” who did not have a role of that kind.

Shenzhen Asia Pacific Commercial Development Association (SAPCDA) – the inception

- 7.8. As earlier mentioned, Mr Maguire was the honorary chair of the Shenzhen Asia Pacific Commercial Development Association (SAPCDA).¹⁸⁷ He assumed that position in 2016. This membership was declared in his disclosures made pursuant to the Disclosure Regulation.
- 7.9. The principal objective of SAPCDA was to assist Shenzhen business people to invest in the South Pacific region and for the South Pacific region to have opportunities with Shenzhen and China.
- 7.10. As the minutes of a SAPCDA meeting held in NSW Parliament House on 20 July 2016 recorded, “[t]he preparatory work to establish SAPCDA officially commenced in Shenzhen in March 2016, when Mr Daryl Maguire MP visited Shenzhen to meet with Mr. Tse and Mr. Li etc. to establish the preparatory team for SAPCDA. Maguire MP agreed to assume the position of Honorary Chairman of SAPCDA, responsible for the communication with the South Pacific countries.” Ms Wang became the secretary of SAPCDA. She acted as an intermediary and interpreter between Mr Maguire and Mr Li and did a lot of the running around in relation to the organisation.

¹⁸⁷ SAPCDA was also sometimes referred to as the Shenzhen Asia Pacific Commerce Council (SAPCC) and also sometimes as the Shenzhen Council for the Promotion of Asia Pacific Commerce and Trade (SCPAPCT) particularly in the MOU it executed with various Pacific countries.

7.11. On 22 April 2016, Mr Maguire sent an email to the consular representatives of three Pacific countries (“country A”, “country B” and “country C”) which thanked the recipients for their attendance at a meeting at Parliament House the previous day, then stated, “I have spoken to Shenzhen SAPCDA regarding our discussions, they are delighted with all arrangements made by us on behalf of the peak bodies chambers of Commerce and business associations in each nation”. Mr Maguire sought “a letter responding on behalf of the consulate and the associations, with contact details for each representative organisation as well as an appraisal of the , economic, social environment , projects , resources and humanitarian needs of each nation [as in original]”. He also advised he had “appointed Ms Maggie Wang to assist me with arrangements correspondence coordination of the project here in Australia and Simon Wang , no relation,in Shenzhen to manage the communications between us and SAPCDA (as in original)”.

7.12. On 16 June 2016, Mr Maguire wrote a letter on parliamentary letterhead, and over his signature block as chair of the APFG, to Mr Li saying:

I write to thank you for your warm hospitality when I visited Shenzhen recently and confirm the discussions we had regarding the formation of the Shenzhen Asia Pacific Commercial Development Association.

I can confirm on my return to Australia I have met with [country A, country B, country C and country D] who have all given in principal [sic] support to joining the Association. Commitments have been given by [“country D”] to extend the invitation to [“country E”] and [“country F”] to join. This meeting will be arranged by [country D] in Canberra soon.

*General agreement has been reached by the government representative that they will arrange for Peak Commerce Representative bodies of each country ie Chambers of Commerce to partner with SAPCDA and was agreed this organisation is to be independent and free of Government influences except to assist in its formation. **In this regard I can confirm my APFG is most willing to assist in the formation of the group using our available resources.** (Emphasis added)*

7.13. Counsel Assisting submitted that it is evident from this letter (and confirmed by the 20 July 2016 minutes), that by this time, Mr Maguire had used his role as the chair of the APFG to benefit SAPCDA.

7.14. The Commission accepts that submission. Mr Maguire accepted that he did not have the authorisation of the APFG to offer the assistance of that group to SAPCDA. He agreed that the Shenzhen organisation was an organisation principally concerned with commerce, so that by offering the assistance referred to in the 16 June 2016 letter, he was knowingly acting in breach of the Parliamentary Friendship Groups Policy referred to above. He also agreed that at least one reason that he was involved in SAPCDA was to attempt to be involved in projects in the South Pacific region, investments or development activities that might ultimately lead to profits for himself, G8wayInternational and possibly Ms Wang.

7.15. How those profits might be earned is in part apparent from the minutes of the 20 July 2016 meeting. They described SAPCDA in the following manner:

SAPCDA is a non-government organisation, and has rich enterprise and business resources in China. The purpose of establishing SAPCDA is to open up extensive business cooperation, information sharing and mutual development with the South Pacific Island countries in areas such as tourism, marine resources, agricultural resources, mineral resources and real estate, and at the same time, to actively participate in charity events that assist with the development of the backward areas in the island countries.

7.16. Those in attendance at the meeting on 20 July 2016 included Mr Maguire, Mr Tse and Mr Li. Mr Maguire was described in the minutes as “Secretary General of the NSW government, Parliamentary Secretary for the ANZAC Centenary, Chairman of the NSW Parliament Asia Pacific Friendship Group, Honourary [sic] Citizen Chairman of SAPCDA.” Mr Tse was described in the minutes as “Former Deputy President of AustCham Southern China, Justice of the Peace, Honourary [sic] Citizen, first point of contact at the Australian Consulate General, Guangzhou, initiator of multiple charity events.”

7.17. During the meeting, Mr Maguire said:

In the past three months, through the NSW Parliament Asia Pacific Friendship Group, I contacted many countries and did a lot of work, which achieved key development. At the moment, seven countries have largely confirmed their intention of strategic cooperation.

[...]

The South Pacific region covers an oceanic area as wide as one sixth of the total area of the earth, but the countries are scattered and some have not formally established diplomatic relations with China. Therefore, it is not straightforward on the foreign policy level to establish cooperation with all the countries at the same time, which will slow down the progress. With that in mind, I was selective in choosing the countries to establish intention of cooperation with SAPCDA.

[...]

Through the NSW Parliament Asia Pacific Friendship Group, SAPCDA will be able to connect with the South Pacific island countries and develop extensive business cooperation in areas such as tourism, marine resources, agricultural resources, mineral resources and real estate. As the Chairman of the NSW Parliament Asia Pacific Friendship Group and Honorary Chairman of SAPCDA, I will help expedite the work at SAPCDA by reasonably using the long-term network I have built with government officials such as the consuls general and commercial counsellors. (Emphasis added)

SAPCDA – commerce or charity?

7.18. As noted above, Mr Maguire agreed that the SAPCDA organisation was an organisation principally concerned with commerce. A further explanation of this objective was given by Mr Tse, who was not available to be called to give evidence at the public inquiry, during a compulsory examination as follows:

[Counsel Assisting]: But really, substantively, this document suggests to us that the primary purpose of the [SAPCDA] organisation was business purposes.

[Mr Tse]: Yep.

...

[Q]: Mr Li wanted to use the organisation to make money out of projects in the South Pacific region. Is that correct?

[A]: Make money? Yeah, business, yeah.

[Q]: It was for business. Is that right?

- [A]: Mmm.
- [Q]: And you were there for business as well?
- [A]: I'm part of the group.
- [Q]: You're part of the group which was there for business. Is that right?
- [A]: Mmm.
- [Q]: **Sorry, is that correct? Could you answer that on the record, you were part of the group that was there for business. Is that right?**
- [A]: **Yeah.**
- (Emphasis added)

7.19. Mr Li gave evidence to like effect that SAPCDA was primarily a commercial organisation looking for business opportunities in the Pacific Island region. The idea that SAPCDA should focus on commercial profits rather than on philanthropic activities accorded with Mr Maguire's understanding of Mr Li's objectives. It also accorded with his own view of the focus of the organisation, in which context, he hoped there might be some profits for himself and perhaps Ms Wang. Ms Wang also gave evidence to similar effect, while noting that there was a view that the organisation "had to make money first" before engaging in charitable activities.

7.20. Following the formation of SAPCDA, Mr Li said Mr Maguire assisted it by setting up meetings with government officials and businesspeople with a view to it having investments in the South Pacific region.

7.21. Mr Tse described Mr Maguire's involvement as follows:

- [Counsel Assisting]: Did you know that Mr Maguire was the honorary chairman of this organisation?
- [Mr Tse]: Honorary Chairman, yeah.
- [Q]: You knew?
- [A]: I can remember.
- [Q]: **What did that title mean?**
- [A]: **Mr Maguire helping to contact all the consul general and chamber of commerce organisation and be, try to dealing with us and we thought we would have his name in the organisation, look more official.**
- [Q]: To make it appear as though he had some ability to represent the organisation, is that right?
- [A]: Yep.
- [Q]: And was he, in fact, part of the organisation, Mr Maguire?
- [A]: Yeah, he did help a lot with the contacting people, you know, supplying all the information.
- (Emphasis added)

SAPCDA's activities

7.22. Part of SAPCDA's *modus operandi* was to sign MOUs with South Pacific countries. There was a standard agreement which applied to all South Pacific countries, of which the MOU SAPCDA signed with country E was an example. SAPCDA sought to sign such documents with as many South Pacific countries as possible. It was Mr Maguire who arranged for MOUs to be signed between SAPCDA and Pacific Island nations by people like consuls general or other government officials. He helped act as a "shortcut" to give access to government officials (and commercial people) in the South Pacific area, because none of Mr Li, Mr Tse or Ms Wang knew any officials.

7.23. Some members of SAPCDA were interested in buying a casino in the Pacific Islands. To that apparent end, Mr Maguire wrote the following in an email to a government minister in country B, on 15 February 2017:

Just a quick note to say hello and enquire about the SAPCDA agreement we discussed. I have not had any communication from the Chamber of Commerce so I guess they don't want to proceed. Can you please advise me if you [sic] group are now in a position to sign the document. I am travelling to [country C, country D, country E and country F], in April to finalise those arrangements with them. I would like [country B] agreement in place soon before I depart.

Also the friends in China wish to explore purchasing a CASINO in [country B], do you have connections and can you make the necessary introductions in the next few months if necessary? (Emphasis added)

7.24. On 31 March 2017, Mr Maguire wrote to the same government minister again, on this occasion on parliamentary letterhead, over a signature block identifying himself as the chair of the APFG. The letter referred to a previous meeting, apparently between Mr Maguire and the minister in country B, and other communications. It "officially" invited the minister and a small delegation to meet in country D in early April 2017 "to further discussions about the formation of the Shenzhen [sic] Trade Group". It explained that in his capacity as honorary chair of that group, Mr Maguire had arranged for a delegation from Shenzhen to travel to countries D, C, F and E "with the aim of formalising agreements for them to participate". It pointed out that country D had already signed "the Memorandum of understanding" and that the expectation was that the culmination of the visit would be that "all countries will join". It is apparent, from the letter, that Mr Maguire had already given the minister a copy of the proposed MOU. Mr Maguire advised that he believed this was "an outstanding opportunity for Pacific Island countries to engage in commerce and trade with our largest Asian neighbour and enjoy common benefits in commerce, trade, culture exchange, innovation and agricultural advances".

7.25. The MOU explained that the principle of the Shenzhen Council was "to engage to [sic] developing countries to promote the commerce and trade as well as charitable projects". It described the composition of SAPCDA as consisting of "successful business men, women and companies who look forward to investing in Asia Pacific countries in sectors including tourism, real estate, mineral resources, ocean resources as well as the generosity donate to charitable organization [sic]".

Why was Mr Maguire involved?

7.26. Mr Maguire accepted that he used his position as the chair of the APFG and the network of contacts it provided him to set up various meetings for the benefit of SAPCDA, including meetings with consuls general. He never disclosed, when setting up such meetings, that he hoped to benefit financially from the activities of SAPCDA.

- 7.27. Mr Maguire also accepted that it was a fair characterisation that he was using the weight of his office and the diplomatic and consular ties it afforded him to advance private business interests in China with the ultimate hope, if possible, of gaining some personal profits for himself. He agreed, albeit with the benefit of hindsight, that it was quite wrong to do that because in effect he was using an office he had as chair of the parliamentary friendship group to benefit himself and to benefit private business interests of certain Chinese business people.
- 7.28. Mr Maguire asserted that he would still have done all that he did for SAPCDA even in the absence of a personal profit motive, although he also accepted that he was at least in part motivated by the hope of personal profits. This is evident from a telephone conversation, discussed in more detail below, he had with Mr Elliott on 9 December 2017 about the prospects of SAPCDA investing in country C. After having been played a recording of the telephone call, Mr Maguire agreed that his involvement in, at least, seeking to advance SAPCDA's investment in country C, was driven by "pure profit motive".

The First Pacific Islands trip – 2017

- 7.29. Mr Maguire's letter of 31 March 2017 to the government minister of country B was written in anticipation of a trip members of SAPCDA – being Mr Maguire, Mr Li, Mr Tse and Ms Wang – took between 7 and 16 April 2017 to countries E, D, F and C ("the First Pacific Islands trip"). Mr Maguire also participated in a second trip to that region, on that occasion to countries B and A in February 2018, again with members of SAPCDA. Mr Maguire also met with consular officials from countries C and F in preparation for the First Pacific Islands trip.
- 7.30. Mr Maguire played an integral role in setting up the itinerary and meetings in relation to those two trips, although the actual itineraries may have been compiled by a member of his staff with Ms Wang's assistance. A draft itinerary was prepared by Adriana Lions, Mr Maguire's electorate officer, in February 2017. Mr Maguire sent it to Ms Wang who said she would forward it to Mr Li. It appears she did, as Mr Li's evidence in response to a question as to who organised the trip was that "Maggie notified me for the meeting". There appear to have been discussions with Mr Tse as well. Mr Li said that he and Mr Tse had to be involved as "we have to take into consideration the cost of the trip".
- 7.31. The First Pacific Islands trip was paid for by SAPCDA, through its members, as well as through business people in Shenzhen who wanted to promote some of their projects through SAPCDA, and so paid it advance commission. SAPCDA also paid Mr Maguire the sum of \$3,500 by way of spending money or allowance which was given to him in cash inside a white sealed envelope at Sydney Airport.
- 7.32. In anticipation of this trip, it appears that Ms Lions contacted the Department of Foreign Affairs and Trade (DFAT) in April 2017 advising Mr Maguire "would like to meet with the Chamber of Commerce in [country C], as well as any other peak commercial bodies". DFAT responded letting her know "what the process is for MP's [sic] travelling overseas" and asking for the details of his trip. Mr Maguire then asked Ms Lions to inform DFAT that "although he is a member of Parliament, that is not the main capacity in which he is travelling to [country C]".
- 7.33. Mr Maguire agreed that the main capacity in which he was travelling to country C was to promote the interests of the Shenzhen group of business people. Notwithstanding that he agreed his position as a member of Parliament was not the main purpose for the trip, he said that during the trip he would still introduce himself to people as such and as chair of the APFG and would use his parliament business card, which included the words "New South Wales Parliamentary Friendship Group", if there was an exchange of name cards or business cards during a function.

- 7.34. In addition, Mr Maguire used his APFG contacts to arrange the trip. He advised the honorary consul for country F of his plan to visit that country, in particular its Chamber of Commerce, describing it in an email header as a visit by a delegation of the NSW Parliament Asia Pacific Friendship Association. The “delegation” consisted of himself, Ms Wang, Mr Li and Mr Tse, all members of SAPCDA. In response to an inquiry from the Chamber of Commerce as to how they could assist and any possible program, Ms Lions advised the schedule had not been confirmed.
- 7.35. Further, when the DFAT officer who had contacted Ms Lions in April 2017 asked if in the light of her reply, the original inquiry was “no longer relevant to Mr. Maguire’s trip overseas”, Mr Maguire told Ms Lions to tell DFAT “it’s all being arranged by the CG”, that is to say the consul-general, with whose good offices he was presumably acquainted by reason of his APFG role.
- 7.36. It appears manifest that Mr Maguire did not regard the trip as one on behalf of the APFG, let alone a delegation by it, as it is not reported in that group’s 2017 annual report. However, it is clear that others, particularly in the Pacific region, did not readily dissociate themselves from their perception of him as a member of Parliament. This blurring of his role as a member of Parliament and his role in SAPCDA was no doubt a function of him writing to people such as, the government minister of country B, referring to his “hat” as honorary chair of the “Shenzen [sic] Trade Group”, albeit that, as previously noted, that letter was written on his Parliamentary letterhead and over his signature block as chair of the APFG.
- 7.37. SAPCDA’s “wish to explore purchasing a CASINO in [country B]” was pursued with vigour during the First Pacific Islands trip, albeit in country C, not country B.
- 7.38. On 13 April 2017, Mr Maguire’s electorate office in Wagga Wagga, on Mr Maguire’s behalf, sent an email to the CEO of the Chamber of Commerce in country C, confirming a meeting between the two at 9 am on 15 April 2017.
- 7.39. On 15 April 2017, the delegation met the CEO of the Chamber of Commerce of country C and the immediate past CEO. Minutes of the meeting (which were taken by Ms Wang) were headed Shenzhen Asia Pacific Commerce Council (SAPCC – as earlier noted, another description of SAPCDA), and were prepared in Chinese and English. SAPCC was described as “a not-for-profit organisation providing its members with a business and trade platform and extension services by using its extensive social resources. When the opportunity is available, and in accordance with the needs and agreements of both parties, platforms for business, trade, health and philanthropy etc. will be built to promote local economy, increase employment and improve living standards.”
- 7.40. Ms Wang recorded that those present “discussed possibilities and breakthrough points to work together in the business field in [country C]”. That being said, all of what were described in the minutes as “breakthrough” points involved business matters such as setting up a high technology innovation park, wholesale markets aimed at the South Pacific area, developing tourism, restaurants, hotels and casinos, golf courses and direct flights from China. Country C mentioned issues of concern to them, including the closure of an enterprise that had been operated by a foreign company for 25 years which employed 740 workers and contributed a significant percentage of its GDP and exports. During the meeting, an MOU and a Strategic Cooperation Agreement were signed by both parties.
- 7.41. It does not appear that the “breakthrough” points were discussed in detail on 15 April 2017. In his evidence, Mr Li indicated that in the course of the CEO of country C’s Chamber of Commerce taking them on a tour of a night market, during which Mr Maguire was present, the topic of a

casino and a resort came up. In Mr Li's view the two concepts, a resort and a casino, went hand in hand. As he said in response to Counsel Assisting:¹⁸⁸

[Counsel Assisting]: *And in [country C] was there discussion about a casino licence?*

[Mr Li – through interpreter]: **Not a casino itself. It was a resort, holiday resort was discussed and the casino licence was part of it.**

[Q]: ***And so as part of a resort there might be a casino within the resort. Is that right?***

[A – through interpreter]: ****All holiday resorts should have casinos, otherwise there is no point having the resort.****

[Q]: *And there was some discussion as to whether either you or other business people from Shenzhen could invest in that resort and casino. Is that right?*

[A – through interpreter]: **Correct.**

(Emphasis added)

- 7.42. According to Mr Li, the CEO of the Chamber of Commerce was “*very much hoping that we could have set up a resort there so we could boost the local tourism*”, as was the delegation which was “*hoping that [the CEO] could provide resources.*” Mr Tse saw the casino licence as a business opportunity in country C for Mr Li.
- 7.43. Mr Maguire agreed that he assisted Mr Li to explore the project of getting a resort and an accompanying casino licence off the ground by arranging meetings. He saw such a resort and licence as a possibility of a profit-making venture for G8wayInternational through some management opportunities for Mr Elliott, and possibly profits for himself and Mr Elliott, as well as Mr Li.
- 7.44. Following his meeting with the delegation, and consistent with Mr Li's belief, on 20 April 2017, the CEO of country C's Chamber of Commerce sent an email to Mr Li “and members of the SPACT delegation”, thanking them for visiting the Chamber of Commerce and country C and attaching documents relating to tax rates in that country and the application process for a casino licence. The email was sent to Mr Maguire, Ms Wang and Mr Tse, presumably with the intention that one of them would provide the details to Mr Li.
- 7.45. Following the First Pacific Islands trip, on 21 April 2017 Mr Maguire sent letters of gratitude to several government and consular officials using his parliamentary letterhead. The letters sent to the consuls general of countries B, C, D and F included an invitation to attend a lunch at the Strangers' Dining Room at NSW Parliament House on 3 May 2017. Those addressed to the consuls general of countries C, D and F advised that “The leader of the delegation Mr Li and I would be pleased to invite you to a lunch to express our appreciation and give you a briefing of our successful visit.”
- 7.46. A letter, again on Mr Maguire's parliamentary letterhead, emailed to the CEO of country C's Chamber of Commerce on behalf of Mr Maguire on 24 April 2017 included the following statement:

Mr Li has suggested [country C] will be the first to benefit from the new agreements.

¹⁸⁸ Mr Li's evidence was given through an interpreter as indicated by the asterisks when his evidence is quoted.

- 7.47. On 3 and 17 May 2017, SAPCDA meetings were held at NSW Parliament House which were attended by, amongst others, Mr Li, Mr Maguire, Ms Wang and the consul-general of country C (who apparently attended on 17 May only). In addition to the representatives of the Pacific Island countries the delegation had visited in April, the consul-general for country A was present. Once again, Ms Wang took minutes which again were headed as the minutes of the Shenzhen Asia Pacific Commerce Council (SAPCC). Notably, Mr Maguire was the only member of the APFG present. Minutes of the meetings (which do not differentiate between the two different dates) repeated many of the “breakthrough” points from the 15 April 2017 meeting verbatim, including:
- Breakthrough Point 3: Developing tourism, restaurants, hotels and **casino**, golf courses, and direct flights from China. The upgrade of the International Airport in [the capital of country C] is expected to be completed by the end of this year. Currently the project is being undertaken by Shanghai Construction Group. (Emphasis added)*
- 7.48. As is apparent from the meeting on 15 April 2017 of the SAPCDA delegation with members of country C’s Chamber of Commerce, it appeared that at that date, that body could provide the entrée to SAPCDA obtaining a casino/resort licence in country C. However, that position changed as emerged in a conversation Mr Maguire had with Ms Wang on 2 August 2017. Referring to Mr Li, Ms Wang said, “he keep mentioning, you know, the situation has been changed, totally changed from six months ago, it’s very – very difficult to get money out of China to invest overseas ... And so that’s why he said only way to do it is through government. So if it’s not government it’s you know private, you know, forget about it there’s no way we can do it now it’s just impossible.” In addition, it appears that by this time, Mr Li’s interest may have shifted from the resort/casino project to developing a market using land about to be vacated in country C by a foreign corporation.
- 7.49. According to Ms Wang, Mr Maguire ultimately drafted a letter for the government of country C to sign to be provided to the Shenzhen government to obtain government approval to get money out of China.
- 7.50. However, by September 2017, according to a text Mr Maguire sent Ms Wang just after he landed in Sydney following a trip to country G, he was concerned that Mr Li was “going to stuff around with Project”. It appears Mr Maguire was contemplating trying to get country G involved either with a casino in country C or a factory. Within 10 or so minutes of sending that text, Mr Maguire rang Ms Wang. Mr Maguire said he had talked to people in country G about the factory closure and told them, “this is a big problem”. It is apparent from their conversation that the CEO of the Chamber of Commerce of country C was in town, and they contemplated trying to arrange a meeting with him to resolve the issue of obtaining the letter from country C’s government Mr Li wanted. One of Mr Maguire’s ideas was to obtain such a letter from another Pacific country, such as country E where apparently the government rather than a chamber of commerce had signed the MOU, with a view to that country in effect leading by example in the hope that country C might follow.
- 7.51. However, things looked up again towards the end of October. On 27 October 2017, Ms Wang told Mr Maguire that Mr Li had rung and advised “so it’s pretty good in his sight, you know, end and he sought the region approval from Shenzhen Government ... to go ahead with our project with... [country C].” It appeared Mr Li had contacted Ms Wang straight after his meeting with Shenzhen authorities and, now that he was confident a project in country C could proceed, wanted Mr Maguire to arrange for him to have access to a higher governmental level (such as the prime minister) than the CEO of the Chamber of Commerce. Mr Maguire enquired as to the amount of investment Mr Li was talking about, and Ms Wang said, “tourism airlines”. She also mentioned the foreign factory which was about to close and how to help the workers.

Ultimately, Mr Maguire said Mr Li should write a letter on letterhead referring to the go ahead having been given so he had something in hand he could talk to the consul-general about seeking a meeting with the prime minister. Mr Li denied that he made any request to meet with country C's prime minister.

- 7.52. Two days later, on 29 October 2017, Mr Maguire had a telephone conversation with Mr Elliott in which he told him the “good news ... Shenzhen gave us the nod, the central government”. He said:

Mmm, so um, so all good news. He's coming back in a couple of weeks and um we'll see what the next step is now. I, I think it's a quick trip to um, ah [country C]. I think that's gonna happen in the next few weeks because he wants me to get him an appointment with the Prime Minister .

- 7.53. It is apparent from this that Mr Li was returning to Australia, and that Mr Maguire expected to accompany him on a trip to country C to meet the prime minister to advance the SAPCDA investment in that country. It appears from a remark by Mr Maguire to Mr Elliott – “you got your accounting hat on and your licences in place” – that Mr Maguire saw Mr Elliott as having some role in the project moving forward.
- 7.54. Mr Maguire met Mr Li at NSW Parliament House on 16 November 2017. On 24 November 2017, Mr Maguire apparently returned a call to Ms Wang who told him Mr Li had just rung her to “ask about the progress and because we haven't heard anything from [the CEO of country C's Chamber of Commerce] because he's on holiday – for two weeks”. Mr Li apparently had to leave soon and was wondering if an appointment could be made to see the consul-general for country C “to push it forward”. Mr Maguire said he would make the arrangement but told Ms Wang she could go with Mr Li because he, Mr Maguire, was too busy.
- 7.55. Mr Maguire arranged a meeting for Mr Li and Ms Wang with country C's consul-general for 7 December 2017. Ms Wang reported on the meeting to Mr Maguire on 8 December 2017, advising that it “went well”. It appears that Mr Li was focusing on the idea of the wholesale markets with the prospect of using some of the workers from the foreign factory who had not been placed yet. Otherwise, Ms Wang advised that Mr Li confirmed the date for Mr Maguire's second trip to the Pacific region with him, on this occasion to countries A and B, in February 2018. Mr Li also appears to have flagged another trip with Mr Maguire to country C. Mr Maguire told Ms Wang that he had “spoke[n] to [the Consul General for country A] this morning” and that he would “make sure we meet the Prime Minister and the Deputy Prime Minister”.
- 7.56. On 9 December 2017, Mr Maguire had a telephone conversation with Mr Elliott in which he reported on recent events. It is apparent that Mr Maguire had more information from Mr Li than Ms Wang had imparted the previous day. Mr Maguire said he had “organised for Li to go and meet the [country C] um, Consulate”, that Mr Li had “gone back to Shenzhen now and um, they were happy with the meeting”, so in February he was going to countries A and B, and in March country C was going to be visited “in the next round” for 10 days and “they” were bringing “a dozen business people”, “their own jet”, “calling in” to Australia, “then going to country C and then come back to drop us off on the way back”.
- 7.57. Mr Maguire's view at the time was that country C “is definitely a go”, to which Mr Elliott responded “We need a result. Got to get a bit of cash flow back in the tin.” Mr Maguire then suggested such matters were “probably the kind of things you should talk about over a barbecue fire”. After having been played a recording of this intercepted telephone call, Mr Maguire agreed he was hoping that in the event that the casino project in country C proceeded, there would be some profits for him and Mr Elliott.

- 7.58. Mr Elliott said that he believed that the reference to country C “is definitely a go” related to the proposed development of a casino. Mr Elliott said his reference in that conversation “to get[ing] a bit of cash flow back in the tin” reflected his hope “that G8wayInternational would have had some sort of involvement and some sort of commission base from that”.
- 7.59. Mr Maguire agreed, in relation to the casino venture, that he provided assistance to Mr Li including setting up meetings through his consular contacts, and that he was taking steps with his APFG hat on, with a view to making some money for himself and Mr Elliott. He also agreed that his involvement in seeking to advance SAPCDA’s casino investment in country C was not done for any charitable purposes, but was driven by a “pure profit motive”.
- 7.60. Mr Elliott agreed the casino venture was also an example of Mr Maguire, acting as the director of G8wayInternational, trying to achieve business activities for the company and Mr Elliott, as the nominal director, leaving it to Mr Maguire to manage the details, but providing the corporate vehicle.

The Second Pacific Islands trip – 2018

- 7.61. In February 2018, Mr Maguire visited countries A and B with Mr Li and Ms Wang (“the Second Pacific Islands trip”).
- 7.62. On 5 February 2018, Ms Wang advised Mr Maguire that Mr Li had “asked who we are planning to see in [country A]? PM?”. Mr Maguire replied, “Anyone he wants to meet.”
- 7.63. In a telephone call on 12 February 2018, Mr Maguire told the government minister of country B, referred to above, of the planned trip to that country. He said that he was going to arrive on 19 February 2018 and that Ms Wang and Mr Li were arriving the next day. He asked the minister to see if it was possible for his group to meet the prime minister during their visit, including hosting a dinner for him “to make a friendship”. The minister said he would “definitely ... get ... important people there to be able to try and plan ahead”.
- 7.64. As with the First Pacific Islands trip, it is apparent the purpose of the second such trip was to promote the interests of the Shenzhen group of businesspeople.
- 7.65. On 17 February 2018, Mr Maguire exchanged emails with the consul general for country A about “our planned visit to [country A] with the Delegation leader Mr Li”, advising “they want to explore Mangrove farming and other things we will send the background document today”. The consul general responded, “Thank you and see you soon!”
- 7.66. The SAPCDA trip to countries A and B took place between 19 and 26 February 2018. Mr Maguire agreed that he would have handed out his parliamentary business card on SAPCDA related trips, which included a reference to his role as chair of the APFG.
- 7.67. As is apparent from Mr Maguire’s communications with the government minister of country B, the delegation appears to have visited that country first.
- 7.68. The consul general for country A met Mr Maguire, Mr Li and Ms Wang at the airport in country A on 22 February 2018. In a text to country A’s consul general the same day, Mr Maguire thanked him for that and also advised:

We need you to arrange a meeting to discuss mangrove farming of fish, clams, crab, etc. with relevant minister also Mr Li wants to host a dinner with you and ministers for. Agriculture? Development? Immigration? And Prime Minister either Friday or Saturday night, we want to meet these people during the day, we wish to know the investment conditions and Opportunities the Government have and want partners in!

- 7.69. SAPCDA paid the expenses of the Second Pacific Islands trip. However, Mr Li was unhappy with the itinerary Mr Maguire's office and Ms Wang had arranged for the trip which was too tight to enable him to see the people he wanted to see in country A or the sites he wanted to see in country B. Accordingly, he and the Shenzhen director-general of SAPCDA decided they would not give Mr Maguire an allowance for the Second Pacific Islands trip, as they had for the First Pacific Islands trip.
- 7.70. Mr Maguire's view of the trip was more sanguine. He described it to Mr Alha in a conversation on 28 February 2018 in positive terms. He said country B was "good", and that he had made progress with Mr Li, referring to Mr Li having "investments in [country A] ... logging and property". He was particularly enthusiastic about country C saying:
- MAGUIRE: – but we're going back to [country C]. They're deadly serious about investing in [country C] that's – it's gonna happen.*
- ALHA: But the – what – what do they want to do there?*
- MAGUIRE: Oh they want to invest in a casino and motel and there's a big – there's a big undercover property that ... they want it.*
- 7.71. It is apparent from this conversation that Mr Maguire was very confident that an investment would be made into country C and that a casino was still a project in contemplation, as well as a prospective development of the disused factory.
- 7.72. However, Mr Li said that by the time he had met with the consul general of country C on 7 December 2017, SAPCDA had been losing interest "regarding the casino licence because it was already half a year since the discussion". He wanted help from the consul general to allow the proposed investment to take place, including government approval from country C in relation to the resort. There was no evidence before the Commission as to whether SAPCDA ever proceeded with the resort/casino venture.
- 7.73. Mr Maguire agreed that the main purpose of both Pacific Island trips was not in any official capacity of his, but rather, in his capacity as the honorary chair of SAPCDA to promote that group of business people. However, he accepted that he used his position as chair of the APFG as a door opener in the South Pacific region to benefit SAPCDA. He agreed that this was an activity divorced from his public official functions and something he should not have done.

The oil technology project

- 7.74. Mr Maguire also used his position as chair of the APFG in pursuit of personal financial gain in connection with an oil extraction technology that he and Ms Wang sought to sell.
- 7.75. On 27 March 2018, Ms Wang told Mr Maguire about a new Chinese petroleum exploration technology which would enable oil to be extracted from old wells, the clay content of which had hitherto rendered the extraction process too expensive. She described it as revolutionary technology.
- 7.76. Mr Maguire and Ms Wang spoke about the new technology again on 29 March 2018, when Mr Maguire told Ms Wang he had hit the "jackpot", as Steve Galilee, the CEO of the Mining Association, had rung him back. They discussed the sort of money which could be made from a business exploiting that technology in Australia, and how any such money would be structured. They also considered how they could earn money from the endeavours of the Chinese inventors should the inventors set up a company in Australia, Ms Wang's suggestions being having shares in the company or getting a consulting fee, but whatever form the remuneration might take, she and Mr Maguire would "do um the you know as before half, half".

7.77. During the call, Mr Maguire suggested that 3% of turnover was “the standard thing” and observed that:

three percent of whatever it is um, ah and when you're talking oil you're talking big money.

7.78. Mr Maguire’s evidence was also that the sale of the oil technology was to be dealt with on a 50:50 basis as between Ms Wang and himself. It did not involve G8wayInternational.

7.79. As Counsel Assisting submitted, it is apparent that Mr Maguire foresaw the possibility of significant financial gain, “big money”, from the successful sale of the oil extraction technology.

7.80. Mr Galilee apparently put Mr Maguire in touch with Malcolm Roberts, the CEO of the Australian Petroleum Production and Exploration Association, with whom he spoke by telephone on 3 May 2018 as follows:

MAGUIRE: Um, and we were actually thinking about going but I, I want to try and get a shortcut if I can because I just don't have time to muck around. Just to give you um, a background, I'm ah, Chairman of the New South Wales Parliament Asia Pacific Friendship Group.

MALCOLM ROBERTS: Right.

MAGUIRE: Um, we're normally the first port of call for a lot of enquiries with regards to just about everything um, from the Asia Pacific countries. Now um, I've got an enquiry and they've, they want to make some contacts. Um, this group have got some new technologies. They call it enhanced viscosity program so it's an oil displacement ah, program that ah, extracts apparently 30 percent more oil from a, um dormant well, and they want to ah, engage with some Australian oil producers with um, ah, you know um, ah producing wells -

MALCOLM ROBERTS: Okay.

MAGUIRE: – um, to talk about this technology. Now apparently um, this technology has existed but they're saying that they've got new ah, chemicals or new products that um, will extract more -

MALCOLM ROBERTS: Okay.

*MAGUIRE: – and, and what we want to do is fi – have some um, introductions. Um, what I'm doing is I'm actually getting some background on it um, you know the, the techniques and all of that stuff. **They, they want us to make the introductions.** Um, I've got a woman that's doing the interpreting and arranging all of that, so I'm wondering if you can firstly help us out.*

...

MAGUIRE: Correct, correct. Okay, that's – alright so I'll get that all organised. I've got your phone number now and -

MALCOLM ROBERTS: Great.

MAGUIRE: – and I'll just Google your address in Canberra.

MALCOLM ROBERTS: Yeah, I, I can send you through um – you, you’ll have a – I can send something to your electoral [sic] officer if you like um but –

MAGUIRE: Send it to me at my private email.

(Emphasis added)

- 7.81. Mr Maguire agreed that in this conversation with Malcolm Roberts, he sought to leverage his role as chair of the APFG with a view to obtaining profits in connection with the sale of oil technology. He admitted that he did not have approval from the APFG to use his office as chair in this fashion, a proposition Mr Coure confirmed. Mr Maguire also agreed that he did not report his invocation of his role as chair of the APFG to market oil technology to the APFG, another proposition with which Mr Coure agreed.
- 7.82. Counsel Assisting submitted that it is apparent from the second extract of Mr Maguire’s conversation with Malcolm Roberts that Mr Maguire’s enquiries about the oil technology was a private pursuit rather than something done in discharge of Mr Maguire’s public duties. At no stage during the call did Mr Maguire advise Malcolm Roberts that he was pursuing his own financial interests. Rather, the invocation of his role as chair of the APFG was calculated to suggest the opposite to Malcolm Roberts.
- 7.83. The Commission accepts that submission. It finds that in this conversation with Malcolm Roberts, Mr Maguire was using his role as chair of the APFG to cloak his pursuit of pecuniary benefit. This was a breach of public trust.
- 7.84. Malcolm Roberts participated in a voluntary interview with the Commission on 6 March 2019. He said that Mr Maguire had come to see him in his Canberra office on 25 May 2018 and given him a reasonably substantial document explaining some of the new enhanced oil recovery technique. Mr Maguire gave Malcolm Roberts a copy of this document without the identification of the company, which Malcolm Roberts thought was a little odd, in the sense that if it was a recognised company in that line of work, it would have been more credible for him to pass that to a member company. He thought the only reason why Mr Maguire would pass a document to him without the branding on it was perhaps to make himself an agent for the discussion and funnel the conversation or connection through him.
- 7.85. This behaviour on Mr Maguire’s part is consistent with other occasions referred to in the report in which he sought to avoid being circumvented – the Achilles heel of acting as a middleman.
- 7.86. Mr Maguire did not agree that his statement to Malcolm Roberts that the APFG was the “first port of call for a lot of enquiries with regards to just about everything ... from the Asia Pacific countries” was false, although he agreed it was an overstatement. Mr Coure stated that that characterisation was “not accurate at all”.
- 7.87. Counsel Assisting submitted that the Commission should prefer Mr Coure’s evidence in this respect as being consistent with the annual reports for the APFG and with the evidence generally as to that body’s functions. They also submitted it was given by a witness who presented as a witness of truth and should be accepted as such. Mr Maguire did not submit to the contrary.
- 7.88. The Commission accepts Counsel Assisting’s submission. It also notes that the conversation between Mr Maguire and Ms Wang on 29 March 2018 concerning how they could share the proceeds of any successful exploitation in Australia of the Chinese company’s technology, the lengths Mr Maguire went to to ensure Malcolm Roberts did not communicate with him through his “electoral” officer, as well as the anonymisation of the document Mr Maguire gave Malcolm

Roberts describing the oil recovery technique, demonstrate that Mr Maguire was seeking to exploit the oil technology proposal as a private profit-making enterprise unconnected to any parliamentary role he held.

- 7.89. However, in seeking to make that profit, he exploited his position as a member of Parliament and as chair of the APFG and misrepresented the function of the APFG to justify his approach to Mr Roberts in May 2018. As Counsel Assisting submitted, and Mr Maguire accepted, he was seeking to leverage his position as chair of the APFG which made it more likely that Malcolm Roberts would lend his assistance to Mr Maguire's personal pursuit. It is notable that Malcolm Roberts said that if Mr Maguire had not been a member of Parliament, he would probably not have agreed to see him.

Leveraging APFG contacts in connection with Smartwest.Sydney

- 7.90. Mr Maguire also used connections he had made through his role as chair of the APFG in an attempt to advance a personal commercial pursuit in relation to Smartwest.Sydney. The latter was a planning proposal concerning substantial land holdings towards the west of the then proposed airport. Those land holdings are (or, at least, were at all material times) associated with the Waterhouse family of which Louise Waterhouse is a member. Ms Waterhouse first met Mr Maguire through the APFG. In circumstances detailed in chapter 8, in 2017, Mr Maguire sought to earn commission by assisting Ms Waterhouse to resolve planning issues in a way which would enable her fully to exploit the potential of the Smartwest.Sydney land. An early attempt involved him seeking to attract investors from country G to purchase or invest in the land.
- 7.91. On 11 September 2017, Mr Maguire dined at the home of Mr Z, the then consul general for country G in Sydney. He met Mr Z in his capacity as chair of the APFG.
- 7.92. On 14 September 2017, Mr Maguire called Mr Z for purposes he admitted involved using the consular network to which he had access as chair of the APFG with a view to pursuing his private business interests. He agreed that he called Mr Z in his capacity as chair of the APFG, and as a friend.
- 7.93. It is apparent from the conversation that the topic of the Badgerys Creek airport had been raised in Mr Maguire's discussion with Mr Z at the dinner three days earlier. Dinners with consular officials were part of Mr Maguire's regular round of functions as chair of the APFG.
- 7.94. During the conversation, Mr Maguire broadly described Ms Waterhouse's land at Badgerys Creek as being used to construct the support network for the airport and also its potential for a technology park, housing and development. He said he had been asked by a friend (who he never identified by name but said in his evidence at the First Public Inquiry could have been Ms Waterhouse or Mr Luong) to do "some matchmaking" and find either a partner or a buyer for the land. He suggested Mr Z might be able to suggest some major companies from country G that were interested in making some investments. He said he could arrange a briefing for Mr Z.
- 7.95. Mr Maguire agreed that he never advised Mr Z of his own financial interest in the matter, and that he would not have engaged in the call but for his own financial interest in receiving a fee in respect of the sale or development of the Smartwest.Sydney site.
- 7.96. In the week or so which followed, Mr Maguire arranged meetings between Mr Z and Mr Luong and Tim Lakos of Country Garden Australia Pty Ltd (discussed in chapter 8), presumably to provide the briefings Mr Z thought advisable, but ultimately nothing appears to have transpired from Mr Maguire's endeavours in this respect.

- 7.97. Mr Maguire also agreed that it was quite wrong in circumstances where he did not make it clear to Mr Z that he was motivated at least in part by personal profit interests, to be saying something about the relationship between Australia or perhaps NSW and China, without disclosing that at least one of the reasons that he was identifying that point was with a view to making money for himself.
- 7.98. As Counsel Assisting noted, it is not suggested that Mr Z acted improperly or inappropriately in any way during or in connection with the telephone conversation with Mr Maguire. On the contrary, it appears that Mr Z was confronted with the very awkward situation of Mr Maguire acting in a way that was quite wrong. Mr Z dealt with that situation as well as could be expected in difficult circumstances.

Mr Maguire's submissions

- 7.99. Mr Maguire first submitted that the role of the APFG was to facilitate bringing together business chambers in the Asia-Pacific region. He contended that it was never intended, nor was there any evidence to suggest, that the APFG itself, under the chair of Mr Maguire, sought to undertake activities of a commercial nature, contrary to clause 4.1(f) of the Parliamentary Friendship Groups Policy. He argued that the APFG, by providing support and encouragement to establish SAPCDA, was clearly not itself engaging in commercial activities but facilitating commercial activities within the region between members of SAPCDA and other regional chambers of commerce.
- 7.100. This submission pays no attention to Mr Maguire's admission that in offering the assistance of the APFG to SAPCDA, an organisation principally concerned with commerce (and without the APFG's authorisation), he was knowingly acting in breach of the APFG policy that a friendship organisation should not be involved in commercial activities.
- 7.101. Secondly, Mr Maguire submitted that there was no evidence of any commercial activity by the APFG or financial benefit to the APFG. There is also no evidence of any commercial activity (actual or contemplated), nor any financial benefits between members of SAPCDA, and the members of the chambers of commerce.
- 7.102. Once again, Mr Maguire's submission pays no regard to the considerable evidence of SAPCDA's ambitions during the First and Second Pacific Island trips to pursue the development of a casino and resort in country C, an ambition in which Mr Maguire assisted them by using his APFG contacts to arrange meetings for SAPCDA with members of country C's Chamber of Commerce through whom it was hoped this opportunity could be pursued. All this, of course, was undertaken by Mr Maguire with the hope that in the event the casino project in country C proceeded, there would be some profits for him and Mr Elliott.
- 7.103. On the Second Pacific Islands trip, again wearing his APFG hat, Mr Maguire arranged meetings with relevant government officials and SAPCDA, which was looking at investing in logging and property. The fact that it does not appear any of SAPCDA's projects came to fruition in the period under consideration does not detract from the fact that Mr Maguire was misusing his role as chair of the APFG to promote SAPCDA's commercial activities.
- 7.104. Thirdly, Mr Maguire accepted that he did not have express authority or approval from the members of the APFG. He submitted that that may be a governance issue but that does not support a finding that his actions in helping create SAPCDA were corrupt and, therefore, constituted the offence of misconduct in public office.

- 7.105. Mr Maguire's actions in helping create SAPCDA were part of a course of conduct which amounted to a breach of trust by him in taking advantage of the opportunity his position as chair of the APFG afforded him, and the Pacific Island connections he developed through that position, to his ultimate goal: making some money for himself and Mr Elliott. His involvement in seeking to advance SAPCDA's casino investment in country C, for example, was driven by a "pure profit motive".
- 7.106. Fourthly, Mr Maguire submitted that the Commission should find that it was a proper part of Mr Maguire's role as chair and a member of the APFG to encourage the development of business relationships with China, country A and country C and, in doing so, the APFG was acting as a facilitator and not entering into commercial transactions itself.
- 7.107. That submission begs the question of Mr Maguire's underlying motive in assisting SAPCDA as he did. As he admitted, at least one reason that he was involved in SAPCDA was to attempt to be involved in projects in the South Pacific region, investments or development activities that might ultimately lead to profits for himself, G8wayInternational and possibly Ms Wang.
- 7.108. Fifthly, Mr Maguire submitted that it was not put to him that his evidence that he would still have done all that he did for SAPCDA, even in the absence of a personal profit motive, was untrue and that his conduct was for no other purpose but to benefit his own personal interests as well as the commercial interests of his associates (including members of SAPCDA). He also argued that was a proper purpose to assist SAPCDA and the evidence did not support a finding that his conduct "would not have been undertaken but for the improper purpose".
- 7.109. The Commission has already addressed the rule in *Browne v Dunn* earlier in this report. The Commission is satisfied that Mr Maguire was on notice that his evidence in relation to his motives for his involvement in SAPCDA was challenged. The Commission rejects the submission that Mr Maguire's actions in relation to SAPCDA were undertaken for a proper purpose. The overwhelming evidence as outlined in this chapter is that Mr Maguire undertook his activities in relation to SAPCDA, driven, as he admitted, by a "pure profit motive".
- 7.110. Mr Maguire did not seek to defend his conduct in relation to the use of his position as chair of the APFG to secure profits in relation to the oil technology project.
- 7.111. Insofar as the conversation with Mr Z on 14 September 2017 is concerned, Mr Maguire suggested that it was Mr Z who first raised the issue of investments at Badgerys Creek. He submitted that there was no evidence to suggest that at the time of this conversation he would obtain any financial benefit from connecting a landowner with a company from country G.
- 7.112. As noted above, and as addressed in detail in chapter 8, in 2017, Mr Maguire went to considerable effort in the pursuit of commission by assisting Ms Waterhouse (who he first encountered as part of APFG activities) to resolve planning issues and/or gain an investment in a way which would enable her fully to exploit the potential of her Smartwest.Sydney land near Badgerys Creek. An early attempt involved him seeking to attract investors from country G to purchase or invest in the land which is what he was doing when he had the conversation with Mr Z. Even assuming it was Mr Z who initiated the conversation, Mr Maguire took full advantage of the opportunity in the belief that if he were successful in securing an investor from country G for Ms Waterhouse, he would earn a substantial commission, a matter he did not disclose to Mr Z.
- 7.113. Finally, Mr Maguire submitted there would be no evidence to support a charge of misconduct in public office insofar as it involved the conversation with Mr Z as his own evidence could not be used, and it may be questionable whether Mr Z could give evidence. The question whether there is admissible evidence is ultimately one for the DPP, however, clearly the best evidence of the conversation is the lawfully obtained telephone recording of it.

Corrupt conduct findings

Mr Maguire

Section 8(1)(c), ICAC Act

- 7.114. The conduct in which Mr Maguire engaged wearing his hat as chair of the APFG in relation to SAPCDA, the oil technology project and seeking to procure Mr Z to identify potential investors for the Smartwest.Sydney land, was undertaken with a view to his personal pecuniary benefit. The Commission is satisfied that he would not have undertaken those activities were it not for that improper purpose.
- 7.115. As noted above, one of the criteria for approval of a parliamentary friendship group was that “the Group must not undertake activities of a commercial nature (other than obtaining sponsorship for charitable donations).” Yet Mr Maguire used his APFG position to leverage, or seek to leverage, his position for his own private financial gain by seeking to encourage Mr Z to identify possible investors in, or purchasers of, the Smartwest.Sydney site. Insofar as SAPCDA and the oil technology project are concerned, he also acted in pursuit of pecuniary benefit for Mr Elliott, G8wayInternational and Ms Wang. This was a breach of public trust.
- 7.116. It was an abuse of his position as a member of Parliament and chair of the APFG for Mr Maguire to use the weight of his office, and the diplomatic and consular ties it afforded him, and parliamentary resources, to advance private business interests for SAPCDA, with the ultimate hope, if possible, to gain some personal profits for himself.
- 7.117. Mr Maguire’s conduct in misusing his position as chair of the APFG in the manner set out above was wilful and in bad faith. He knew he did not have the authorisation of the APFG to offer the assistance of that group to SAPCDA, and that, by offering that assistance, he was knowingly acting in breach of the applicable Parliamentary Friendship Groups Policy. Further, his conduct was undertaken by him deliberately, with a view to pursuing his own private financial gain.
- 7.118. The Commission finds that Mr Maguire engaged in conduct which constituted or involved a breach of public trust within the meaning of s 8(1)(c) of the ICAC Act by misusing his role as a member of Parliament and chair of the APFG to advance his own financial interests, as well as the commercial interests of his associates, including members of SAPCDA.

Section 9(1)(a), ICAC Act

- 7.119. As explained below, the Commission also finds that the conduct of Mr Maguire in connection with his role as chair of the APFG is not excluded by s 9 of the ICAC Act because it involved conduct of a kind that could constitute or involve a criminal offence, namely, the offence of misconduct in public office.
- 7.120. The elements of this offence have been set out in chapter 3.
- 7.121. Mr Maguire, as a member of Parliament, was a public official throughout the period of his activities as chair of the APFG in relation to SAPCDA, the oil technology project and seeking to procure Mr Z to identify potential investors for the Smartwest.Sydney land.
- 7.122. As found in relation to s 8(1)(c), Mr Maguire’s conduct in relation to those activities was in the course of or connected to his public office in the sense that he used his role as chair of the APFG to advance his pecuniary interests, and/or the pecuniary interests of those with whom he was closely associated, including Mr Elliott, G8wayInternational, Ms Wang and SAPCDA.

- 7.123. There was no reasonable excuse or justification for Mr Maguire’s conduct in acting to advance his personal pecuniary interests and those of his associates while misusing his position as a member of Parliament and chair of the APFG.
- 7.124. Mr Maguire’s conduct in relation to his misuse of his position as chair of the APFG was wilful and in bad faith because, as he admitted:
- he did not have the authorisation of the APFG to offer the assistance of that group to SAPCDA, and that, by offering that assistance, he was knowingly acting in breach of the applicable Parliamentary Friendship Groups Policy
 - in relation to the casino project in country C, the steps that Mr Maguire took had a “pure profit motive”
 - he did not have any approval from APFG to use his role as chair to pursue the oil technology project
 - it was “quite wrong” for him to engage in the conversation with Mr Z.
- 7.125. The Commission also finds that the conduct in which Mr Maguire engaged in connection with the APFG and discussed above was of a kind that is sufficiently serious to merit criminal punishment, having regard to: his responsibilities as a member of Parliament, parliamentary secretary and chair of the APFG; the importance of the public objects which he served in those roles; and the nature and extent of his departure from the furtherance of those public objects in pursuit of his own private pecuniary interests, or the private pecuniary interests of his associates, SAPCDA, Mr Elliott, G8wayInternational and Ms Wang.
- 7.126. As Counsel Assisting submitted:
- 7.126.1. a particularly egregious aspect of Mr Maguire’s conduct in connection with his role as chair of the APFG was his misuse of consular networks and his misuse of friendly relations more generally between this state (and this country) and friendly nations and governments
- 7.126.2. it was seriously improper for Mr Maguire to misuse the consular network to which he had access as chair of the APFG for his personal gain
- 7.126.3. in particular, the call that Mr Maguire made to Mr Z, the then consul-general for country G, for the purposes of potential pecuniary gain was highly inappropriate and apt to risk damaging Australia’s consular and/or diplomatic relations with a friendly nation and trade partner.
- 7.127. The Commission finds that the circumstances set out in this chapter disclose a very serious misuse of Mr Maguire’s office of such seriousness as to satisfy the fifth element of the offence of misconduct in public office.
- 7.128. The Commission finds, for the purposes of s 9(1)(a) of the ICAC Act, that, if the facts as found in relation to Mr Maguire’s conduct in connection with the APFG were to be proved on admissible evidence to the requisite standard of beyond reasonable doubt and accepted by an appropriate tribunal, there would be grounds on which such a tribunal could reasonably conclude that Mr Maguire committed the offence of misconduct in public office. Accordingly, Mr Maguire’s conduct was such as could constitute or involve a criminal offence within the meaning of s 9(1)(a) of the ICAC Act.

Section 13(3A), ICAC Act

- 7.129. The Commission is satisfied for the purposes of s 13(3A) of the ICAC Act, that, if the facts it has found in relation to Mr Maguire's conduct in connection with the APFG were to be proved on admissible evidence and accepted by an appropriate tribunal to the requisite standard of beyond reasonable doubt, there would be grounds on which such a tribunal would find that Mr Maguire engaged in conduct that constitutes the offence of misconduct in public office.
- 7.130. Accordingly, the Commission is satisfied that the jurisdictional requirements of s 13(3A) of the ICAC Act are satisfied.

Section 74BA, ICAC Act

- 7.131. The Commission is satisfied, for the purposes of s 74BA of the ICAC Act, that Mr Maguire's conduct in relation to his misuse of his role as chair of the APFG is serious corrupt conduct for the reasons already set out above, but which in short are as follows.
- 7.131.1. Mr Maguire used his role as chair of the APFG to advance his own financial interests, as well as the pecuniary interests of his associates, including Mr Elliott, G8wayInternational, Ms Wang and SAPCDA.
- 7.131.2. Mr Maguire's role as chair of the APFG could not be divorced from his position as a member of Parliament. In both capacities in his dealings in relation to SAPCDA, and its commercial Pacific pursuits, in his pursuit of investors for the oil technology project and in his pursuit of purchasers and/or investors in the Smartwest.Sydney land through his conversation with Mr Z, the then consul-general for country G, he was presenting the face of an important diplomatic initiative, intended to demonstrate the state of NSW's friendship with its Pacific nation "colleagues".
- 7.131.3. Mr Maguire's conduct in pursuing his own financial interests, as well as the pecuniary interests of his associates under the guise of his role as chair of the APFG, represented a significant departure from the responsibilities of that role.
- 7.131.4. An especially egregious aspect of Mr Maguire's conduct in connection with his role as chair of the APFG was his misuse of consular networks and his misuse of friendly relations more generally between this state (and this country) and Pacific nations and their governments to pursue commercial interests on behalf of SAPCDA.
- 7.131.5. In particular, the call that Mr Maguire made to Mr Z, the then consul-general for country G for the purposes of potential pecuniary gain, was highly inappropriate and apt to risk damaging Australia's consular and/or diplomatic relations with a friendly nation and very important trading partner.
- 7.131.6. Mr Maguire's knowing contravention of the prohibition on parliamentary friendship groups undertaking activities of a commercial nature by using his APFG position to leverage, or seek to leverage, his position for his own private financial gain was a serious breach of public trust.

Corrupt conduct conclusion

- 7.132. The Commission therefore finds that Mr Maguire engaged in serious corrupt conduct which constituted or involved a breach of public trust within the meaning of s 8(1)(c) of the ICAC Act by misusing his role as a member of Parliament and chair of the APFG to advance his own financial interests, as well as the commercial interests of his associates, including members of SAPCDA.

Section 74A(2) statements

- 7.133. The Commission is satisfied that Mr Maguire and Mr Elliott are “affected persons” for the purposes of the ICAC Act in that substantial allegations have been made against them in the course of, or in connection with, the Commission’s Operation Keppel investigation.

Phillip Elliott

- 7.134. This is the end of the sections of the report which deal with G8wayInternational activities. It is appropriate, therefore, to deal at this stage with Mr Elliott’s role in relation to G8wayInternational, the Immigration Scheme and the APFG, as well as offences under the ICAC Act.

Destruction of documents: s 88(2), ICAC Act

- 7.135. At 7.28 am on 13 July 2018, the day Mr Maguire appeared before the Commission in connection with Operation Dasha, Mr Elliott and his partner, Karen Barbey, sent Mr Maguire a text message saying, “Dear Darlie, no matter what happens we are always here for you.” Mr Maguire responded, “Ta just remember your phones can’t be traced unless you have an old one with lots of shit on it. So the lesson is always get NEW TECHNOLOGY, everyone needs to do it regularly” (original emphasis). A few seconds later, Mr Maguire sent a follow-up text message, saying “tell your close friends”. Shortly after midday, Mr Maguire sent a further text message saying, “hope Phil is Spring Cleaning, getting ready for my visit”, followed a minute or so later by “And cleaning out crap and ship” and then another text message to clarify that he meant “shit”.
- 7.136. Consistent with Mr Maguire’s text messages about “spring cleaning”, Mr Elliott gave evidence during the public inquiry that, at some point between 13 July 2018 and Mr Maguire’s resignation from Parliament, Mr Maguire advised him to:
- ...remove any records that I may have had ... words to the effect of “Delete any records of,” and I don’t know whether a reference to G8way or, “our records” or something along those lines.*
- 7.137. In evidence similar to that given by Ms Wang, discussed above, Mr Elliott gave evidence that this communication happened some days after Mr Maguire’s appearance before the Commission on 13 July 2018. He agreed that the gist of what Mr Maguire was saying to him, as he understood it, was “delete things associated with G8wayInternational” and he said that in response, he “deleted or tried to delete any emails and ... spreadsheets and so forth”.
- 7.138. Mr Elliott said he agreed to comply with that particular instruction because that is what Mr Maguire had asked him to do.
- 7.139. Mr Elliott agreed that he knew that there were documents associated with G8wayInternational that might implicate Mr Maguire in relation to the Commission’s investigation into him and that he deleted those documents with a view to assisting Mr Maguire and preventing them from coming to the notice of the Commission.
- 7.140. Mr Elliott ultimately agreed that he knew at the time that it was a very serious matter to destroy records in the face of a Commission inquiry and that he did it to deflect the Commission from evidence that might implicate both himself and Mr Maguire, and to deflect the Commission or any other organisation that might investigate the matter from finding out the truth in connection with G8wayInternational.

- 7.141. Mr Maguire agreed that he had contacted Mr Elliott after his appearance before the Commission on 13 July 2018 and said something along the lines that “You should make sure your records are in meticulous order,” which he recognised Mr Elliott could interpret to mean Mr Maguire was asking him to get rid of records which might demonstrate that for the past six years he had been the director, in fact, of G8wayInternational.
- 7.142. Counsel Assisting submitted that, in light of the evidence given by Mr Elliott, the Commission should state that it is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Elliott for an offence of destroying a document or other thing with intent to delay or obstruct the carrying out by the Commission of an investigation, in contravention of s 88(2) of the ICAC Act.
- 7.143. The Commission accepts Mr Elliott’s evidence in the public inquiry as truthful. The Commission finds that he deleted documents associated with G8wayInternational, on Mr Maguire’s instructions, in the days following Mr Maguire’s appearance before the Commission, while the Commission’s investigation into Mr Maguire’s conduct was ongoing. The Commission is satisfied that he did so to keep evidence away from the Commission that may implicate Mr Maguire or himself.

False or misleading evidence: s 87(1), ICAC Act

- 7.144. Counsel Assisting submitted that there is evidence available to the Commission in respect of a number of responses given by Mr Elliott to questions asked during a compulsory examination he participated in on 22 November 2018, which discloses that Mr Elliott may have committed offences under s 87(1) of the ICAC Act.
- 7.145. During that compulsory examination, Mr Elliott gave the following evidence:
- [Counsel Assisting]: Who else was involved in the company?*
- [Mr Elliott]: Me.*
- [Q]: It was only you?*
- [A]: Only me.*
- [Q]: Did anybody else have an interest in the business conducted by the company?*
- [A]: No*
- ...
- [Q]: And you’re saying that Mr Maguire didn’t have any interest in the company per se?*
- [A]: No, he had no interest in the company.*
- [Q]: And what do you mean by that, he didn’t have a registered interest in the company?*
- [A]: He had no registered nor financial interest in the company.*
- 7.146. Counsel Assisting submitted that the evidence available to the Commission which discloses that, by these responses Mr Elliott may have given knowingly false or misleading evidence, includes the following evidence he gave during the public inquiry:

[Counsel Assisting]: Is the reason that Mr Maguire was not formally appointed as a director was that, at the time that you set up G8way International Pty Ltd, Mr Maguire was a member of Parliament and therefore, as you understood it, did not want a formal office within the company?

[Mr Elliott]: That's correct.

[Q]: And as you understood it, Mr Maguire viewed G8way International Pty Ltd as a business enterprise in respect of which he was closely involved, is that right?

[A]: Yes.

[Q]: For all intents and purposes, although Mr Maguire was not formally appointed as a director of G8way International Pty Ltd, he did the kinds of things that a director might do. Do you agree?

[A]: Yes.

7.147. The Commission has found, as outlined in chapter 4 of this report and consistent with Mr Elliott's ultimate admissions, that Mr Maguire established G8wayInternational with Mr Elliott as a vehicle through which he could earn income but avoid having to disclose it pursuant to his parliamentary obligations. Mr Elliott was the sole formally-appointed director and recorded shareholder on G8wayInternational's incorporation because, as a member of Parliament at the time the company was set up, Mr Maguire did not want a formal office within the company, albeit he did the kinds of things a director might do, including pursuing business opportunities from which he and Mr Elliott would share the profits.

7.148. The Commission is therefore satisfied that when Mr Elliott denied during his compulsory examination that Mr Maguire had any involvement or interest, financial or otherwise, in G8wayInternational, he gave knowingly false and misleading evidence.

7.149. Counsel Assisting submitted that another instance in which Mr Elliott may have committed an offence under s 87(1) of the ICAC Act is in respect of the following evidence he gave during the compulsory examination in which he participated on 22 November 2018:

[Counsel Assisting]: So you do have other people that work for the business?

[Mr Elliott]: Yes.

[Q]: And did anybody else work for the G8way business?

[A]: No.

[Q]: So, it really is just you?

[A]: Yes, yeah.

[Q]: Did anybody provide administrative assistance to the G8way business?

[A]: No.

7.150. The Commission has found, as outlined in chapter 4 and consistent with Mr Elliott's ultimate admissions during the public inquiry that, in fact, Mr Maguire made available to G8wayInternational the business resources that were available to him as a member of Parliament. Those resources included access to parliamentary staff including Ms Hatton and Ms Cartwright to assist with G8wayInternational activities.

- 7.151. The Commission is satisfied that when Mr Elliott denied during his compulsory examination on 22 November 2018 that anybody but himself worked for, or provided administrative assistance to, the G8wayInternational business, he knowingly gave false or misleading evidence in a material particular.
- 7.152. Counsel Assisting acknowledged that Mr Elliott ultimately made admissions that assisted the investigation, however, they submitted that his earlier denials went to a critical aspect of the investigation, namely, whether Mr Maguire had misused his office and the resources to which he had access as a member of Parliament for the benefit of G8wayInternational. Mr Elliott's denials were apt to hinder or delay the Commission's investigation. For that reason, Counsel Assisting submitted that notwithstanding his ultimate admissions, the Commission should make a s 74A(2) statement adverse to Mr Elliot in relation to his earlier false evidence.
- 7.153. The Commission accepts the submissions of Counsel Assisting in this regard. While Mr Elliott ultimately gave evidence in the public inquiry which the Commission accepts as generally truthful and consistent with the objective evidence and the evidence of other witnesses, the countervailing considerations include that his earlier evidence was materially inconsistent with his later evidence and had the capacity to frustrate the Commission's investigation.
- 7.154. While Mr Elliott appears ultimately to have given a truthful account, that cooperation was late in coming and he did not return to the Commission voluntarily, as Mr McCormick did, but was required to appear before the Commission in the public inquiry under summons. Mr Elliott was reminded of the serious consequences for giving false or misleading evidence to the Commission before he gave his evidence under compulsory examination in November 2018. There is no evidence and he has made no submissions to the effect that he did not understand or appreciate those consequences. The Commission accepts Counsel Assistings' submission that Mr Elliott's false and misleading evidence in the instances discussed above is a continuation of his conduct in facilitating the concealment of Mr Maguire's activities.

Misconduct in public office (complicity)

- 7.155. Counsel Assisting submitted that the evidence of Mr Elliott's involvement in G8wayInternational Pty Ltd and his association with Mr Maguire, as detailed in this report, disclose that Mr Elliott may have a form of liability as a person complicit in one or more offences of misconduct in public office if Mr Maguire committed any offence.
- 7.156. Pursuant to s 74B(1)(a) of the ICAC Act, the Commission is prohibited from making findings or expressing opinions that a person is guilty of a criminal offence. Instead, when considering what s 74A(2) statements should be made, the Commission considers whether there is sufficient admissible evidence to support making a statement to the effect that consideration should be given to obtaining the advice of the DPP.
- 7.157. Mr Elliott's evidence was the subject of a declaration under s 38 of the ICAC Act. His evidence would therefore not be admissible in criminal proceedings against him other than for offences under the ICAC Act, including offences under s 87 and s 88(2), discussed above, in relation to his conduct in giving false or misleading evidence and destroying evidence to facilitate the concealment of Mr Maguire's activities.
- 7.158. Counsel Assisting submitted that notwithstanding Mr Elliott's own evidence would not be available, evidence of other witnesses would likely be available in any prosecution of him for one or more offences of accessory to misconduct in public office. In addition, there is a substantial body of documentary evidence available.

- 7.159. In this report, the Commission has made statements pursuant to s 72A(2) of the ICAC Act that it is of the opinion that consideration should be given to obtaining the advice of the DPP in relation to the prosecution of Mr Maguire for the offence of misconduct in public office in respect of a number of findings, including, relevantly for Mr Elliott's involvement, that Mr Maguire engaged in conduct that involved a breach of public trust by:
- 7.159.1. monetising his position as a member of Parliament in order to promote his own pecuniary interests and those of persons close to him which was wrong, and in breach of his duties and obligations as a member of Parliament to act only in accord with what he believed to be in the public interest and the interests of the electorate
 - 7.159.2. misusing his position and taxpayer-funded resources to which he had access as a member of Parliament to benefit G8wayInternational, a company of which he was in substance a director and in respect of whose profits he had an arrangement to share personally
 - 7.159.3. using his position as a public official to cause G8wayInternational to charge a fee for introducing members of the Liaoning delegation to then premier, Mr O'Farrell
 - 7.159.4. misusing his role as a member of Parliament to advance his own financial interests, as well as the commercial interests of his associates in connection with an immigration scheme that he advanced to his constituents and others connected with his electoral district
 - 7.159.5. misusing his role as chair of the APFG to advance his own financial interests, as well as the commercial interests of his associates.
- 7.160. As set out in chapter 4 of this report, the Commission found that Mr Maguire established G8wayInternational, with Mr Elliott as the front man, with the intention of monetising his parliamentary position for the benefit of himself and his associates and to conceal his true position as a director of that company because he did not want to have to disclose that position in his returns under the Disclosure Regulation. The Commission found that these were misuses of his public office.
- 7.161. There is abundant admissible evidence, discussed in chapter 4, indicating Mr Elliott's involvement in Mr Maguire's misuse of his public office, including the deliberate concealment of Mr Maguire's position in G8wayInternational, his use of Mr Maguire's parliamentary staff and parliamentary resources to assist with G8wayInternational business, his facilitation of payment to Mr Maguire "off the books" and his involvement in drafting an invoice to be raised by G8wayInternational for the provision of introduction and interpreter services in connection with an event involving then premier Mr O'Farrell at Parliament House on 30 November 2012 arranged by Mr Maguire. This evidence includes emails between Mr Elliott and Mr Maguire and between Mr Elliott and Mr Maguire's parliamentary staff. The evidence of Ms Hatton and Ms Cartwright, and potentially Mr Maguire, would also be available.
- 7.162. As set out in chapter 6 of this report, the Commission found that Mr Maguire misused his role as a member of Parliament to advance his own financial interests, as well as the commercial interests of his associates in connection with an immigration scheme that he advanced to his constituents and others connected with his electoral district.
- 7.163. There is abundant admissible evidence indicating Mr Elliott's involvement in this immigration scheme, and his knowledge that it was a connivance and illegitimate and involved lying to immigration officials. Mr Elliott's involvement included, via G8wayInternational, his role in

identifying potential businesses that might sponsor or nominate a particular individual as a visa holder, negotiating G8wayInternational's potential take from the scheme and keeping payments to Mr Maguire arising from the scheme off G8WayInternational's books. This evidence includes emails between Mr Elliott and Mr Maguire and between Mr Elliott and Ms Wang indicating the illegitimacy of the scheme. The evidence of Mr Bell, who described the scheme as "looking dodgy" to Mr Elliott, and Mr Howe, for whom alarm bells started ringing on hearing Ms Wang's explanation of the scheme, would be available as would, potentially, the evidence of Ms Wang and Mr Maguire.

- 7.164. The Commission has found that Mr Maguire misused his role as chair of the APFG to advance his own financial interests, as well as the commercial interests of his associates including Mr Elliott.
- 7.165. There is admissible evidence showing Mr Elliott's awareness of Mr Maguire's pursuit of commercial opportunities in the South Pacific that may benefit Mr Maguire personally and provide a commission to G8wayInternational, or himself ("a bit of cashflow back in the tin"). This includes a lawfully intercepted telephone call between Mr Maguire and Mr Elliott on 9 December 2017 indicating Mr Elliott's apprehension that at least some of their conduct involved wrongdoing. The fact that Mr Maguire suggested such matters as getting "a bit of cash flow back in the tin" were "probably the kind of things you should talk about over a barbecue fire", were a clear flag to Mr Elliott that Mr Maguire was engaged in illicit conduct.
- 7.166. In all the circumstances set out above, 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 Elliott for offences under s 87(1) and s 88(2) of the ICAC Act and for one or more offences of misconduct in public office (whether as a principal in the second degree, as a participant in a joint criminal enterprise or in some other accessorial liability).

Daryl Maguire

Misconduct in public office

- 7.167. Mr Maguire's evidence was the subject of a declaration under s 38 of the ICAC Act and cannot be used against him in criminal proceedings, except in relation to prosecution for offences under the ICAC Act. However, evidence of witnesses other than Mr Maguire would likely be available in any prosecution of him for the offence of misconduct in public office in respect of his involvement with the APFG. That, coupled with the substantial documentary evidence that is available in relation to his activities in this respect and as evident from the references to it in this chapter, warrants consideration being given to obtaining the advice of the DPP with respect to the prosecution of Mr Maguire for misconduct in public office in respect of the misuse of his role as a member of Parliament and chair of the APFG to advance his own financial interests, as well as the commercial interests of his associates.

Section 88, ICAC Act: offences relating to documents or other things

- 7.168. Counsel Assisting submitted that the Commission should consider obtaining the advice of the DPP with respect to the prosecution of Mr Maguire for a number of offences under s 88(2) of the ICAC Act, these being offences relating to the destruction or alteration of documents or other things relating to the subject-matter of any investigation being carried out by the Commission, with the intention of delaying or obstructing that investigation.
- 7.169. While Mr Maguire gave evidence under objection, that objection does not prevent his evidence from being used against him in the prosecution of an offence under the ICAC Act.

Accordingly, Mr Maguire's own evidence would be admissible in criminal proceedings against him for offences under s 88 of the ICAC Act.

- 7.170. Specifically, Counsel Assisting submitted that the Commission should consider obtaining the advice of the DPP with respect to the prosecution of Mr Maguire in connection with his involvement in the destruction of records by Mr Elliott, addressed in this chapter, his involvement in the deletion of messages by Ms Wang, addressed in chapter 6, and his own deletion of email records with the assistance of his son, James Maguire, addressed in chapter 4. This conduct is dealt with in turn below.

The destruction of records by Mr Elliott

- 7.171. As set out above, Mr Elliott gave evidence that, a matter of days after Mr Maguire's appearance before the Commission on 13 July 2018 in connection with its investigation in Operation Dasha, Mr Maguire advised him to:

...remove any records that I may have had ... words to the effect of "Delete any records of," and I don't know whether a reference to G8way or, "our records" or something along those lines.

- 7.172. Mr Maguire agreed in evidence that after his appearance before the Commission on 13 July 2018, he took steps to destroy material. He admitted that this was, "partly", with a view to keeping that material away from the Commission or anyone else who might investigate his affairs. He agreed that he sought not only the destruction of his own records, but that he encouraged others to delete their records as well.
- 7.173. However, Mr Maguire's efforts to destroy records had commenced a bit earlier. As set out above, at 7.28 am on 13 July 2018, Mr Elliott and his partner, Ms Barbey, sent Mr Maguire a text message saying "Dear Darlie, no matter what happens we are always here for you." Mr Maguire responded, "Ta just remember your phones can't be traced unless you have an old one with lots of shit on it. So the lesson is always get NEW TECHNOLOGY (original emphasis), everyone needs to do it regularly", with a follow up message a few seconds later, "tell your close friends". At about midday, he sent a further text, "hope Phil is spring cleaning, getting ready for my visit", followed a minute or so later by "And cleaning out crap and ship ... shit".
- 7.174. Mr Maguire disputed using the word "delete" in his communication with Mr Elliott after his appearance before the Commission, saying his recollection was that he would have said something along the lines that "You should make sure your records are in meticulous order". Nevertheless, Mr Maguire conceded that Mr Elliott could have interpreted from what he was saying that he was really asking him to get rid of records and he agreed that what he was seeking to achieve was for Mr Elliott to delete records that might implicate him. He agreed that he wanted Mr Elliott to delete any records that might allow the interpretation that he had in fact been the director of G8wayInternational for the previous six years.
- 7.175. The Commission has found that Mr Elliott deleted records including emails and spreadsheets associated with G8wayInternational that might implicate Mr Maguire in relation to the Commission's investigation into him, and that he did so to prevent those documents from coming to the notice of the Commission.
- 7.176. The Commission is satisfied that in the days following his appearance before the Commission on 13 July 2018, Mr Maguire instructed Mr Elliott to get rid of records associated with G8wayInternational that might implicate Mr Maguire, in order to keep that material away from the Commission.

The destruction of records by Ms Wang

- 7.177. As set out in chapter 6, Ms Wang gave evidence that, while she was in China, some days following Mr Maguire's appearance before the Commission on 13 July 2018, Mr Maguire got a message to her via Mr X to the effect that she should delete messages between herself and Mr Maguire.
- 7.178. Mr Maguire agreed in evidence that he made contact with Ms Wang through Mr X to encourage her to delete records and destroy material that might implicate him and to keep it away from organisations like the Commission that may wish to investigate him.
- 7.179. The Commission has found that Ms Wang deleted emails and messages between herself and Mr Maguire on Mr Maguire's direction on or around 18 July 2018, while the Commission's investigation into Mr Maguire's conduct was ongoing, and that she did so to keep that evidence away from the Commission.
- 7.180. The Commission is satisfied that, in the days following his appearance before the Commission on 13 July 2018, Mr Maguire encouraged Ms Wang to destroy material that might implicate him, in order to keep it away from the Commission.

Deletion of email records with the assistance of James Maguire

- 7.181. As set out in chapter 4, on 27 August 2018, in a lawfully intercepted telephone conversation with his father, James Maguire stated that he had "just tried getting rid of the emails from the computer". Later during the same call, Mr Maguire told his son that he had "got rid" of his "g8waydaryl" email account and that he should get rid of his parliamentary email too.
- 7.182. Mr Maguire agreed in evidence that following his appearance before the Commission on 13 July 2018, he wanted all of his files and other material destroyed, including material that might implicate him.
- 7.183. When questioned about whether he had asked for his son's assistance in deleting records in particular emails, Mr Maguire responded:
- Well, my recollection is that once the parliamentary career was gone, I only had limited technology, one of those things was my personal site to get emails and things, I couldn't get the damn thing going, it's all witchcraft to me, and it was blocked up, it kept getting spam email, it kept getting, filling up, and it, it wouldn't function, nor would the iPad, and I asked my son, "How the hell do I fix it?"...and I did seek advice, yes, I did.*
- 7.184. Mr Maguire said he had to delete previous emails, not just from the device itself, but also from the server, to enable him to receive emails on his iPad, but he ultimately agreed that in part, he sought to delete certain emails with a view to keeping evidence that might implicate him away from the Commission or some other investigative authority.
- 7.185. The Commission is satisfied that following his appearance before the Commission on 13 July 2018 and his resignation from Parliament on 3 August 2018, Mr Maguire sought the assistance of his son, James Maguire, to permanently delete certain emails, including his G8wayInternational email account, in part to keep certain evidence that might implicate him away from the Commission.

Mr Maguire's submissions

7.186. Relevantly, s 88(2) of the ICAC Act provides that:

A person who, with intent to delay or obstruct the carrying out by the Commission of any investigation -

destroys or alters any document or other thing relating to the subject-matter of the investigation....

is guilty of an indictable offence.

- 7.187. The thrust of Mr Maguire's submission in response to Counsel Assistings' submission that the Commission should consider obtaining the advice of the DPP with respect to the prosecution of Mr Maguire for one or more offences under s 88(2) of the ICAC Act, is that any such prosecution would have to establish an intent to delay or obstruct the Commission by destroying or altering a document or other thing relating to the subject of "the investigation".
- 7.188. Mr Maguire submitted that "the investigation" must refer to an investigation which is underway and where its subject is known to the person accused of an offence under s 88(2). He argued that the words of the section creating the offence do not extend to preventing persons from destroying any documents or things which might be the subject of some future investigation.
- 7.189. Mr Maguire submitted that there is no evidence to suggest that he knew that he was being investigated by the Commission in relation to anything that was the "subject" of Operation Keppel in the period from July 2018 until 12 September 2018, when Commission officers executed a search warrant at his property, and he was advised of the matters being investigated and what the "subject" of that investigation was.
- 7.190. It was further submitted that as there is no evidence that Mr Maguire knew of Operation Keppel at the time of his involvement in the destruction of records by Mr Elliot and Ms Wang, and the deletion of his own emails, occurred, he could not have formed the "intent" to delay or obstruct something about which he had no knowledge prior to 12 September 2018.
- 7.191. The Commission rejects these submissions. They do not take account of Mr Maguire's own admissions that shortly after appearing before the Commission in connection with Operation Dasha in July 2018, he requested Mr Elliott and Ms Wang to delete or destroy material he thought might implicate him in order to keep it away from the Commission, and that he deleted his own emails in or around August 2018 for the same reason.
- 7.192. At the time that Mr Maguire was, by his own admission, seeking to destroy records, messages, emails and other documents he thought might implicate him, the Commission's investigation in Operation Dasha was ongoing. While Mr Maguire had given evidence in connection with that investigation, the Commission did not report its findings in Operation Dasha until March 2021.
- 7.193. As set out earlier in this report, in Operation Dasha the Commission investigated allegations concerning the conduct of certain public officials from the former Canterbury City Council, including former councillor, Mr Hawatt. In lawfully intercepted telephone calls between Mr Hawatt and Mr Maguire, at a time in which Mr Maguire was a Liberal Party member of the Legislative Assembly representing the electorate of Wagga Wagga, the two men discussed potential property deals. Mr Maguire told Mr Hawatt that he had a "mega big" client who was looking for properties with approved development applications. Mr Hawatt nominated a potential property in the Canterbury area owned by a friend. References in the telephone calls suggested, and Mr Maguire accepted in his evidence before the Commission, that both Mr Hawatt and

Mr Maguire were talking about sharing in any commissions that might flow from a sale of that property to Mr Maguire's "client". That client was Country Garden.

- 7.194. The Commission's investigation in Operation Dasha gave rise to questions about whether Mr Maguire had misused his public office to progress business opportunities for his own personal benefit and these were circumstances which, in the Commission's opinion, implied that corrupt conduct may be occurring.
- 7.195. The Commission is satisfied that the records, messages, emails and other documents that Mr Maguire thought might implicate him, and wanted destroyed and thereby kept away from the Commission, related to his misuse of his public office to progress business opportunities for his own personal benefit.
- 7.196. Section 88(2) of the ICAC Act refers to the intent of a person being to delay or obstruct the carrying out by the Commission of any investigation when they destroy or alter any document or other thing relating to the subject-matter of the investigation. The Commission is satisfied that whether the investigation was Operation Dasha, or the Operation Keppel investigation that arose directly out of it, Mr Maguire intended to delay or obstruct any Commission investigation into his misuse of his public office for personal benefit by destroying records and other things relating to the subject matter of either investigation.

Conclusion

- 7.197. In all the circumstances set out above, 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 Maguire for offences of breaches of s 88(2) of the ICAC Act, in connection with his conduct in deleting his own emails and as an accessory in relation to Mr Elliott's and Ms Wang's destruction of records.

Chapter 8: Property developers or deals

MAGUIRE: ...it looks like we finally got the Badgerys Creek stuff done, that's good, mmm. I'll be glad when that's done 'cause I'll make enough money to pay off my debts (laughs), which would be good. Can you believe it, in one sale.

BEREJIKLIAN: I can believe it.

- 8.1. This chapter considers Mr Maguire's relationships with property developers. Mr Maguire agreed during the First Public Inquiry that, except for Mr Alha (as to whom see below), but for the potential profit motive, he would not have engaged in, or would not have provided the level of assistance to them, that he did.
- 8.2. It should be acknowledged at the outset, that at the time of the events concerning Mr Maguire, there was no general prohibition on members of Parliament who were not ministers engaging in secondary employment, including in the property development industry. However, it is a breach of public trust for a member of Parliament to leverage, or seek to leverage, that office for private financial gain.
- 8.3. As the activities discussed in this chapter reveal, that is precisely what Mr Maguire did. As with his role with G8wayInternational, Mr Maguire acted as a middleman. He brought his ability to act as a door opener to the table to "earn" his hoped-for commission. He assisted the vendors and property developers discussed in this chapter to gain access, whether directly or indirectly, to members of Parliament, their staff and other public sector employees who it was hoped could resolve whatever "obstacle" the developer was encountering in advancing their project. At no stage did Mr Maguire disclose to those he approached on the developers' behalfs his expectation of receiving a personal pecuniary benefit.

Starting small

- 8.4. One of the earliest property transactions in which Operation Keppel discerned Mr Maguire was involved was when he boasted to Ms Berejiklian during an exchange of text messages in February 2014 that he had earned a \$5,000 commission in connection with the sale of a property. The text exchange was as follows:

MAGUIRE: *Hawkiss*¹⁸⁹ good news One of my contacts sold a motel for 5.8 million I had put her in contact so I should make 5k.

¹⁸⁹ "Hawkiss" is a reference to "Hokis", an Armenian term of endearment.

BEREJIKLIAN: Congrats!!! Great News!! Woo hoo ... That is really good. Does that mean your commission is 0.1 per cent?

MAGUIRE: sharing with Chinese business partner so commission is 20k usually its 50% of that but I will only ask for 25% cause uts (as in original) such a small sale only 5.8m so I get 5k.

BEREJIKLIAN: Great stuff!

- 8.5. The Commission does not suggest there was any impropriety in Mr Maguire or Ms Berejiklian's conduct in respect of this transaction, or the exchange of text messages.
- 8.6. Insofar as Mr Maguire is concerned, however, the text exchange reveals what transpired in connection with his later attempts to earn commission from property transactions: the involvement in some such transactions of a "business partner" or on other occasions a "middleman" to assist in facilitating the transaction from which the commission could be earned, and it being divided between Mr Maguire and that business partner.
- 8.7. Mr Luong played an important role in relation to Mr Maguire's attempts to earn commission from property transactions in at least two respects: Mr Maguire got him involved as a middleman in his attempts to earn commission from dealing (whether by sale or joint venture) with Charbel Demian's land at Camellia and also Ms Waterhouse's land near the site for the Western Sydney Airport at Badgerys Creek.
- 8.8. Secondly, Mr Maguire sought to assist Mr Luong in respect of transactions Mr Luong wanted to effect on his own behalf in respect of land in Cawdor, a new suburb near Camden, over which Mr Luong obtained call options to purchase in the period from 2017 to 2018.

Operation Dasha – Operation Keppel

- 8.9. When Mr Maguire's next interest in property transactions came to light, the Commission concluded that he was seeking to use his office as a member of Parliament with a view to advancing his own private financial interests and/or those of persons associated with him in connection with the sale and/or development of land in NSW. As already explained in chapter 3, it is a breach of public trust for a public official to leverage, or seek to leverage, that position for private gain.
- 8.10. As outlined in chapter 2, the Commission became aware of Mr Maguire's involvement in seeking to earn commission from property transactions during Operation Dasha after the Commission lawfully intercepted telephone calls in May 2016 between Mr Maguire and Mr Hawatt.
- 8.11. Initially the Commission investigated the conduct of Mr Maguire and Mr Hawatt as an aspect of Operation Dasha. Mr Hawatt had nominated 548–568 Canterbury Road, Canterbury, as a property in relation to which the two men hoped to earn a commission on sale. While he was a councillor, Mr Hawatt had voted in favour of development applications for 548–568 Canterbury Road.
- 8.12. However, after certain telephone calls between Mr Maguire and Mr Hawatt came to the Commission's attention, the Commission decided, on its own initiative, to conduct an investigation named Operation Keppel into the Maguire allegation set out above in chapter 1. The exhibits relevant to the Maguire allegation from the Operation Dasha public inquiry became exhibits in the First Public Inquiry.

Country Garden Australia Pty Ltd

- 8.13. One of the property developers in connection with whose developments Mr Maguire sought to earn commissions was Country Garden Australia Pty Ltd (Country Garden), the Australian arm of a Chinese development company.
- 8.14. Tim Lakos was the head of investment at Country Garden between February 2016 and March 2018, with responsibilities including land acquisition and investment. He met Mr Maguire in February 2016 through Johnson Zhang, who was then the CEO of Country Garden. He understood that prior to joining Country Garden, Mr Maguire had been “working with Johnson, and the team to find and identify and secure sites for development”. He introduced Mr Maguire to the new CEO, Guotao Hu (frequently referred to as “GT”).
- 8.15. Mr Lakos described Country Garden as a very big business which, as at May 2016, wanted to buy sites. It was looking for projects, in particular “DA approved” projects (that is, projects that had received a development consent or like under the *Environmental Planning and Assessment Act 1979* (NSW)). Such sites were regarded as attractive according to Mr Lakos because “that speeds the process, you can start work quickly on producing the development . . . whereas planning and development approvals can take a long time and they’re fraught with risk”.
- 8.16. As noted, at the time Mr Lakos met Mr Maguire, Mr Maguire had already been working with Country Garden to identify sites for development. He continued to assist in that manner during Mr Lakos’ tenure. As at March and April 2016, Mr Maguire communicated with Country Garden and Mr Lakos using a personal email address, “maguiretradingpl@[redacted]”.
- 8.17. Mr Lakos agreed that it was a practice in the property development industry to pay a fee to someone who might introduce a project. He said this was usually a real estate agent. He also agreed that it was common on the seller side to have a commission in the “multiple per cents” if the vendor was paying the commission, which was mostly the case. He said the standard agency rate for a vendor introduction was about 2.5 per cent. He also agreed that even on the buyer side, a commission or fee would be paid to an individual assisting a buyer, like Country Garden. In that respect, the fee was lower, like 1 per cent.
- 8.18. Mr Lakos hoped that Mr Maguire would be able to feed Country Garden some potential projects. He made it very clear to Mr Maguire that there was plenty of money available from Country Garden, that it wanted to invest, and it wanted to invest quickly.
- 8.19. Mr Lakos said Country Garden did not agree to pay any fee to Mr Maguire or anything else by way of remuneration in connection with being introduced to any development projects. He knew Mr Maguire was the member for Wagga Wagga. However, he said he understood Mr Maguire to be assisting “in his capacity as an MP”, discharging his duties to the parliamentary committee that he was a part of that was promoting business between Chinese and Australian businesses. As he said Mr Maguire explained his role, he was running the NSW Parliament APFG and had been appointed by the NSW Government to try to encourage investment by Chinese companies in NSW and work with NSW businesses.
- 8.20. Mr Lakos did not understand Mr Maguire to have any personal interest in his dealings with Country Garden. However, he said that Mr Maguire did indicate in a casual discussion that after he retired, he would be looking for things to do, and that maybe Country Garden might find him useful.
- 8.21. Mr Maguire introduced Country Garden to Mr Luong who came up with a couple of sites in the vicinity of the Western Sydney Airport that Country Garden looked at, one owned by the Medich family and the other by the Waterhouse family.

- 8.22. Ultimately, Country Garden did not invest in any projects that were introduced by Mr Maguire, although as what follows reveals, that was not for want of trying on his part.

Charbel Demian

- 8.23. An illustration of Mr Maguire's endeavours to make money from vendors he could introduce to Country Garden can be seen from his dealings with Mr Hawatt in relation to land being developed by Mr Demian.
- 8.24. Mr Demian is a property developer and the director of Demian Property Group. He is sometimes referred to as "Charlie".
- 8.25. Mr Maguire had met Mr Hawatt during a by-election campaign in 2008.
- 8.26. Mr Maguire admitted in Operation Dasha that he and Mr Hawatt were going to share, or were planning on sharing, commissions obtained from property developers who sold their properties to clients of Mr Maguire to whom they were introduced. This included commissions from introductions on behalf of Mr Demian. The way such commission might be earned was either by Mr Hawatt identifying properties which could be sold to interests that Mr Maguire had contact with, such as Country Garden, with a view to money being made by him and Mr Hawatt, and/or from Mr Maguire introducing a joint venture partner – an introduction which might otherwise not have occurred.
- 8.27. On 9 May 2016, Mr Maguire and Mr Hawatt had a telephone conversation starting at 9.21 am from which it was apparent, and Mr Maguire accepted in his evidence in Operation Dasha, that the two men had met in Shenzhen on a recent trip to China. During the conversation, Mr Maguire mentioned his property developer friend Mr Alha, saying "I'm talking with Joe, just quietly Joe and I have got a couple of deals before a big developer." The latter was a reference to Country Garden. Mr Maguire said he was trying to assist Country Garden because of the friendship he had developed with Mr Lakos.
- 8.28. Mr Maguire asked Mr Hawatt "what have you got on your books? Have you got anything that's DA approved?", to which Mr Hawatt responded, "there's a couple of them, yep. There's a big one ... of three hundred" units, which he identified as having been known as "Harrisons on Canterbury Road", "across the road from Canterbury Hospital," a site a "friend" of his had, but was looking to sell. Mr Hawatt's "friend" was Mr Demian.
- 8.29. Mr Maguire explained that he "need[ed] a few things to feed my friends ... [who] ... want thirty projects rolling ... And ideally they want something that's DA approved." They then discussed the price per unit, and as a whole, the latter they calculated as being \$48 million. Mr Maguire said he used the word "need" because "there was a[n] urgent need to get Country Garden operating", "that [he] needed to help them get these developments up and running, that [he] had a, a loyalty and wanted to drive that along." He asked Mr Hawatt to "get the package and you just give it to me in confidence okay". Mr Hawatt agreed. Mr Maguire said the reference to "package" was to information about a particular site, possibly including plans to take to Country Garden. Mr Maguire described his "client" as "mega big" with "mega money" who "wants two or three DA approved projects right now. Today." The "client" to which Mr Maguire was referring was Country Garden.
- 8.30. Towards the end of the conversation, the men discussed the percentage that Mr Hawatt might derive as a vendor's agent. Mr Hawatt said he thought his "friend" could go to 3 per cent which Mr Maguire said he would need to as "one point five percent isn't enough divided by two if you know what I'm talking about". Mr Maguire agreed that in this remark, he was talking about a

dividend to be shared by himself with Mr Hawatt. He ultimately accepted that the conversation supported the assumption that he was probing Mr Hawatt to identify properties which could be sold to interests that he had contact with, such as Country Garden, with a view to money being made by him and Mr Hawatt. At the end of the conversation, Mr Hawatt said he would give his “friend” a call and get back to Mr Maguire. Mr Maguire also said he would give Mr Hawatt his private email address and he should “send it there”, “it” presumably being a reference to the “package”.

- 8.31. At 3.05 pm the same day, Mr Maguire telephoned Mr Hawatt who told him he had “just met the guy” who was going to “send me a summary of all the projects” which he would forward to Mr Maguire. Mr Hawatt indicated his friend was “willing to work with us”. Mr Maguire reiterated that “he’s got to do three percent”.
- 8.32. On 11 May 2016, Mr Hawatt emailed to Mr Maguire’s private email address a list of sites Mr Demian was developing which included the site at 181 James Ruse Drive, Camellia (“the Camellia site”). He told Mr Maguire that “the owner [Mr Demian] wishes to meet to discuss further if you are happy to move forward with some or all of the above”.
- 8.33. Mr Maguire met Mr Demian with Mr Hawatt on 26 May 2016 to discuss some things in Mr Hawatt’s email which was when “the topic of joint venture came into it”. Mr Hawatt asked to have a meeting on 26 May 2016, the night before the meeting with Country Garden because Mr Hawatt said there were some things that the proponent wanted to discuss first before they met the next day with Country Garden.
- 8.34. The meeting with Mr Demian contemplated by Mr Hawatt’s last remark in his 11 May 2016 email was organised by Mr Maguire and took place on 27 May 2016 in a coffee shop in the city. Mr Maguire, Mr Hawatt, Mr Lakos and Mr Demian attended. Mr Lakos became aware at that meeting of Mr Demian’s property as well as one at Campsie associated with Mr Alha. The group discussed joint ventures and companies which “had the ability to partner with [Mr Demian] to achieve the very large developments that he wanted to achieve”. The intent of that meeting was for “Michael Hawatt ... to try to facilitate interest on the part of Country Garden in properties that Mr Demian had available for sale”.
- 8.35. On 2 June 2016, Mr Maguire rang Mr Hawatt. By this stage, Mr Hawatt had spoken to Mr Demian who was going to respond to Country Garden that day. Mr Maguire had also spoken to Mr Demian apparently to arrange a meeting in relation to “another client that has given me orders for three particular properties”.
- 8.36. It is clear that Mr Maguire was conscious of a need to distance himself from direct involvement with property transactions, even though it is equally apparent that he was aware that secondary employment as such was permissible. He explained to Mr Hawatt that Country Garden was “talking to me about the future”, and that he would ask Country Garden to “just pay a retainer and – and then if I go to work will you pay me a couple of grand a day or something” and that he thought “they’re happy at that”. He continued:
- my position is this is that if Country Garden decides that they want a strategic policy engagement director well I’m it and they can pay my company. But the work has to be done by some others at lengths or at arms [sic] lengths without – some of the work has to be done at arms length ... so that’s where I rely on you.*
- 8.37. Mr Maguire’s reference to having to do things at “arms length” demonstrated his appreciation of the necessity to keep his activities making representations on behalf of property developers from which he hoped to earn a commission confidential.

- 8.38. The “others” included Mr Maguire making appointments, but Mr Hawatt taking “them to planning and people like that because you can do that”, whereas “[i]n return what we do is those things that I place, that you put me onto with Charlie and others you negotiate the dollars and cents ...– and you and I – you and I can share that okay” (emphasis added). Mr Hawatt agreed he was to negotiate “a fee of some description”. Mr Maguire said that “because he [Mr Hawatt] brought the, the owner/developer to me I assumed there was a relationship where he could negotiate”. As is evident, the fee, also referred to as “commission ... paid by the developer”, that is to say Mr Demian, was to be shared between the two men.
- 8.39. They next discussed, in effect, the value Mr Maguire could bring to the process. Mr Maguire agreed his strength, as he explained to Mr Hawatt, was that he (Mr Maguire) had “more chance of opening the door to our friends than” Mr Hawatt had.
- 8.40. Mr Maguire said it worked “two ways”. After Mr Maguire opened the door, Mr Hawatt would actually talk to the people involved with planning issues because, as Mr Maguire observed, “you’re well known you know you – you can talk to planning, you can talk to those people and do a legitimate job”. However, in certain situations, Mr Maguire would accompany “the ones that I need to do I will take him by the hand and make sure that happens.” Nevertheless, Mr Maguire told Mr Hawatt he did not want “too much information out in the marketplace if you know what I mean”. Mr Hawatt agreed, “from now on everything – whatever we do is got to be confidential”. Mr Maguire explained this exchange on the basis that he “wanted to hold the available properties or information about them sufficiently closely to you to allow your clients or potential clients an opportunity to consider those properties without any commercial pressure from others”.
- 8.41. When taken to the 2 June 2016 conversation during the Operation Dasha public inquiry, Mr Maguire agreed that it was “clear” that he and Mr Hawatt were intending to share commissions from introductions, including those involving Mr Demian. He further agreed that his “strength” in the partnership, relative to Mr Hawatt, was that he would “have more chance of opening the door to our friends than you have”.
- 8.42. Mr Maguire met Mr Demian at the latter’s request on 14 September 2016 for lunch in Parliament House. According to Mr Maguire, Mr Demian wanted to meet to talk about a problem that he had with one of his Sydney sites and “some issues with the RMS [Roads and Maritime Services], I think perhaps council”.
- 8.43. On 16 November 2016, Mr Demian sent a lengthy email to Mr Maguire in relation to the Camellia site. As Mr Demian explained, this land “used to be the Hardy Manufacturing Plant and has not being [sic] occupied since its closure due to heavy contamination status”. The project was, according to Mr Demian, experiencing delays and was, at that point, awaiting a determination by Transport for NSW (TfNSW). Mr Demian wrote to Mr Maguire seeking his “support to help achieve a determination by TfNSW in the near future”.
- 8.44. The next day, 17 November 2016, Mr Maguire, using his parliamentary email account, forwarded the email to Clementine Julian, a parliamentary liaison officer in the office of the then minister for roads, Duncan Gay, asking her to “please try to get this important project moving asap” to which she responded that she was “looking into” [sic].
- 8.45. On 25 November 2016, Mr Maguire forwarded this email chain to staff in the office of the then premier, Mr Baird, and to staff of the then minister for planning, Rob Stokes, with a request that it be forwarded to the premier. He observed:

*Here is why Stokes is making Dopy [sic] suggestions to get rid of NG when there is a very clear failure as you see in this correspondence, it needs just one Dep RMS to. Do their Job and thousands more homes can be delivered, I can show you dozens of examples. Please forward to the Premier. **I have taken the matter up with RMS to help this guy.***
(Emphasis added).

- 8.46. The same day, Mr Maguire forwarded the email chain, including the above observation, to the then treasurer, Ms Berejiklian.
- 8.47. On 14 December 2016, Mr Maguire received another email from Mr Demian containing further information regarding his difficulties, which Mr Maguire also forwarded, using his parliamentary email account, to Ms Julian and John McCormack (the latter also being attached to the minister's office) saying, "can we please have some action".
- 8.48. On 15 December 2016, Mr Demian's firm of traffic engineers sent him an email in respect of the Camellia site advising of action that both TfNSW and the RMS were taking. Mr Demian forwarded the email to Mr Maguire and thanked him for his "assistance to get the traffic management issues for the above project resolved". He concluded his email saying, "Hope to hear from you in the near future, should you require any further information please call me any time."
- 8.49. On 21 December 2016, Mr Maguire sent an email to Mr Demian saying, "G'day spoke to Duncan's office re Camellia". He also sent him an email showing he had been chasing up Mr Demian's 16 November communication with a parliamentary liaison officer, Reg Fisk. Later that day, Mr Demian sent Mr Maguire an email thanking him for following up on the Camellia site project, and saying he was requesting "a joint meeting with both RMS and Transport NSW [sic] following the submission of the full Transport Management Plan and Traffic Modelling to discuss any issues of concern if any".
- 8.50. Mr Maguire's endeavours on Mr Demian's behalf continued in 2017. On 18 January 2017, Mr Fisk emailed him advising "The wheels of the bureaucracy move s-l-o-w-l-y", to which Mr Maguire replied, "Mate keep pushing ask TFNsw [sic] minister to get it done PLO [parliamentary liaison officer] there in Andrew]'s office may help". On 20 January 2017, Mr Maguire received a response from Mr Fisk advising of a further discussion with the RMS in relation to a rezoning and redevelopment proposal at the Camellia site which Mr Maguire forwarded to Mr Demian on 22 January 2017.
- 8.51. Mr Demian replied on 23 January 2017 pressing for what he viewed as the only way forward, a meeting with senior RMS and TfNSW personnel to achieve an outcome based on an arrangement with the RMS, TfNSW and the Department of Planning and Infrastructure. Mr Maguire again used his parliamentary email account to forward his email to Mr Fisk and also Ms Lions, saying, "this needs to happen can you or a PLO arrange meetings ASAP, the response they gave was typical BS". He blind-copied this email to Mr Demian.
- 8.52. Mr Maguire admitted that this exchange was another piece of advocacy from him for Mr Demian with the minister's office, and that he expected them to contact the relevant departmental officers to make an appointment. He also agreed that he drafted his correspondence because he was intending "to put some sort of pressure on Mr Fisk to do something as soon as possible because [Mr Maguire] said it needed to happen". Finally, he accepted that he blind copied the email to Mr Fisk to Mr Demian because Mr Demian was a potential source of commissions for him and somebody he wanted to keep onside and to keep impressed with the work that he was doing on his behalf.

- 8.53. On 17 February 2017, Mr Maguire elevated Mr Demian's issue to ministerial level, writing on his official parliamentary stationery to Anthony Roberts, then minister for planning, seeking an appointment for Mr Demian with a planning officer in connection with the Camellia site. He wrote in the letter, "This week would be good".
- 8.54. On 11 May 2017, Anthony Roberts replied to Mr Maguire's letter about the Camellia site. Mr Maguire forwarded the response to Mr Demian on 17 May 2017, with the handwritten note "Update please Charlie" on it.
- 8.55. Mr Maguire would not accept that by writing letters to ministers such as Anthony Roberts, he was shortcutting the bureaucratic process in terms of setting up meetings and the like, saying "anyone can write to a minister and seek the same thing as I did". Nevertheless, he agreed he was lending the weight of his office as a member of Parliament by making representations on behalf of the subject of the correspondence, and that his correspondence would be more likely to get closer attention than if they were letters written by the developers or their planners directly. The Commission finds that the reality is that Mr Maguire was giving people like Mr Demian easier access to those who might be able to assist him resolve his problems at the Camellia site. He was opening doors for them because he was hoping that if Mr Demian's development was successful, some money would flow to him.
- 8.56. While members of Parliament making representations on behalf of constituents is undoubtedly part of the democratic process, the problem was that Mr Maguire did not at any stage disclose to Anthony Roberts or any other minister, or any ministerial staff to whom he wrote making representations on behalf of Mr Demian, that he was hoping that he might make a commission or other fee in the event that the development was successful.
- 8.57. Mr Maguire asserted that it did not occur to him at the time that he should make such disclosure. The Commission rejects that evidence. It is clear from conversations, such as that which took place between Mr Maguire and Mr Hawatt on 2 June 2016, that Mr Maguire was acutely conscious of the impropriety of a member of Parliament seeking to earn commissions in exchange for making representations on behalf of developers to advance their developments and was anxious to ensure that Mr Hawatt and he kept their plan to do so secret.

Mr Maguire's submissions: Mr Demian

- 8.58. Mr Maguire submitted that whilst there is evidence that he was hoping to receive a financial benefit for assisting Mr Demian, there is no evidence that Mr Maguire sought a fee from Mr Demian for providing assistance or that Mr Demian offered a financial benefit to Mr Maguire. However, it is plain from their 2 June 2016 conversation that Mr Maguire left it to Mr Hawatt to negotiate the remuneration they would get from Mr Demian in relation to assisting him with the Camellia site. In that respect, Mr Hawatt was the "middleman" between Mr Maguire and Mr Demian.
- 8.59. Mr Maguire accepted that he did not disclose, and should have disclosed, his "hoped for" financial interest in this matter, in the course of making representations as an actual or potential conflict of interest. However, he contended that his failure to make a disclosure did not support a finding that his conduct could constitute or involve misconduct in public office. He contended, in substance, that he was carrying out his role as a politician to make representations on behalf of voters and that the representations made on behalf of Mr Demian were a proper use of Mr Maguire's position.
- 8.60. The Commission rejects this submission. As noted above, Mr Maguire accepted Counsel Assisting's proposition that he was making representations on Mr Demian's behalf because he was a potential source of commissions and somebody he wanted to keep onside and to keep

impressed with the work that he was doing on his behalf. It is a breach of public trust for a member of Parliament to make representations on someone's behalf in the hope of gaining a personal financial benefit.

Mr Maguire, Mr Luong and Mr Demian

- 8.61. On 11 September 2017 at 14:44 pm, Mr Maguire had a conversation with Mr Luong in which they discussed Mr Maguire's concerns as to whether there was "any danger that because of the Chinese credit squeeze of, of some of Country Garden's projects not getting up". Mr Luong downplayed that risk on the basis that although Country Garden "grew up in China", it was a Hong Kong listed company and so was "not bound by the Chinese policy". This issue with getting money out of China in September 2017 was one which, it will be recalled, had also surfaced in relation SAPCDA's attempts to obtain a casino licence in country C.
- 8.62. Mr Luong mentioned that he had met Mr Hawatt recently and they had discussed Mr Demian. He said he had known Mr Hawatt for some time. Mr Maguire said he had introduced "them all ages ago". This would appear to have been a reference to Mr Maguire having introduced Mr Demian to Country Garden as Mr Lakos was also referred to. Mr Luong said Mr Hawatt had told him that but said "nothing happened after that".
- 8.63. Mr Luong then said Mr Hawatt wanted Mr Luong "to be middleman". It is clear from the conversation that this took Mr Maguire by surprise: nevertheless he explained the issues Mr Demian had with "the council is his problem. Getting, getting approval, road approvals and things", and that "he just goes cold" even though he "needs to sell some to cash up a bit". Mr Luong then suggested he might be able to have some success in persuading Mr Demian to sell, mentioning his recent success in convincing the Waterhouse family to do so (see further below in relation to Smartwest.Sydney). He asked Mr Maguire to arrange for him to meet Mr Demian which Mr Maguire agreed to do.
- 8.64. Mr Luong agreed in his evidence that in return for Mr Maguire introducing him to people such as Mr Demian he would have "given Mr Maguire a 10 per cent introduction fee ... if that resulted in a business deal".
- 8.65. Shortly after this conversation ended, Mr Maguire rang Mr Demian and asked him if he was making any progress with the Camellia site. Mr Demian told him that he had written to the planning minister seeking a meeting with one of the minister's advisers, "'cause the Minister don't want to meet anybody". He also said he was about to send a letter to the transport minister's office. Mr Maguire asked Mr Demian to send him a copy of both letters and he would "organise it".
- 8.66. Mr Maguire then turned to the apparent impasse between Mr Demian and Country Garden. Mr Demian complained that Country Garden was "coming in super low, like below the raw price". Mr Maguire explained that he had "someone who's very experienced in the game" who had "managed to actually pull um, a number of these opportunities together". He was speaking of Mr Luong who he described as having "just pulled another one off out at um, Badgerys Creek, um a big one". He suggested that the two men meet, to which Mr Demian agreed because he "would love to get ... a joint venture for my Camellia project". They agreed that Mr Maguire would provide Mr Demian's details to Mr Luong.
- 8.67. A few minutes after this conversation, Mr Maguire sent Mr Luong a text message forwarding Mr Demian's contact details and suggested Mr Luong "SMS him Thursday meet for Dinner He's Keen on a JV [joint venture] Camellia! I have been helping him with RMS and Council."

- 8.68. Mr Maguire and Mr Luong spoke again that evening about assisting Mr Demian with Country Garden. Mr Maguire told Mr Luong to “just keep it quiet. Don’t tell nobody nothing and just quietly work away at it” with which Mr Luong agreed. However, he asked “do I mention Michael [Hawatt] as well?”, to which Mr Maguire replied “No, no just, just shut up, just shut up... just don’t tell too many people that you know anybody.”
- 8.69. On 20 September 2017, Mr Demian, and others from his property group, met with government representatives apparently associated with Anthony Roberts’ department.
- 8.70. On 21 September 2017, Mr Maguire spoke to Mr Luong who told him he thought “Country Garden has stalled”. Mr Maguire agreed, saying “there’s no doubt about it”. He thought they had to “Just see what happens in the next month or two.” It is not apparent whether anything eventuated, although that appears unlikely as according to Mr Lakos, towards the end of his period with that company (which it will be recalled was March 2018), “Country Garden had slowed down its interest in acquisition, and so we weren’t as active, and I think the discussion about land or projects sort of petered out really.”
- 8.71. Mr Maguire admitted that he had used his office as a member of Parliament in order to assist Mr Demian because he hoped that some profits would ultimately flow to himself. He said he would not have got involved in the kind of depth that he did with Mr Demian unless he had thought that there was a prospect of some money at the end of the day.
- 8.72. The Commission finds that Mr Maguire viewed Country Garden and its activities as an opportunity to make money whether that was from Country Garden itself or from vendors he could introduce to Country Garden. In order to “earn” that money, he went to considerable lengths to assist Mr Demian with the various obstacles he was experiencing in relation to his Camellia site to “try to get this important project moving asap”. Not only did he contact the parliamentary liaison officer in the office of the minister for roads, but he copied the correspondence to the staff of Mr Baird, to the staff of the minister for planning (then Mr Stokes), with a request that it be forwarded to the premier, and also, albeit separately, to Ms Berejiklian, who was then the treasurer.
- 8.73. It is a breach of public trust for members of Parliament to leverage, or seek to leverage, their role for their personal pecuniary benefit. The Commission finds that throughout his endeavours in relation to Mr Demian’s Camellia site, Mr Maguire was leveraging, or seeking to leverage, his position as a member of Parliament in return for his personal pecuniary benefit. This was a breach of public trust. The Commission also finds, as Mr Maguire admitted, that Mr Maguire would not have engaged in these endeavours were it not for the hope of securing a personal pecuniary benefit. Whether Mr Maguire’s conduct constitutes corrupt conduct is considered later in this chapter.

Louise Waterhouse

- MAGUIRE:* William tells me we’ve done our deal
- BEREJIKLIAN:* I don’t need to know about that bit.
- MAGUIRE:* No you don’t.
- BEREJIKLIAN:* Yep.
- MAGUIRE:* You do not so anyway it’s all good news so we are moving ahead.
- BEREJIKLIAN:* Okay good.

- 8.74. Mr Maguire met Ms Waterhouse through his role with the APFG in relation to the SAPCDA First Pacific Islands Trip in April 2017. They met on 5 April 2017 at Parliament House before that trip. Ms Waterhouse's Smartwest.Sydney site was discussed at their first meeting.
- 8.75. Ms Waterhouse described the Smartwest.Sydney site as "land which has been held by my father [William Waterhouse] and our family for just over 50 years – as part of his long-term vision for the future of Western Sydney", as being "strategically positioned on the western boundary of the Western Sydney Airport and with 233 hectares, is one of the largest holdings in close proximity to the airport". She opined that "land holdings of such large scale are unusual and create the opportunity to be a catalyst to significant investment".
- 8.76. On 7 April 2017, Ms Waterhouse sent an email to one of Mr Maguire's electorate officers commencing, "Further to your mentioning the Free Trade Zone at Shenzhen and our confidential discussions about our exciting project adjoining the new Western Sydney Airport", attaching "a very brief summary and map" and describing Smartwest.Sydney as "233h" "and in total the holdings are 300h". She told Mr Maguire, "I look forward to brainstorming with you – as you are obviously ahead of the curve!!" Ms Waterhouse said the last sentence concerned a reference Mr Maguire made to a free trade zone in Shenzhen which interested her because she was also looking at something along those lines in relation to Smartwest.Sydney.
- 8.77. Mr Maguire returned from the First Pacific Islands trip on 16 April 2017. While he was away, he had sent Ms Waterhouse an email apparently letting her know what was going on while he was in country. On 16 April 2017, she replied saying she looked forward to hearing about the trip on his return. On 17 April 2017, Mr Maguire replied, outlining how the trip had gone and advising "we are planning to have a lunch with all consul generals at PH to thank them for helping us to arrange the visit and report our success. Make a diary note I will confirm later this week."
- 8.78. On 18 April 2017, Mr Maguire emailed again revising the possible date for the consular get-together and also saying "I would like to catch up re the other matter we discussed, I couldn't access the whole document and would like to look at it in detail."
- 8.79. Ms Waterhouse said the reference to the "other matter" would have been to "the free trade zone in terms of the SmartWest project".
- 8.80. On 21 April 2017, Mr Maguire sent a letter on his parliamentary letterhead to a number of consular representatives of Pacific Islands, and including Ms Waterhouse, thanking them respectively for their assistance in relation to the trip and advising, "The leader of the delegation Mr Li and I would be pleased to invite you to a lunch to express our appreciation and give you a briefing of our successful visit." Ms Waterhouse met Mr Li for the first time at the lunch.

Smartwest.Sydney

- 8.81. On 26 April 2017, Mr Maguire met Ms Waterhouse, Mr Luong, Mr Li and a Mr Young at 9 am. The purpose of the meeting was to discuss Smartwest.Sydney, with those attending being potential sources of advice. Part of the reason for Mr Maguire introducing Ms Waterhouse to Mr Luong was the possibility that Mr Luong would assist Ms Waterhouse in finding a potential buyer or other investor for the Smartwest.Sydney site. The other reason was so that Mr Luong might be in a position to provide some advice in relation to what was a fairly major piece of land and a fairly major proposed project in the Badgerys Creek area.
- 8.82. One of the reasons Mr Maguire took the steps that he did thereafter in relation to the Smartwest.Sydney land was the possibility of a commission or other payment in the event that the sale of the land or investment in it was successful. Ultimately, Mr Maguire hoped through

this networking meeting on 26 April 2017, that one of the individuals at the meeting might be able to assist Ms Waterhouse in making some money with him sharing some of those profits with whomever might be assisting.

- 8.83. By April 2017, Mr Maguire had made up his mind that he was not going to stand for re-election at the 2019 state election, although he had not said anything publicly about his political future. He accepted that part of his motivation for seeking to make money at that point in time was his intention to leave Parliament and a desire to be financially secure upon doing so. He was concerned in 2017 about having something to go to, meaning having some new role in terms of a post-parliamentary career. Another matter was ensuring that he was in a financial position that made him content to retire. He made these matters clear to Ms Berejiklian.
- 8.84. Although he had his parliamentary superannuation to fall back on, that had been depleted by a property settlement with his previous partner. That left him being in a somewhat worse financial position than he might otherwise have been. Accordingly, part of what was informing him in 2017 was to attempt to bring some money in to improve his overall financial position.
- 8.85. On 27 April 2017 at 6.33 pm, Mr Maguire sent Ms Waterhouse an email asking her to call him. That was the same evening he had dinner with Mr Luong and Mr Lakos from Country Garden, a meeting apparently arranged by Mr Luong texting Mr Lakos on 22 April 2017. At 7.21 pm, Mr Maguire forwarded Ms Waterhouse's 7 April 2017 email to Mr Luong.
- 8.86. On 2 May 2017, Ms Berejiklian issued a media release stating, "The NSW Government has today welcomed the Federal Government's commitment to build Western Sydney Airport at Badgerys Creek delivering a major infrastructure and jobs boost to the region." The same day, Mr Maguire forwarded the email containing the media release to Mr Luong. This was one of the ways he kept Mr Luong updated.
- 8.87. Ms Waterhouse recollected meeting Mr Luong, whether or not for the first time, at a dinner at the Marigold restaurant to which Mr Luong brought some brochures about Country Garden, of which she had not previously heard. Ms Waterhouse recollected that Mr Maguire told her Mr Luong was an expert in the area of Western Sydney near the airport because he had done a lot of work out there. Mr Luong's recollection was that the dinner was attended by Ms Waterhouse, Mr Maguire and himself.
- 8.88. On 12 May 2017, Mr Maguire sent Ms Waterhouse an email saying, "With regard to Badgery [sic] creek, I really would like to have William manage that an [sic] meet with you separately in your office. He has been in contact with the relevant people who have shown a serious interest and they have plenty of funds". Mr Maguire said the "relevant people" were Country Garden. The dinner at Marigold had happened prior to 12 May 2017.
- 8.89. Ms Waterhouse said her initial intention was to develop the Smartwest.Sydney land rather than sell, perhaps with a joint venture partner. However, she said that Mr Luong's role morphed from offering advice and saying what he thought should happen on the property, to him saying she would be better off to at least explore the possibility of selling rather than developing.
- 8.90. Ms Waterhouse understood Mr Luong to have initially been working in some capacity for Country Garden. However, that changed at some point, and he became, in effect, a vendor's agent being paid by her, rather than a buyer's agent acting on behalf of Country Garden.
- 8.91. On 6 June 2017 at 3.12 pm, Mr Luong texted Mr Lakos advising him that he was to "meet Louise Waterhouse in the afternoon to discuss either JV and/or purchase of their land in Wallacia and Badgerys Creek for CGA [Country Garden Australia]" and asking him if he had anything "that you would like to say to" Ms Waterhouse.

- 8.92. Ms Waterhouse recalled that matters progressed relatively slowly from May until about August 2017, when Country Garden was reported to have increased its interest to the point of being “very keen” after having missed out on a nearby property on Elizabeth Drive, being the sale of land at Bringelly belonging to the Medich family or interests associated with them in August 2017.
- 8.93. On 8 August 2017, Ms Waterhouse met with representatives of the Greater Sydney Commission. This was the second meeting they had had, the first having been on 11 November 2016. A summary of what occurred at the 8 August 2017 meeting was contained in a briefing paper prepared for Anthony Roberts after a later meeting with Mr Maguire, Ms Waterhouse and a Waterhouse Group planning consultant on 12 March 2018. The briefing paper recorded that the Smartwest.Sydney land was within the scope of land designated as part of the Metropolitan Rural Area (MRA) in the Greater Sydney Region Plan (GSRP). It appeared that the MRA was regarded as being within Greater Sydney’s food basin, catchment areas and bushland. Focus groups and community submissions had strongly supported the need to protect its ecological and scenic value. In that context, the Waterhouse Group’s planning proposals for its land holdings in the Western Sydney City District were said to be “largely inconsistent with the MRA, with most outside the Growth Area where urban development and infrastructure is planned to occur”.
- 8.94. On 9 August 2017, Mr Maguire arranged and attended an introductory “meet and greet” meeting between himself, Mr Lakos and other representatives of Country Garden and Anthony Roberts. As the note for the meeting said, it was “not to discuss a specific project”.
- 8.95. On 18 August 2017 at 12.36 pm, Mr Luong rang Mr Maguire, having just finished a meeting with Ms Waterhouse and her brother, Rob Waterhouse. Mr Maguire asked how it went, and Mr Luong said, “Pretty good, pretty good but I would like to talk to you um, when we see each other, when we meet.” They agreed to meet later that day in Parliament House. This was the sort of communication which took place between the two men when Mr Luong updated Mr Maguire “in connection with the SmartWest Sydney project”.
- 8.96. By 24 August 2017, it is apparent from a text Mr Luong sent Mr Lakos, that Mr Luong had persuaded the Waterhouse interests to sell the land in its entirety. Mr Luong wrote:
- We really need to discuss and plan what CGA would like to do with Waterhouse’s block of land at Badgery Creek and how much is CGA willing to pay for it since I have now convinced Louise and Rob agreed to a full sale thus CGA can has [sic] complete control of the land. **CGA also needs to think about how to lobby the Western Sydney Commission**¹⁹⁰ **for road access from the Northern Road**¹⁹¹ etc. Ben Chow is a very good friend of Lucy Turnbull and he might be able to help us. (Emphasis added)*
- 8.97. On 28 August 2017, Ms Waterhouse, Mr Waterhouse, Martin Mambraku (a representative from Country Garden) and Mr Luong visited the Smartwest.Sydney property. On the way back from the visit, Mr Luong rang Mr Maguire and told him, “I also got them convince [sic] to sell the whole property now.” Mr Maguire responded, “That’s excellent that’s good news”, and added, “well we need to make it happen, soon.” Mr Luong said he persuaded the Waterhouses to sell because he told them “It cost you a lot of money to develop. It’s not worthwhile.”
- 8.98. On or around 30 August 2017, Mr Luong sent Ms Waterhouse a document headed “Consultancy Fee Agreement”, which she said was not signed. Mr Luong disagreed, saying it “was ultimately signed”.

¹⁹⁰ This is presumably a reference to the Greater Sydney Commission of which Lucy Turnbull was chief commissioner at the time.

¹⁹¹ The Northern Road issue is discussed below.

- 8.99. Nevertheless, while Ms Waterhouse said that she did not “formally engage” Mr Luong as a vendor’s agent, both agreed the fee that he would be paid in the event he could procure a sale of the land to Country Garden was that set out in the Consultancy Fee Agreement.
- 8.100. The parties to the Consultancy Fee Agreement were specified as Oakhope Pty Ltd, William Stanley Waterhouse and Stanlight Investments Pty Ltd (collectively the vendors) and Swamer Investments Pty Ltd (SIPL, Mr Luong’s company).
- 8.101. Under the heading “Background”, Recital A provided that “SIPL has a business relationship with the Vendors and CGA in respect of the sale of the Properties”, while Recital B provided, “The Parties have agreed to work together under the operative provisions of this Document to effect the sale of the Properties from the Vendors to CGA or of its nominated entity.” The floor price for the sale of the properties was not less than AU\$256 million.
- 8.102. Under the agreement, the vendors appointed SIPL to facilitate the sale of the properties from the vendors to CGA, or its nominee, and provide consultancy services to the vendors in respect of the properties for the negotiation period. The negotiation period in respect of a “Property” was the period commencing on the date of the Consultancy Fee Agreement and ending on the earlier of two years after the date of the document; or the date of a sale agreement in respect of that property.
- 8.103. Clause 1.1 of the Consultancy Fee Agreement defined “Service Fee” as the service fee as set out in the table below, plus GST payable by the vendor for a property or properties under a sale agreement with CGA. The table was as follows:

Table 2: Service Fee Table from the Consultancy Fee Agreement between the vendors and CGA

Combined Property Sale Price (in Millions)	%		Total
0–200	x 0.5	= 1.000	1.000
200–250	x 2.0	= 1.000	2.000
250–280	x 3.0	= 900 [sic]	2.900
280–300	x 5.0	= 1.000	3.900
300–330	x 10.0	= 3.000	6.900
330–360	x 10.0	= 3.000	9.900
360–400	x 10.0	= 4.000	13.900

- 8.104. As is apparent, the “Service fee” or commission was to be determined based on a sliding fee scale, containing thresholds, with progressively greater incentives for Mr Luong, as vendors’ agent, to secure a higher sale price. The third column in the table sets out the increase between the preceding threshold band and the next.
- 8.105. As an example, a sale price of \$256 million would have yielded a total incentive of \$2.18 million, comprising the threshold incentive from the \$200 million – \$250 million category, of \$2 million, plus an incremental incentive of \$180,000 (the remaining \$6 million x 3.0%).

8.106. Mr Maguire said that at some time after April 2017, he understood he was in line for a significant commission or other payment arising from the sale of the Smartwest.Sydney land or some part of it, which commission he also understood would be paid by Mr Luong. Mr Luong agreed that Mr Maguire was closely involved in attempting to achieve the sale of the Smartwest.Sydney land. He accepted that in the event of a good sale price, he would be paying Mr Maguire hundreds of thousands of dollars, likening his role to that of an “introducer”.

8.107. Mr Maguire said he may have shared the news of his decision to retire at the 2019 election with Ms Berejiklian. It is apparent that he had done so at least by 1 August 2017, when he told her that he was attempting to “pull ... deals off”:

MAGUIRE: I'm not going not going to have those problems so much when I retire which is good.

BEREJIKLIAN: Thank goodness for that thank god that means we can actually go places together is that what it means?

MAGUIRE: I won't have any money but we will be more flexible.

BEREJIKLIAN: (indecipherable).

MAGUIRE: I won't have any money unless I can pull these deals off which I am working on.

BEREJIKLIAN: But hokis the thing is all you need to do is you we don't need money I can support myself always have always will and you just need to do whatever you need you know for yourself and your kids.

...

MAGUIRE: I said it you talking tripping around and stuff expensive – anyway just hold on a second.

BEREJIKLIAN: You just need to stay healthy so we enjoy it.

(Emphasis added)

8.108. Ms Waterhouse agreed that around September 2017 was the first time she took the prospect of a sale of the Smartwest.Sydney land to Country Garden seriously when it looked like she and Country Garden were getting quite close to a potential deal in terms of price, and it at least looked as though there was quite a serious prospect that a deal would be able to be done.

8.109. Mr Maguire and Ms Berejiklian discussed his debt level in two conversations on 1 September 2017 (the first interrupted by Ms Berejiklian having to attend a function) as follows:

At 18:12:50:

MAGUIRE: So I paid my car lease out yesterday, it's gone, so I don't have any money coming out that's for anything other than property and rates and things like that –

BEREJIKLIAN: Yeah.

MAGUIRE: – which are all tax deductible.

BEREJIKLIAN: Mmm.

MAGUIRE: So that's all I've got coming out you know, parking fees, things like that, insurances, so they're all –

- BEREJIKLIAN: *That's all handy.*
- MAGUIRE: *What do you mean?*
- BEREJIKLIAN: *That's handy, that's good. It means you've, you've simplified everything as well.*
- MAGUIRE: *Tax effective.*
- BEREJIKLIAN: *Yeah.*
- MAGUIRE: *Mmm. So I've done that, but it depends how much money they're gonna give me. And I had \$10,000 left over yesterday -*
- BEREJIKLIAN: *MMM.*
- MAGUIRE: *- so they put um, they put it off my primary mortgage -*
- BEREJIKLIAN: *Mmm, **like offset it.***
- MAGUIRE: *- so my prim -*
- BEREJIKLIAN: *Yeah.*
- MAGUIRE: *Yeah, well the, the house one is now \$689,000.*
- BEREJIKLIAN: *You'll - **that's nothing, you'll fix that.***
- MAGUIRE: *No, that's the house.*
- BEREJIKLIAN: *Mmm.*
- MAGUIRE: *The rest of it's 1.55 million.*
- BEREJIKLIAN: *Mmm.*
- MAGUIRE: *Mmm, so anyway, so I needed to fix that. So anyway, I knocked it off that. And then depending how much they're gonna give me in a cheque, I've got some cash in a tin so I'm -*
- BEREJIKLIAN: ***Yeah, I know that.***
- MAGUIRE: *Mmm, well I, I'm, I'm gonna, well I need some for Kara's wedding. So I think what I'll do is if they give me a cheque for my tax I think it's better taken off my mortgage. I think what I'll do is I'll whack it into shares. I think -*
- BEREJIKLIAN: ***You told me that before.***
- ...
- At 22:04:49**
- MAGUIRE: *Yeah I'm getting a big tax return I'm told so I'm very happy about that.*
- BEREJIKLIAN: *Ohh well that's good you won't you won't you won't be saying you are poor then for maybe a week and then you'll start saying it again.*
- MAGUIRE: ***No well I am poor I'm telling you 1.59 million poor.***
- BEREJIKLIAN: *Yeah.*

MAGUIRE: Just repeat after me 1.5 million.

BEREJKLIAN: I'm not going to say any such thing.

MAGUIRE: Your... just repeat it.

BEREJKLIAN: Hmm.

MAGUIRE: That's right. But I'm going to solve that problem now which I am working on hmm.

(Emphasis added)

8.110. The following morning, on Saturday, 2 September 2017, Mr Maguire called Mr Luong. In response to Mr Maguire's question "everything else good?" Mr Luong responded that there was "probably a little bit of hiccup with Waterhouse". By this time, Mr Luong had sent Ms Waterhouse the draft Consultancy Fee Agreement referred to above. One aspect of the draft agreement was a clause requiring all communications between the Waterhouses and Country Garden to be through, or facilitated by, Mr Luong's company and prohibiting direct communication unless Mr Luong was uncontactable for at least 24 hours.

8.111. Mr Luong explained that the "hiccup" with Ms Waterhouse was that one of two things she would not agree to was that all communications would go through Mr Luong. Mr Luong told Mr Maguire that he had explained to Ms Waterhouse that "if it doesn't come through me and then you communicate with them from time to time or and sometimes communicate with me then it might cause a little misunderstanding and ... miscommunication". He indicated that Country Garden would prefer such an arrangement with Mr Luong as the conduit because it was one they had agreed to in previous deals.

8.112. Mr Luong agreed in evidence that the "no circumvention" clauses in his previous agreements with Country Garden were essential to ensure that the purchaser and vendor could not deal with each other directly and avoid paying him the commission he was due for brokering any sale.

8.113. The second issue that Ms Waterhouse would not agree to, as Mr Luong explained to Mr Maguire, was that she did not want to pay the potential commission of \$2 million on a \$200 million sale on exchange, which is when Mr Luong expected it. Mr Luong told Mr Maguire that Ms Waterhouse wanted to spread the commission "over the next few years", which Mr Maguire noted was "a bit rough".

8.114. Mr Luong told Maguire that he would talk with Ms Waterhouse to sort all these things out on Monday, but when Mr Maguire suggested "Well get Tim [Lakos] to talk to her too", Mr Luong told him "No, ah Tim shouldn't, shouldn't come into this." While Mr Maguire appeared to demur to this suggestion, he ultimately agreed to let Mr Luong "handle it".

8.115. At about 1 pm on 5 September 2017, Mr Maguire and Ms Berejiklian had the following conversation:

MAGUIRE: – and then I'll work on the farm in the next few days to get my projects up?

BEREJKLIAN: Mmm, mmm.

MAGUIRE: I've got to get it making money.

BEREJKLIAN: Mmm.

*MAGUIRE: Anyway, you didn't ask me how much money I got back.
(Laughs)*

BEREJKLIAN: *Because you'd swear at me.*

MAGUIRE: *No I wouldn't swear at you. It's only when you want me to spend money that I swear.*

BEREJKLIAN: *No, you told me not to ask you anything so, about money so I won't ask you about anything*

MAGUIRE: *No –*

BEREJKLIAN: *– about money.*

MAGUIRE: *– money as in when, when – to do with other stuff*

BEREJKLIAN: *Well I can't tell what I can and can't ask you so. (Sighs) I can't work out your head, what's okay and what's not to ask you so.*

MAGUIRE: *True. Anyway, put it this way I won't starve for this year.*
(Emphasis added)

- 8.116. Shortly after his conversation with Mr Maguire on 2 September 2017, Mr Luong appears to have been very confident of a sale of the combined Waterhouse holdings at Badgerys Creek to Country Garden for a price of between \$317 million and \$330 million (at worst \$320 million), news he relayed to Mr Maguire in a telephone conversation on 5 September 2017, commencing at 8:41 pm. The following exchange also took place during the conversation:

LUONG: *Yep, and one more thing is um, she asked me, she said um, who will look after Daryl?*

MAGUIRE: *Oh.*

LUONG: *I said I – I will look after Daryl, that's what I said.*

MAGUIRE: *Oh, that was nice of her.*

LUONG: *Yeah – yeah.*

MAGUIRE: *Mmm. Well it's been good for everybody all around which is excellent, so –*

LUONG: *Yeah.*

MAGUIRE: *– you know it – it's – it's – it's good long term, mmm.*

LUONG: *Yeah it's good. And also what – thought about you so not bad (laughs).*

MAGUIRE: *Hey?*

LUONG: *Everybody has thought about you –*

MAGUIRE: *That's nice I mean –*

LUONG: *– take care of your interest.*

8.117. The only reference to a woman in the course of this conversation was to Ms Waterhouse. Ms Waterhouse agreed that Mr Maguire had provided a higher level of advice and assistance in relation to the Smartwest.Sydney issues than any other politician with whom she had had any involvement in relation to the Smartwest.Sydney site. However, she said she had “absolutely not” made it clear to Mr Luong that she expected him to look after Mr Maguire financially in the event that the then proposed sale to Country Garden was successfully negotiated.

8.118. Mr Luong was interviewed by Commission officers on 12 April 2019. He was not played the recording of the telephone conversation he had with Mr Maguire on 5 September 2017. He was questioned on the topic of commissions in connection with the Smartwest.Sydney site, in which respect he said as follows:

[Commission Officer]: Just going back to what we were talking about. In relation to the commission or potential commission payments to Mr Maguire, if there were to be any, that would have to come from you from what you said? You were the agent. Did you have an intention to pay Mr Maguire a commission?

[Mr Luong]: I would consider to be honest if you ask me. If the deal was successful I may consider paying him something. I may consider paying him something but whether his legitimate, I don't know, you know what I mean.

[Q]: Did you discuss that with him?

[A]: No.

[Q]: Did you discuss whether Mr, you would pay Mr Maguire a commission with Louise Waterhouse?

[A]: I don't know whether we have discussed. I think there was, I think Louise was whether Maguire was, where we look after whatever this.

[Q]: Just re-phrase that again for me please. What did you say?

[A]: I think Louise was saying that maybe Maguire we will be looked after. When we have something we look after Maguire, whatever. Something, I think something along those lines.

[Q]: Yes.

[A]: And then we say at the end we may consider, we don't know, we don't know, too early to tell anything.

[Q]: So you said to Louise that you may consider it?

[A]: I, I may yeah I don't know what I've said to be honest. Maybe, I've even forgot, forgot about this Smart Sydney thing or Smart West Sydney and then you keep on jogging me and then I remember.

8.119. Counsel Assisting submitted that the Commission should find that, at some point proximate to 5 September 2017, Ms Waterhouse had a conversation with Mr Luong in which she asked him whether Mr Maguire would be “looked after” (or words to similar effect) in the event of a sale of the Smartwest.Sydney site. They contended that finding should be made for the following reasons:

- 8.119.1. the context surrounding the lawfully intercepted telephone conversation on 5 September 2017 makes it clear that there was significant optimism about a sale proceeding at the time of the conversation. Who would be paid what commission was a topic that was likely to have arisen for consideration at that time and to have been the subject of discussions between Ms Waterhouse and Mr Luong
- 8.119.2. there was no obvious reason as to why Mr Luong would have invented the suggestion that Ms Waterhouse had asked him who would “look after Daryl” including in circumstances in which the lawfully intercepted telephone conversation on 5 September 2017 sounds and reads as an unguarded conversation in which neither Mr Maguire nor Mr Luong seem to apprehend the possibility of being recorded or the possibility of Mr Maguire’s conduct in connection with Smartwest.Sydney being called into question
- 8.119.3. the assertion that Mr Luong volunteered during his recorded interview that “I think Louise was saying that maybe Maguire we will be looked after” is substantially identical to an assertion that Mr Luong made during an intercepted telephone conversation that he had with Mr Maguire around 18 months prior to the recorded interview (“she asked me, she said um, who will look after Daryl?”). That suggests that Mr Luong’s assertion as to that matter is true. Had Mr Luong invented the suggestion that he made during his telephone conversation with Mr Maguire on 5 September 2017 that Ms Waterhouse “asked [him] ... who will look after Daryl?” in circumstances where there was no reason for him to consider that that conversation was being recorded or would otherwise be called into question, it is unlikely that he would have been able to recall and almost precisely repeat a lie that he had told around 18 months earlier when questions were asked of Mr Luong by the Commission. The more likely explanation is that Mr Luong’s evidence on this issue is true notwithstanding Ms Waterhouse’s denial.
- 8.120. Ms Waterhouse submitted, relevantly, that the evidence before the Commission in relation to Mr Luong’s “damaging claims” about her is unbalanced and incomplete and it is not open to the Commission to make the findings on it that are suggested by Counsel Assisting.
- 8.121. Ms Waterhouse submitted that Counsel Assistings’ submissions rely upon the premise that Mr Luong told the truth to Mr Maguire during his telephone conversation with him on 5 September 2017, and subsequently to the Commission, when he said to Mr Maguire that Ms Waterhouse had asked him “who will look after Daryl?” It was submitted that even on the available evidence, that premise was demonstrably weak, because it was false and prejudicially so. Further, it was submitted that the closed questioning on this topic in the public inquiry failed to investigate alternative hypotheses, including that Mr Luong lied to Mr Maguire. Even though Counsel Assisting dismissed this hypothesis on speculative grounds, it was contended that Counsel Assisting never explored it in context with Mr Luong, Ms Waterhouse or Mr Maguire and nor was Mr Luong tested on it, or on his offer made immediately afterwards in the same call, to “look after” Mr Maguire himself.
- 8.122. Ms Waterhouse submitted that, contrary to Counsel Assistings’ submissions, Mr Luong had good reasons of his own to tell Mr Maguire falsely that Ms Waterhouse had asked Mr Luong to “look after” him and to make him think that any financial benefit to him from the sale of the Waterhouse land at Badgerys Creek would most reliably come through Mr Luong. That reason was that Mr Luong wanted to ensure that Mr Maguire did not cut him out of financial benefits from the sale of Ms Waterhouse’s land and to ingratiate himself more generally with Mr Maguire.

- 8.123. It was submitted that Mr Luong made concerted efforts to try to lock the Waterhouses into dealing with him exclusively, but they declined to sign his contract. Well aware that he could at any time be excluded given Ms Waterhouse's direct line to Mr Maguire and Mr Maguire's direct line to Country Garden, Mr Luong lied to Mr Maguire in the intercepted call on 5 September 2017 when he said that Ms Waterhouse had asked who would "look after" Mr Maguire. His underlying message was that Mr Maguire would be "looked after" but that would only happen if Mr Luong was involved and to cement Mr Maguire's belief that money from Ms Waterhouse would only flow through Mr Luong, Mr Luong implicated Ms Waterhouse in a lie that caused harm to Ms Waterhouse's reputation.
- 8.124. Ms Waterhouse submitted that in his interview with Commission officers on 12 April 2019, Mr Luong disingenuously, given the size of the commission he had stood to make, failed until towards the end of the interview to recall his involvement with Ms Waterhouse at all, even though the interview took place just over a year since he had last seen her, and he had pursued the sale of her land on and off in the year before that.
- 8.125. It was submitted that Mr Luong's claims about Ms Waterhouse's request that Mr Maguire be "looked after" emerged after the Commission interviewer had started to ask Mr Luong about specific pieces of land, commission payments to Mr Maguire and whether these would have come from Mr Luong, and after Mr Luong admitted that he did not know whether any payments to Mr Maguire would be legitimate. Contrary to Counsel Assistings' submission, Mr Luong's claims about Ms Waterhouse's request were not "volunteered" but were, rather, prompted by a question which suggested the answer: "Did you discuss whether Mr, you would pay Mr Maguire a commission with Louise Waterhouse?"
- 8.126. Ms Waterhouse submitted that later in that interview, Mr Luong said that he was consulting to Ms Waterhouse as a "favour" to Mr Maguire and it was in the context of Mr Maguire having introduced Mr Luong to Ms Waterhouse that it was she, rather than he, who raised the issue of a commission for Mr Maguire. It was submitted that in his interview with the Commission officers, Mr Luong portrayed a reluctance to participate in a commission arrangement and described himself as a secondary participant, saying that he "may consider" it. He did this to implicate Ms Waterhouse as the originator of the idea and to falsely minimise his own role or exculpate himself.
- 8.127. During her compulsory examination on 26 June 2019, Ms Waterhouse gave the following evidence:
- [Counsel Assisting]:* Was there ever any discussion with Mr Luong about Mr Luong sharing any of his commission payments with Mr Maguire?
- [Ms Waterhouse]:* No. I would have been horrified.
- [Q]:* Did you ever have a conversation with Mr Luong where you asked Mr Luong whether, who would be looking after Daryl?
- [A]:* No. I just said to him at the time that I was grateful to Daryl to introduce us.
- [Q]:* Did you say anything to Mr Luong about looking after Daryl at all?
- [A]:* No.
- ...
- [Q]:* Did you have any understanding at all as to whether Mr Maguire had any interest in the investment from Country Garden being successful?

[A]: *No, not at all. I just thought he was very helpful and trying to be, and in fact he said to me when the very first time he said there's nothing in it for me, I'm just trying to help. In the very early days.*

8.128. During the public inquiry, Ms Waterhouse was questioned and gave evidence as follows:

[Counsel Assisting]: *Do you agree that in or about early of September of 2017, I'm going back in time now, September of 2017 you made clear to Mr Luong that you expected Mr Luong to look after Mr Maguire financially in the event that the then proposed sale to Country Garden Australia was successfully negotiated?*

[Ms Waterhouse]: *No, absolutely not.*

[Q]: *You deny that on your oath?*

[A]: *Absolutely.*

[Q]: *Do you deny that you made it clear to Mr Luong that, one way or another, Mr Maguire should be looked after for the assistance that he was giving in relation to that sale?*

[A]: *Absolutely not.*

8.129. Ms Waterhouse submitted in relation to Counsel Assisting's examination on this topic, that Mr Luong did not say, either in his evidence before the public inquiry, or his interview with the Commission, that Ms Waterhouse had "made it clear" – indeed, in his interview, he gave the impression of being quite unsure. Mr Luong did not say that Ms Waterhouse "expected" anything, and he did not say that she spoke about finance or payment to Mr Maguire. Relevantly, it was submitted that this narrow manner of questioning Ms Waterhouse was "inutile" to elicit balanced evidence.

8.130. The Commission is therefore faced with two competing hypotheses: either that Mr Luong had no reason to lie to Mr Maguire when he told him that Ms Waterhouse had asked who would "look after Daryl"; or that, as Ms Waterhouse contends, he may have had good reasons to lie to Mr Maguire about this matter.

8.131. The Commission accepts Ms Waterhouse's submission that Mr Luong may not have been telling the truth to Mr Maguire during this conversation and, contrary to Counsel Assisting's submission, that Mr Luong did have good reasons of his own to lie to Mr Maguire. These include, in particular, that (as outlined in the 2 September 2017 conversation between the two men) he wanted to ensure that Mr Maguire did not cut him out of any financial benefit that may come from the sale of the Waterhouse land given Mr Maguire's own direct relationships with both Ms Waterhouse and Country Garden.

8.132. However, the Commission notes that the hypothesis that Mr Luong was lying to Mr Maguire was not put to him by Ms Waterhouse. It was submitted by Ms Waterhouse that she was not given a proper opportunity to cross-examine Mr Luong in relation to the damaging claims he had made about her.

8.133. It was submitted that Ms Waterhouse was not provided with either the record of the intercepted telephone call between Mr Luong and Mr Maguire on 5 September 2017, or Mr Luong's record of interview with Commission officers on 12 April 2019, before she gave evidence under compulsory examination or in the public inquiry, and nor was she informed of the nature of Mr Luong's claim about her. For that reason, it was submitted that Ms Waterhouse was not aware, and was not made aware, of a reason to request cross-examination, or to be present for the evidence of,

other witnesses. She argued that as a consequence, and contrary to what is contemplated by procedural fairness principles and the ICAC Act itself, neither she, nor her lawyer were present for the evidence of other witnesses. She submitted that she was not aware that evidence was live streamed until immediately after she gave evidence and that she left the public inquiry still unaware that she could be the subject of adverse findings by the Commission. She did not apprehend the nature of those possible adverse findings until receipt of the submissions of Counsel Assisting on 15 February 2022, those possible findings being based principally on the contents of the intercepted telephone call between Mr Luong and Mr Maguire on 5 September 2017.

- 8.134. Ms Waterhouse submitted that procedural fairness required that the relevant evidence, discussed above, should have been disclosed to her to enable her to cross-examine other witnesses. It was submitted that recalling relevant witnesses would not be a satisfactory solution, in that, forensically, serious disadvantage may have flowed by having to cross-examine, initially, without the relevant material and, also, that relevant witnesses may not be able to be found.
- 8.135. The Commission is satisfied that Ms Waterhouse has not been denied procedural fairness in all the circumstances. In *McCloy v Latham* [2015] NSWSC 1879 McDougall J made pertinent observations as to how the requirements of procedural fairness apply to the Commission's investigative proceedings. Relevantly, his Honour observed:

*[T]he nature of the investigative process is such that it is not necessary for advance disclosure of possibly contradictory material to be given to witnesses before they give evidence. To require otherwise would undermine an essential feature of the power to investigate that the ICAC Act gives.*¹⁹²

- 8.136. In relation to the issue of recalling witnesses, his Honour also observed:

*In at least the great majority of cases, the requirements of natural justice, in so far as they give people potentially affected the right to test or call evidence and make submissions, will be served by the recalling of witnesses who have already given evidence and the opportunity to make submissions (or further submissions).*¹⁹³

- 8.137. The Commission notes that Ms Waterhouse did not ask that any witness be recalled following receipt of Counsel Assisting's submissions. Rather, she asserted that recalling witnesses would not be a satisfactory solution given the forensic disadvantages that may have flowed which she submitted were "having to cross-examine, initially, without the relevant material and also, all the relevant witnesses may not be able to be found".
- 8.138. The rules of procedural fairness do not require the Commission to act to preserve the potential forensic advantages of witnesses or of their counsel. The case on which Ms Waterhouse relies to argue the contrary position, *Musumeci v Attorney General of NSW*¹⁹⁴ concerned the position of coroners. As the Court of Appeal has said, the nature of an inquest differs from fundamentally investigatory processes such as the Commission.¹⁹⁵

¹⁹² At [78], referring to *Aristodemou v Temby* (Grove J, 14 December 1989, unreported, BC8901329)

¹⁹³ At [77].

¹⁹⁴ (1993) 57 NSWLR 193; [2003] NSWCA 77 (*Musumeci*).

¹⁹⁵ *Musumeci* (at [34]) per Ipp JA, Beazley JA agreeing.

- 8.139. What is necessary is that by the end of the hearing, a party potentially affected by an adverse finding has the opportunity to meet it by submission, and if necessary, by evidence. This can include, if necessary, the Commission stopping to permit its further investigation by evidence and addresses, and for the party so affected who complains of the loss of an opportunity to test evidence on a particular topic, to apply to reopen the public hearing.¹⁹⁶
- 8.140. The only witness who arguably on Ms Waterhouse's submissions could have been recalled for this purpose was Mr Luong. There is no reason he could not have been recalled at Ms Waterhouse's request, subsequent to her receipt of the submissions of Counsel Assisting, and the hypothesis put to him that he was lying to Mr Maguire in their telephone conversation on 5 September 2017. The Commission does not accept Ms Waterhouse's submission that she was under any forensic disadvantage militating against such an application.
- 8.141. It is uncontroversial that Mr Luong told Mr Maguire during the 5 September 2017 conversation that Ms Waterhouse had asked him "who will look after Daryl?" or words to that effect. It is clear that Mr Maguire believed him, not merely from his response to Mr Luong telling him this, but also from his excited conversations with Ms Berejikian the same evening and in the following days discussed below recounting his imminent receipt of that largesse, and the effect its receipt would have on his financial situation.
- 8.142. Nevertheless, the Commission accepts that the evidence before it is not sufficiently cogent, in the face of Ms Waterhouse's denials, to find to the requisite standard described in *Briginshaw v Briginshaw*, as contended by Counsel Assisting, that at some point proximate to 5 September 2017, Ms Waterhouse had a conversation with Mr Luong in which she asked him whether Mr Maguire would be "looked after" (or words to similar effect).
- 8.143. Mr Luong accepted in the public inquiry that he had an understanding with Mr Maguire that if a sale were successful, he would pay Mr Maguire a fee. Mr Luong agreed that in the event a sale was successful, he expected to receive a fee in the millions of dollars and accepted the possibility that if he did receive such a fee, he would be in a position to pay Mr Maguire a fee at least in the hundreds of thousands of dollars.
- 8.144. The Commission finds, in any event, that the critical issue is that during that intercepted telephone call, when Mr Luong told Mr Maguire that Ms Waterhouse had asked him who would "look after Daryl", and Mr Luong had responded that he would, Mr Maguire believed him. Mr Luong had agreed to pay Mr Maguire a fee on a successful sale. The Commission finds that Mr Maguire understood from what Mr Luong told him during that telephone call, and that was the fact, that he would receive some form of payment or commission from Mr Luong in the event that the sale of the Waterhouse land to Country Garden proceeded. Such a finding is consistent with the evidence, and with Mr Maguire's admission that but for the potential profit motive, he would not have engaged in, or would not have provided, the level of assistance to property developers such as Ms Waterhouse that he did.
- 8.145. This finding is supported by the clear expression of Mr Maguire's expectation of payment in his telephone call with Ms Berejikian immediately after his call with Mr Luong on the evening of 5 September 2017 and his telephone call with Mr Elliott the following morning, discussed further below.
- 8.146. Mr Lakos said he was not aware of an arrangement between Mr Luong and Mr Maguire, or entities associated with them, as to whether Mr Maguire would stand to gain if the Waterhouse

¹⁹⁶ *Glynn v ICAC* (1990) 20 ALD 214 per Wood J, cited with approval in *Duncan v ICAC* [2016] NSWCA 143 (at [693]) per Basten JA; Bathurst CJ and Beazley P agreeing.

land were sold. However, he believed Mr Maguire had some direct communications with him with a view to pushing that deal along, in response to which it appears he explained to Mr Maguire “about the changes in government policy with China and how it was much harder to get money out of China now and deals generally were getting much harder to do”. Having regard to the transcript of the conversation between Mr Maguire and Mr Luong in which Mr Maguire raised these concerns, it would appear the conversation with Mr Lakos in this respect took place in about September 2017.

Spreading the news

- 8.147. Mr Maguire was clearly very excited about Mr Luong’s advice about the commission in the 5 September 2017 conversation and relayed the news to Ms Berejikian within the hour at 9.30 pm on 5 September 2017 in the following conversation:

MAGUIRE: Good with cash. So ah, you know I’ve got all the properties all sorted, so got all that done. And they like my idea of an Airbnb for the Ivanhoe houses so I’ll have to work that one out next, anyway. It just all takes time doesn’t it. Not enough hours in the day. Now I’m trying to fix Jimmy’s problem and it looks like we finally got the Badgerys Creek stuff done, that’s good, mmm. I’ll be glad when that’s done ’cause I’ll make enough money to pay off my debts (laughs), which would be good. Can you believe it, in one sale.

BEREJKLIAN: I can believe it.

MAGUIRE: Mmm, yep. I only want to pay off the house, that’s all I want to get rid of (unintelligible) having me debt free, the rest of it I don’t care about. I’m happy to have as much investment debt as I can possibly have. I just want to get rid of the bad debt -

BEREJKLIAN: Yeah.

MAGUIRE: – which is the house, mmm, and that’ll be good.

(Emphasis added)

- 8.148. Counsel Assisting contended that taking the 1 and 5 September conversations together, it was clear that Mr Maguire was anticipating receiving a very substantial commission up to a figure that was capable of paying off his debts, which the lawfully intercepted telephone calls indicated, and Mr Maguire agreed, were in the order of \$1.5 million or \$1.6 million at the time. The Commission accepts that submission. Ms Berejikian accepted that she was aware, as at 1 September 2017, that Mr Maguire claimed to have debts of around \$1.5 million. She also accepted that she understood Mr Maguire to have told her on 5 September 2017 that he was close to getting a deal done that would pay off those debts.
- 8.149. The submission is also supported not only by these conversations but also by the many conversations set out below evidencing Mr Maguire’s anxiety, at times appearing to border on desperation, in pursuing a Smartwest.Sydney sale as the means of putting his life back on an even keel following his property settlement with his former partner referred to above.
- 8.150. Mr Luong agreed that there was a reasonable possibility that his fee out of the sale of the Smartwest.Sydney property, if it took place, might be \$9.9 million or perhaps \$6.9 million, and that he was going to share at least some of that money with Mr Maguire. The figure he could have paid Mr Maguire, in the event a purchase price between \$330 million and \$360 million was

achieved, and that therefore Mr Luong received a payment of \$9.9 million, may have exceeded \$1 million. At the very least, having regard to his practice of paying “introductory fees of 10%”, he would have given Mr Maguire at least 10% and possibly more.

- 8.151. Mr Maguire also shared the news about the sale of the Smartwest.Sydney site and its possible benefit to himself with Mr Elliott the next morning at 8.09 am on 6 September 2017. Mr Elliott and Mr Maguire were close friends at this stage. Mr Maguire discussed problems he was going through in terms of divorce, sicknesses and various other things of a personal nature, and kept Mr Elliott intimately informed as to some of the financial difficulties that he was facing throughout this period as well as of the kind of things that he was trying to do in order to get out of those financial difficulties. They spoke about Mr Maguire’s attempts to get property deals across the line.
- 8.152. At the outset of the 6 September 2017 conversation, the men discussed the parlous financial position of G8wayInternational, then continued:

ELLIOTT: –well there’s no way to get any flash money that’s the problem.

MAGUIRE: Mmm, correct.

ELLIOTT: So, but anyway yeah we’ve got that so we’re pretty chuffed. It’ll be okay, um –

MAGUIRE: Mmm.

ELLIOTT: – and oh –

MAGUIRE: **But we might be right, we still might be right because um, my friend, um who’s doing that, William –**

ELLIOTT: Yeah.

MAGUIRE: – he said to me last night they’re nearly there, they’re nearly –

ELLIOTT: Okay.

MAGUIRE: – there, finally after all this time.

ELLIOTT: Yeah.

MAGUIRE: **I said well that, that’ll be the case, that’ll mean that, that there’ll be some flash money and we’ll be right, we’ll, we’ll pump some into it.**

ELLIOTT: **Sort of thing we can talk about away from prying ears and over refreshments.**

MAGUIRE: Yes, yeah but that’s what we’ll do because we’ll know by probably next Monday or Tuesday,¹⁹⁷ and that being the case well, you know we’ll be right. **Least, least there’s some pressure off all those things I’ve just been talking about and –**

ELLIOTT: Yeah exactly.

MAGUIRE: – and, and you can direct some to help the company.

(Emphasis added)

¹⁹⁷ Noting that “next Monday or Tuesday” after 6 September 2017 would have been 11 or 12 September 2017.

- 8.153. Played the audio of this conversation, Mr Elliott easily identified “William” as Mr Luong. He initially said he thought the transaction being referred to was Mr Luong setting up supermarkets through China, from which G8wayInternational would make money by the distribution or the supply of produce from Australia – a proposition not supported by the tenor of the conversation – but, in any event, Mr Elliott then walked back from that. First, he accepted that one of the things that he and Mr Maguire discussed on or around 20 September 2017 was Mr Maguire’s attempt to get property deals across the line. Secondly, he agreed they may have talked about the development or potential sale of property in or around the Western Sydney Airport, but he did not have a specific recollection of that.
- 8.154. The clear implication of the conversation is that Mr Elliott knew Mr Maguire was involved in something illicit which should not be exposed to the risk of a telephone call being intercepted, and something which would generate “flash” money, that is to say, “a lot of money”. Pressed, Mr Elliott agreed that the reference to “prying ears” was about a concern he and Mr Maguire had because of the lengths they had gone to over the period of six years or so, five or six years prior to this conversation, to conceal Mr Maguire’s involvement in G8wayInternational.
- 8.155. In a compulsory examination held on 24 July 2019, and having been taken to the “prying ears” passage in this conversation, Mr Maguire also agreed that this reference was consistent with the concerns he and Mr Elliott had about concealing his involvement in G8wayInternational.
- 8.156. It is equally clear that Mr Maguire had been discussing his debt position with Mr Elliott, just as he had with Ms Berejiklian, and that the “flash” money he was hoping to garner from whatever Mr Luong was working on would be sufficient to reduce those debts, as well as enable some money to be put towards helping G8wayInternational’s financial position.
- 8.157. Mr Maguire returned to the subject of the possible improvement in his financial position in a conversation with Ms Berejiklian at 9.24 am on 6 September 2017:

MAGUIRE: So cause that’s I can’t write that off I need to find a way to just write off twenty thousand straight away to reduce my tax. So.

BEREJIKLIAN: Hmm.

MAGUIRE: I just have to work that all out. Find a way to do it for next umm tax time.

BEREJIKLIAN: Hmm.

*MAGUIRE: **And um yeah I’ll be alright if we do this deal with um if William gets this deal done at Badgerys Creek then I won’t have to worry about it, too much we’ll be in front again. Phil is going to China Saturday. Can you believe that?***

BEREJIKLIAN: Yeah but I thought that you said he wasn’t very good at that?

MAGUIRE: Well he isn’t but he this one he is good at.

BEREJIKLIAN: Okay.

MAGUIRE: So this particular area he is good at. So and I’ve sent two client referrals over for him as well as he’s got his one. So this he’s right so some areas he’s good at and some area’s he’s not. That’s okay. I’m good at some areas and not good at others.

BEREJIKLIAN: Fair enough.

(Emphasis added)

- 8.158. Counsel assisting submitted, and the Commission accepts, that this conversation provided further support for findings that: Mr Maguire believed that he stood to benefit financially in the event that the Badgerys Creek deal proceeded; he believed he would benefit to such an extent that he would be “in front again” financially; and he was working in conjunction with William Luong. It is equally apparent that he shared this information with Ms Berejiklian who was clearly engaged with the conversation.
- 8.159. At 11:46 am on 6 September 2017, Mr Luong sent the following SMS message to Mr Lakos:
- Hi Tim, I just got a call from Louise and she confirmed that her brother, Rob has now agreed to an out right sale of the land to CGA at \$330 million dollars. It is now only for her to get a ok [sic] from her father but she is 99.9% that her father will also agree to sell at that price. Please advised [sic] whether you have spoken to or already received an approval from GT to make the offer in writing to Waterhouse yet? Regards, William.*
- 8.160. At 12:18 pm on 6 September 2017, Mr Maguire returned a call from Mr Luong, and they discussed the Smartwest.Sydney sale. Counsel Assisting set out extracts from the conversation in a table with their submissions about the inferences which should be drawn from the particular passages. Neither Mr Maguire nor Mr Luong challenged their contentions about the available inferences.

Table 3: Extracts from conversation between Mr Maguire and Mr Luong and inferences drawn by Counsel Assisting in submissions

Extract	Relevance
<p>LUONG: Ah, Water – ah Rob came back from overseas ah, last night.</p> <p>MAGUIRE: Yep.</p> <p>LUONG: So Louise spoke with him. He’s in agreement to sell.</p> <p>MAGUIRE: Excellent. Good news.</p> <p>LUONG: So, which means we got 99.9% certainty already with the other side.</p> <p>MAGUIRE: Mmm.</p> <p>LUONG: From um, from the seller side.</p>	<p>It appears from this extract that Mr Maguire and Mr Luong were very confident that the vendor side of the transaction was prepared to proceed at this point.</p>
<p>LUONG: So which mean (indecipherable). Ah, so I just wanted to let you know but one of the things is they don’t want to agree to pay the commissions at once. They want to pay it over the period of time.</p> <p>MAGUIRE: Mmm, mmm, well that’s a bit of cash flow anyway isn’t it?</p>	<p>This passage supports an inference that Mr Maguire had an interest in the commission payment. Otherwise, there is no apparent reason why information regarding the commission payment would be of relevance or interest to Mr Maguire.</p>
<p>MAGUIRE: Well done. So that’s means, that’s means really it’s three hundred and what, thirty million isn’t it?</p> <p>LUONG: Yes, yes.</p> <p>MAGUIRE: Three thirty million so you’ve done very, very well William. Big, bloody tick to you mate.</p>	<p>This passage confirms that Mr Maguire was aware of the anticipated sale price of \$330 million.</p>

Table 3: continued

Extract	Relevance
<p>LUONG: No just by luck, by luck, purely by luck. If, if it wasn't a referral from you probably won't be able to get it done, put it this way.</p> <p>MAGUIRE: Oh yeah, yeah, well it's because she likes -</p> <p>LUONG: Be careful you don't know this.</p> <p>MAGUIRE: -she likes me. Mmm.</p> <p>LUONG: Yeah she said now you have a very good credibility -</p> <p>MAGUIRE: Yeah.</p> <p>LUONG: -and ah you're a good person so coming from you, happy to get.</p> <p>MAGUIRE: And besides that we've got a nice um, we've got a nice ah customer and -</p> <p>LUONG: Yes.</p> <p>MAGUIRE: -everybody's happy, you know.</p>	<p>It is apparent from this passage that Mr Luong recognised the value that Mr Maguire brought to the prospective transaction by his introduction – value he was prepared to reward. Mr Maguire referred to “we” having a nice customer, which is consistent with Mr Maguire and Mr Luong being effectively in a relationship of partnership and with Mr Maguire receiving a portion of any commission.</p>

8.161. At 4:43 pm on the afternoon of 6 September 2017, Mr Maguire sent the following text to Ms Berejiklian:

*Plus I have money in bank as well so I am almost at target and still got 25 k for next election, **also good news we clinched the land deal** ! For my Friends 😊 I should be back in the Black soon. (Emphasis added)*

8.162. Mr Maguire agreed that at the time of this text, the only thing that would have put him “back in the Black” was receiving an amount of one and a half million dollars and that the only prospect of that was the sale of the Badgerys Creek land proceeding. Although he also said he could not be sure from this brief message that it was about Smartwest.Sydney, he accepted that was an available inference. Both in the context of the amount needed to clear his debts, and the conversations Mr Maguire had had in the previous six days with Ms Berejiklian concerning them and the deal at Badgerys Creek, and Mr Maguire’s exchanges with Mr Elliott and Mr Luong, the inescapable inference, and the Commission so finds, is that this text concerned Mr Maguire’s understanding of the sale of the Smartwest.Sydney land.

8.163. It is also notable in this context that Mr Maguire wrote of “the land deal”, clearly understanding that Ms Berejiklian would know what he was writing about in such excited terms. As just noted, this had been the subject of their frequent communications in the previous days, so writing in that fashion is perhaps unremarkable, save for the conversation which took place when the subject came up again the next morning on 7 September 2017 at 9.44 am when Mr Maguire rang Ms Berejiklian:

MAGUIRE: Counting-counting my tax refund (laughs).

BEREJIKLIAN: Good.

MAGUIRE: That's excellent.

BEREJIKLIAN: Given the size of it it will take you a week to count it all.

MAGUIRE: *That's true and the **good news is William–William tells me we've done our deal so hopefully that's about half of all that gone now.***

BEREJKLIAN: *That's good.*

MAGUIRE: *Hmm.*

BEREJKLIAN: ***I don't need to know about that bit.***

MAGUIRE: *No you don't.*

BEREJKLIAN: *Yep.*

MAGUIRE: *You do not so anyway it's all good news so we are moving ahead.*

BEREJKLIAN: *Okay good.*

(Emphasis added)

- 8.164. By the time of this exchange, Mr Maguire agreed he was concerned that questions might be raised as to the propriety of his involvement in the Badgerys Creek matter. In responding to Ms Berejikian's statement, "I don't need to know about that bit", he was agreeing with her that there was a particular class of information that he did not propose to share with her. Specifically, he came to the view that he should not share information concerning his business dealings, generally or with property developers. Mr Maguire agreed that if he had shared a little bit more than the information he did share with Ms Berejikian, she might need to take action in the exercise of her public functions, saying, "Well, yes, I would have been concerned that, that, that it would cause an issue for her, yes."
- 8.165. One of the factors which guided Mr Maguire in deciding what to tell Ms Berejikian was whether the information would cause her difficulties in terms of conflict of interest. He agreed that Smartwest.Sydney would be an obvious conflict of interest because the NSW Government was making decisions almost constantly about how the Badgerys Creek project would be brought to fruition.
- 8.166. On 8 September 2017, Mr Luong sent a text to Mr Lakos asking that he address the letter of offer to Mr William Waterhouse, Mr Robert Waterhouse and Ms Louise Waterhouse. This suggests a number of things. First, having regard to Mr Luong's text to Mr Lakos on 6 September that he was only awaiting Mr Waterhouse senior's approval to the sale price, that that had been received, and also, having regard again to the 6 September text, it is apparent that Mr Lakos had been given approval by GT to make the offer in writing to the Waterhouses. It is consistent with Mr Luong conveying confidence to Ms Waterhouse and Mr Maguire that the transaction was likely to proceed, and also with Mr Maguire's belief that the deal had been done.
- 8.167. The issue of the Smartwest.Sydney deal came up in the conversation between Mr Maguire and Mr Luong on 11 September 2017 already referred to in the context of Mr Maguire's dealings with Mr Demian. Mr Maguire's concerns about the issue of there being limits imposed on money leaving China and hence "Country Garden's projects not getting up" clearly applied as much to any transaction involving Smartwest.Sydney, as it did to those affecting Mr Demian. Mr Luong reassured Mr Maguire in this respect.
- 8.168. At the time of this conversation, in Mr Luong's view, "it looks like the sale of the SmartWest Sydney site is likely to go ahead" for a "price somewhere in the vicinity of 330 million". Mr Luong told Mr Maguire "Tim [Lakos] is trying to sell the Louise project to ... GT today and the Chairman I think" and that "we [sic] expecting to get a letter offer from Tim today or tomorrow". Later, Mr Luong said he was "trying to get Tim, agree to Tim on the price proposed

by Waterhouse” and explained the negotiations between the parties with the Waterhouses looking for \$330 million and Country Garden offering around \$317 million.

- 8.169. Mr Luong told Mr Maguire that Country Garden had previously been interested in the Smartwest.Sydney land but, because it was registered in company names, did not “know [it] was owned by Waterhouse”. Mr Maguire commented: “And it’s me that’s put it all together ... [p]artners”. Mr Luong responded, “you introduce me to Louise and then I brought this land to, to GT attention”. Mr Maguire re-iterated his role, “... and it was my introduction that opened the door. How good is that?” and Mr Luong agreed, “It was a ... very good fortune in the same.”
- 8.170. Mr Luong told Mr Maguire that Ms Waterhouse had already made it known to Mr Mambraku (with whom he and the Waterhouses had visited the Smartwest.Sydney property on 28 August 2017) that Mr Maguire was the introducer. However, Mr Maguire commented, “Yes, but Martin’s a nobody” and made it clear that he wanted GT to know of his role.
- 8.171. They discussed having dinner with GT, and Mr Maguire commented, “that’s good because we, we desperately need this one to happen”, to which Mr Luong replied, “Yes, we’re a good Christmas gift. Because we aim, the date is 28th of November for exchange”, and Mr Maguire said, “Oh that’s good.”
- 8.172. The men’s conversation then turned to Mr Luong’s role in possibly engaging Country Garden and Mr Demian, but Mr Maguire said, “let’s see if we can get the letter of offer first with this one ... before we muddy the waters with any others”.
- 8.173. It will be recalled that it was around this time that Mr Maguire approached Mr Z to see if he could interest major companies from country G in the Smartwest.Sydney land. Mr Maguire referred to this contact in a conversation with Mr Luong on 13 September 2017, telling him he was waiting for Mr Z to call him back. Mr Luong told him that Ms Waterhouse had tried to get her agent to acquire “those smaller blocks so they ... can get access to the ... Northern Road”.
- 8.174. Mr Luong also told Mr Maguire he had not heard back from Mr Lakos or GT. Mr Maguire remonstrated with Mr Luong and told him “with Country Garden you need to sit down with those guys and talk to them properly when they’ve got time ... to actually consider what’s being said”. Mr Luong said he had sent Mr Lakos a few messages and had not heard back, a silence Mr Maguire attributed to the staff of Country Garden being focused on their chair, who was apparently visiting. In response to Mr Maguire’s advice that “I just think you need to think about you know, what they’re doing and what’s affecting their mind”, Mr Luong opined “I think I can see he is more risk averse ... so he’s not going to pay anything un ... and they’ll pay up the whole lot until get [sic] rezoning.”
- 8.175. Mr Luong said that at the time of this call, Country Garden was “was concerned that land is not going to be a residential land, will be industrial land. They’re not interested in buying industrial site.” Mr Luong said that in the part of the conversation in which he expressed the opinion about being “risk averse”, he was informing Mr Maguire of what Mr Lakos had told him. Mr Luong said that his concern was that Tim “[was] risk averse and might not pay up if there’s no rezoning”. He said he had been telling Ms Waterhouse that “right from the beginning ... Your land doesn’t worth [sic] that much.”
- 8.176. Notwithstanding her view earlier in the month that the transaction with Country Garden may proceed, Ms Waterhouse’s evidence was that by about mid-September, she thought it “was all over red rover” for a number of reasons: she doubted whether Country Garden was seriously interested and thought that Mr Luong had probably “trumped it up a bit” and “it was nowhere near as serious [as] what he proposed”; she understood “there was a change in direction coming from China with investment, and China was frowning on offshore investment for Chinese companies”; and it all seemed to be moving too fast with what was seemingly a lack of proper due

diligence on the part of Country Garden. Her reaction to the proposed sale to Country Garden falling apart in mid-September 2017, was “Oh, yeah. Okay, no problem. That’s fine.”

- 8.177. Ms Waterhouse agreed that, at some point, Mr Luong told her that the zoning of the land was a potential impediment to Country Garden proceeding with the purchase, although she stated that she did not necessarily believe Mr Luong and thought he may have been inventing an excuse. Nevertheless, she accepted that, in September 2017, she was concerned to ensure that in the future development plans of the Western Sydney Aerotropolis (an 11,000-hectare area around the Western Sydney Airport), the Smartwest.Sydney site be included in plans for potential future development in connection with the Western Sydney Airport and surrounding land, rather than being reserved for land in the nature of rural land or “non-further-development” land. They “wanted to be part of the club”.
- 8.178. Mr Maguire rang Mr Luong on 14 September 2017 at 2 pm. Mr Luong told him he had “talk[ed] with [GT] about the land, he said he liked the land”. He said that he was “going to talk to Tim and ... they want to ... meet with me now finish that and ... I obviously I’m gonna meet with Tim. I’m gonna push him.” He said that he had told GT that people from country G were interested in the area and “that really put a lot of pressure on them”. Finally, he said the Waterhouses had started talking on “those land have access to the Northern Road”, but that he had told them to “put [it] on hold”, because they had wanted “maybe \$1 million per acre” when “the Government only give \$140,000 an acre”.
- 8.179. That evening, Mr Maguire spoke to Mr Z at 8.19 pm. Immediately after they spoke, Mr Maguire rang Mr Luong who was at dinner with Mr Lakos. Mr Maguire told Mr Luong about his conversation with Mr Z and explained the latter was going to send Mr Maguire a text about where Mr Luong could go to meet him and brief him about what could happen on the Smartwest.Sydney land, and he would then go “and find the right [country G] partner”. Mr Luong then put Mr Lakos on the telephone and he and Mr Maguire had a conversation during which Mr Maguire asked Mr Lakos if he was “making ... some progress with William”, and Mr Lakos replied, “Yeah we, we, we, we’re working on a few, on a few things. That’s um, it’s, it’s, it’s a little harder than it used to be but we’re getting there.”
- 8.180. Mr Maguire called Mr Luong again the next morning, on 15 September 2017, at 7.52 am, to discuss Mr Luong’s meeting with Mr Lakos. Essentially their discussion revolved around them “working together with the common goal of attempting to procure the sale of the SmartWest Sydney site, either from Country Garden or perhaps from [country G] interests”.
- 8.181. It is apparent from a comparison of Mr Maguire’s conversation with Mr Z, and his account of it to Mr Luong, that he was embellishing the level of country G interest in the Smartwest.Sydney site, suggesting Mr Luong tell Country Garden, “they’re jumping all over ... Badgerys Creek”. He was also anxious to impress upon Mr Luong “the value of having me around the place doing stuff”. Mr Luong explained that Mr Lakos had told him “he’s interested but ... not really determined on the price as well as the term. He wanted to stretch the term, lower that and wanted to get, re-zone it”. Mr Maguire then told Mr Luong how to relay to Mr Lakos the level of (embellished) interest from country G because that “puts the pressure on and, and, and that shows that we’re being helpful to them”.
- 8.182. Almost immediately after this conversation with Mr Luong, Mr Maguire sent Mr Lakos a text at 8.24 am saying :

Gday Tim I Had dinner with CG [country G] residence [Mr Z] Monday night at his invitation, Badgerys creek hot topic ,since Premiers visit [country G] company’s want to know much more about it especially Technology park opportunities. (As in original)

- 8.183. Mr Lakos agreed that Mr Maguire “may have been trying to sort of push the opportunity [in respect of Badgerys Creek] along and saying there are other interested parties”, although he said he had an “automatic ignore” when people resorted to such tactics.
- 8.184. On 19 September 2017, Mr Maguire sent a text to Mr Luong asking him to see if he could arrange a meeting with the consul-general for country G for the following day. That meeting duly took place and Mr Luong recounted what had been discussed in a telephone conversation with Mr Maguire at 4.42 pm the same day. During that conversation, Mr Maguire said to Mr Luong, “well you’re in there that’s the main thing ... so you’ll be the first port of call for him from now on”. He added, “the aim of you going there so that you can put your heart ... on your chest now and you know that the [country G] are interested ... Okay and you’re not telling lies”, to which Mr Luong acquiesced. Finally, Mr Luong told Mr Maguire he had not heard from GT yet, and expressed the opinion, “They’re not very eager by the look of it.” Mr Maguire said he was going to have a drink with Mr Lakos that evening at 5 pm or 5:30 at the “normal place” and Mr Luong said he had also been asked to attend. When he asked Mr Maguire where the normal place was, Mr Maguire replied “well I don’t repeat it on the phone you see. Never repeat these things on the phone ... Mmm, it’s a normal catch-up point, mmm”.
- 8.185. Once again, it is apparent from this conversation that Mr Maguire had introduced Mr Luong to any possible transaction involving investors from country G with a view to keeping himself at arm’s length from any such deal.
- 8.186. Mr Maguire also met Mr Lakos at the Westin Hotel in Sydney at about 5.45 pm on the same day. This appears to have been the “normal place”, as Mr Lakos agreed it was a place that he would meet Mr Maguire from time to time. Mr Lakos also agreed that it was likely that the topic of “the Waterhouse land” was discussed during the meeting. This appears to have been an example of Mr Maguire directly involving himself in a property deal in an effort to get the deal done. If it was, as is apparent from his next conversation with Mr Luong, he received no comfort from Mr Lakos.
- 8.187. Mr Luong rang Mr Maguire on 21 September 2017 and expressed the view that “Country Garden has stalled”. Mr Maguire’s response was, “there’s no doubt about it”. Mr Luong said that Country Garden was “not seeing me”. Mr Maguire in turn recounted that Mr Lakos had told him he was “confused and they’re saying they’re hot, they’re cold, stop, go”. The pair discussed introducing another investor to potential development sites, with Mr Maguire indicating that the Smartwest.Sydney site should be prioritised over other prospective sites, saying “let’s just make sure that we look after our friend Louise first”.
- 8.188. Mr Luong’s view that Country Garden had stalled at that stage and that a transaction might not ultimately be achieved with Country Garden was based on his opinion that a significant issue for Country Garden was that the Smartwest.Sydney land was not suitable for residential use, only industrial.
- 8.189. Mr Lakos said that he had “an absolute brief from the chairman of the [Country Garden] to acquire land” in the vicinity of the Western Sydney Airport and that “a fellow who we had been introduced to by Mr Maguire, William Luong, did come up with a, a couple of sites in that area that we looked at”. One of these sites was the Waterhouses’ land. He said that Country Garden looked at it “but on investigation, established that it was under the proposed acoustic footprint of the new airport, and therefore not, not suitable for residential development. And, and we were really residential developers, **so in the end** we decided not to do anything with that” (emphasis added).
- 8.190. Other impediments to a Country Garden acquisition were that the Waterhouses wanted way too much money for it (although Mr Lakos accepted, while he could not recall specifically, it was possible that Country Garden was at least prepared to look at figures exceeding about \$310 million

for the site), the position of the road and access to the Northern Road meaning the land was not “well connected to the road system”, and it was not zoned for residential development so would have had to be rezoned. Finally, the issue of getting money out of China became an impediment, and slowed Country Garden down a bit, so that while Country Garden had “money in Australia by that stage, according to Mr Lakos, “you wouldn’t just pay cash for like that for a piece of land, it would be, any deal would be on extended terms while you, and probably subject to a rezoning, so there would have been time to manage the finance and obtain finance locally”.

- 8.191. Ms Waterhouse was of the view that the idea of selling the land to Country Garden had pretty much fallen away by mid-to-late September of 2017. Nevertheless, she continued to meet with Mr Luong during the period from October 2017 through to April 2018, during which meetings he attempted to get her involved in deals, both in relation to selling the Smartwest.Sydney site on her behalf, and also in relation to other things as well. Ms Waterhouse understood that Mr Luong was continuing with these endeavours because she had already agreed that, if he were successful, he would be entitled to a substantial fee, so “he was trying to keep the work that he’s done alive in terms of a fee”, as she understood it, although she said she did not think he got much encouragement from her.
- 8.192. Mr Luong also brought to Ms Waterhouse a proposal about land at Cawdor, as a possibility for them to be in business together for their mutual benefit.
- 8.193. Mr Maguire also tried to introduce Ms Waterhouse to Mr Li as a potential investor, and she met Mr Li and Ms Wang out at the site, but she formed the view he was not really interested, and it was just a waste of time.

The Northern Road issue

- 8.194. The reference to the “Northern Road” in the text message Mr Luong sent to Mr Lakos on 24 August 2017, and which Mr Maguire and Mr Luong discussed on 13 September 2017, is to an issue which “was exercising [Ms Waterhouse’s] mind all the way along”. Ms Waterhouse explained the issue in a letter she sent on 19 October 2017 to Jock Sowter, the parliamentary liaison officer to Melinda Pavey, then the minister for roads, maritime and freight, as follows.

The SmartWest concept is to be a sustainable, self-contained and self-funded enterprise which with [sic] not create an undue burden on utilities nor infrastructure nor compete with investment for the greater area north, east or south of the airport. To do so, however, requires future-proofing of the infrastructure – some of which is currently in the final stages of planning – including connection for the western precinct from the airport with the Northern Road.

*The current planning maps for the Northern Road positions [sic] the access intersection the western side of the airport as a 3-way intersection [sic]—in a location which **does not** connect to SmartWest.Sydney nor the neighbouring western precinct.*

Given the advanced planning which has been done on the SmartWest site, we are very concerned that this airport western intersection on the Northern Road is not only not future-proofed but is not in the wrong location which could lead to an expensive revision being required once in the process of being built. (Original emphasis).

- 8.195. Mr Luong said that Ms Waterhouse always wanted to get access between the Smartwest.Sydney land to the Northern Road, which access he thought “was from the Planning Department”, and that she had spent a lot of money on a town planner to that end. He agreed that Mr Maguire was helping her in relation to that issue.

- 8.196. Ms Waterhouse believed the issue of access to the Northern Road had “nothing to do with Country Garden” and was a matter of concern to her independent of any prospective sale to that company. She agreed that access to the Northern Road, and therefore to the airport site, would increase the economic potential of her land.
- 8.197. Ms Waterhouse sought Mr Maguire’s advice as to what she should do in relation to her proposal that a planned intersection on the Northern Road be moved to improve access to a number of properties to the west of the planned airport, including her own. She agreed that, in order to maximise the economic potential of the Smartwest.Sydney concept, both the access issue (to the Northern Road) and the future development planning of the site needed to be addressed.
- 8.198. At this stage of Mr Maguire’s attempts to realise some financial benefit from the Smartwest.Sydney site, he became, as he acknowledged in his evidence to the Commission, a “door-opener in relation to public officials”. He agreed that the principal reason for the prodigious amount of activity in which he engaged on Ms Waterhouse’s behalf over the next several months in terms of seeking to resolve the Northern Road issue was because he hoped to ultimately receive some profits in the event that the Smartwest.Sydney land was sold or was the subject of an investment. This was all part of his attempt to “have a future to go to ... and in terms of having sufficient financial resources,” for his post-parliamentary life.
- 8.199. Mr Maguire agreed that in each of the steps that he took in relation to the Smartwest.Sydney matter, he never disclosed to the people that he was dealing with – be they public officials in NSW, consular officials on behalf of other countries, or indeed anyone else – that the principal reason he was doing this, was with the hope of receiving a commission or other fee for himself.

Meeting Mr Sowter

- 8.200. On 16 October 2017, Ms Waterhouse texted Mr Maguire to see if he had “time for a coffee sometime”. They agreed to meet in Parliament House after question time on 17 October 2017. At that meeting, Ms Waterhouse raised with Mr Maguire the frustration she had with the intersection, telling him she “felt that it was just getting nowhere and [asking] did he have any ideas about what I could do”.
- 8.201. Mr Maguire then told her to accompany him, and took her to an area upstairs in Parliament House, where she waited in a very plush sort of space. Mr Maguire returned about 20 minutes later and told her he was going “to introduce [her] to Jock Sowter and you can tell him your concerns”. He took her into a “little office” where they met Mr Sowter who she understood to be the parliamentary liaison officer (PLO) for the minister for roads, who, as noted above, at that time was Ms Pavey. Mr Sowter had been her PLO since February 2017.
- 8.202. Mr Sowter said a PLO was the point of contact for members of Parliament to raise issues with the minister’s office. In the ordinary course, members of the public did not have access to a PLO, unless they had a contact inside Parliament. In short, a PLO is “in the nature of a middle person between the minister, members of parliament and which might sometime involve getting information or data from the minister’s department”. Indeed, Mr Sowter said that meetings with members of the public were a very rare occurrence. “The only time it really ever happened was when you were dealing with an MP and they would bring someone into the conversation, and if that ever happened it was always a conversation just in the office with your chief of staff and other members in the office to make note that that’s what had occurred”.
- 8.203. Mr Sowter was not aware of any policy requiring that formal records be kept of any interactions between members of the public and PLOs and said his general practice would be to advise the chief of staff, at least as a matter of courtesy.

- 8.204. Mr Sowter said that Mr Maguire started raising issues concerning land in Badgerys Creek owned by interests associated with the Waterhouses towards the end of 2017. The meeting with Ms Waterhouse was the first occasion this had occurred. He said the meeting took place in the foyer of the premier's Parliament House office, on a parliamentary sitting day. He was directed to go to the meeting by Ms Pavey, who had come back from a meeting in the premier's office and told him "Look, Daryl Maguire's downstairs [in the premier's office], Jock. Can you go down and find out what he wants? He wanted to have a chat for five minutes or something. Can you just go down and see him?"
- 8.205. During her meeting with Mr Sowter, which she thought lasted "10 minutes maybe", Ms Waterhouse said she explained her situation to him regarding the proposed location of an intersection on the Northern Road. He said he would look into it and asked her to send him a letter explaining it all clearly.
- 8.206. By this stage, Ms Waterhouse had been dealing with the matter for some time, both at a Commonwealth and a state level. She had already written to Ms Pavey several months before, and other parties had written to many people about the roads, the road issue, and the intersection and had commissioned engineers' drawings to say how it would work. She had gone to Canberra and met with the Department of Infrastructure and Regional Development (DIRD), which was then in charge of the airport. She said that during the meeting, Mr Maguire gave some indication to Mr Sowter verbally that Ms Waterhouse's concerns should be listened to and taken account of.
- 8.207. Mr Sowter's recollection of what Ms Waterhouse told him was that:
- ...they wanted an intersection moved and they were seeking assistance in having that intersection moved for their benefit.*
- [...]
- ...they wanted an intersection moved about 350 or 400 metres or, you know, a couple of hundred metres. I can't remember whether it was north or south, which then, I, to the best of my memory, meant that they could open up their land and, and it would be developable.*
- 8.208. Mr Sowter also had a clear recollection of the meeting taking place in the foyer to the premier's office. As he explained in a record of interview with Commission officers conducted on 8 March 2019:
- The reason I remember it took place in Parliament House was 'cause it was the foyer of the Premier's office*
- [...]
- It was at Parliament House. And I remember it – there's a couple of reasons I remember it, one because as the PLO you kind of don't forget walking in and sitting in the Premier's office, I mean in all fairness you know I'm a country boy from ... you know Moss Vale you got into the Premier's office it's, you know, one of those things.*
- 8.209. Ms Waterhouse gave Mr Sowter her business card and also a large, glossy brochure regarding the Smartwest.Sydney project. Mr Sowter said that while Ms Waterhouse did most of the talking, Mr Maguire added "little bits here and there to the conversation". He did not explain to Mr Sowter why he had any interest in the matter. Mr Sowter did remember him saying at some stage that the development was:
- ...going to create all these jobs and do all these things and, you know, it would, I guess, in a very general sense be a good thing, but he wasn't very much pushing it.*

- 8.210. To Mr Sowter's recollection, the meeting lasted about 20 to 25 minutes.
- 8.211. Mr Maguire said that he could not recall how the meeting between Ms Waterhouse and Mr Sowter came about even after seeing the exchange of texts between Ms Waterhouse and himself from 16 October 2017. He agreed that he did not disclose to Mr Sowter that he hoped to receive a financial reward in connection with the Smartwest.Sydney site and that that was a matter he should have disclosed. He said that he could not recall where the meeting took place. He did not entirely agree that he would not have set up the meeting between Ms Waterhouse and Mr Sowter but for his personal profit motive, although he agreed that the overall accumulation of steps he took to assist with Smartwest.Sydney could only be explained by his desire for a personal financial return.
- 8.212. On 18 October 2017 at 7.11 am, Mr Maguire told Ms Berejiklian that he had taken Ms Waterhouse "up to [her] office", and explained that Ms Waterhouse had "a lot of property out at Badgerys Creek". As he explained the issue to her, the planning department and the RMS were telling Ms Waterhouse they did not "want to plan that now, we're too busy worrying about you know, the new housing and all this around Badgerys Creek", whereas Ms Waterhouse was saying, "I need a road, I need an access, give me an access. I'll develop it myself ... and they're resisting." He pointed out that Ms Waterhouse had been trying to resolve the issue for two years and that he had "got Roads, I got Jock to come down and I got um, one bloke from your place there, got them to put their heads together and said look, why can't you fix this".
- 8.213. On 18 October 2017, Ms Waterhouse sent an email to Mr Sowter in which she thanked him for "taking up our concerns within the Ministry and the RMS". She sent it to Mr Maguire at the same time, following that up with a text to him advising she had "sent through the summary of the situation by email to Jock (and copied you). Please let me know what else you they [sic] may need." On 19 October 2017, she sent Mr Sowter the letter set out above, detailing that Smartwest.Sydney sought both "Recognition in infrastructure planning that the Smartwest.Sydney site, with its strategic location, will sooner or later be zoned for urban development; and Road planning to recognise the Western Airport precinct and accommodate access from The Northern Road realignment." In summary, she explained that "we need a minor amendment in an intersection point that will not have greater cost to government, future proof the intersection and provide much greater benefit to future development in the area – without any adverse impact on land owners or Government investment".
- 8.214. When Mr Sowter had not responded by 23 October 2017, at 1.20pm that day, Ms Waterhouse telephoned Mr Maguire for his advice as to how to proceed. He suggested she "email back to the young fella ... Just keep the pressure on him and then just cc me in on, on the emails okay?" Ms Waterhouse also mentioned that "even though the orbital road on the plans today goes through our site but I can't, you know, I don't know that they're going to give us an on or off ramp because ... they're, they're expensive items aren't they. So ... this Northern Road is the logical connection for us." Mr Maguire replied "Mmm mmm, that's right. So, so, so just keep the pressure on there and just keep emailing okay?"
- 8.215. Mr Maguire agreed that this call was an example of the type of advice he was providing to Ms Waterhouse from time to time to assist her in achieving her objectives of the relocation of the Northern Road intersection and the incorporation of the site into future development plans. As Counsel Assisting observed in relation to this exchange: first, in addition to providing advice, Mr Maguire was lending the weight of his office to add pressure to Ms Waterhouse's requests, specifically advising her to "cc" him on the correspondence; secondly, it is also of note that the concerns expressed about roads access in this call are expressed about the Waterhouse land specifically, rather than a more general concern about landlocked residents west of the Western Sydney Airport site.

- 8.216. Ms Waterhouse sent a further email addressed to both Mr Sowter and Mr Maguire on 23 October 2017, at 2:41pm. That email again raised concerns regarding the location of the Northern Road intersection and the Greater Sydney Commission's plans for the area. Mr Sowter was away at the time, and Mr Maguire counselled Ms Waterhouse to await his return.
- 8.217. On 27 October 2017, Mr Sowter forwarded Ms Waterhouse's emails of 18 and 23 October 2017 to Steven Head at the RMS with the request, "can you look into the below please?". Mr Sowter received a reply to his email on 3 November 2017 from Karen de Ridder, on behalf of Mr Head, which recounted the issues and previous lobbying efforts on behalf of Smartwest.Sydney. In the latter respect, the response advised that, "SmartWest's desire for the location of proposed The Northern Road T intersection with the future Western Sydney Airport has been subject to numerous representations including correspondence and approaches to the office of the Minister for Roads, Commonwealth elected representatives, the Deputy Secretary TfNSW, the RMS project team, DoIRD [sic] representatives, the Greater Sydney Commission and other agencies." The email then set out the most recent response coordinated by TfNSW to correspondence to Ms Pavey's office concerning a submission Smartwest.Sydney had made to the EIS (environmental impact statement), the bottom line of which was that, "Following this review and consultation Roads and Maritime and Transport for NSW have found no compelling reason to modify the location proposed for the intersection."
- 8.218. Before any reply had been received from Mr Sowter, Mr Luong rang Mr Maguire on 3 November 2017 at 6:45 pm and told him that Country Garden had "decided not to ... go ahead with Waterhouse". Mr Maguire replied "Yeah, yeah they're, they're hopeless um, but don't worry I'm, I've introduced Louise to people to fix the road, okay. I'll talk to you about it offline, all right".
- 8.219. A few minutes later, Mr Luong rang Mr Maguire again at 6:48 pm and told him:
- LUONG: I'm trying to save the deal. I told Louise that yes they have done two report on it. The report came back, it said IN2, which is light, light in, industrial.*
- MAGUIRE: Yeah.*
- LUONG: And ah, I said now – but Louise is in the opinion that they maybe get mixed development in there so Tim –*
- MAGUIRE: Yeah.*
- LUONG: – said if it's mixed development they'll go ahead, so maybe the deal is subject to DA or change of zoning. So I said to Louise, I said I'm gonna get Tim to have a meeting with Louise when he comes back so –*
- MAGUIRE: Yep.*
- LUONG: – I can work something out.*
- MAGUIRE: All right.*
- LUONG: So don't tell Louise just yet.*
- MAGUIRE: No, no I won't say anything, all right.*
- (Emphasis added)
- 8.220. Mr Luong agreed that, as at 3 November 2017, he was still trying to salvage the sale of the Smartwest.Sydney site to Country Garden. He gave evidence that, at that time, it had been

communicated to him by Mr Lakos that the deal would be able to go ahead if the land were found suitable for rezoning into mixed use development. He accepted that there was a connection between the zoning of the site and the prospect of a deal taking place at that time.

- 8.221. Mr Sowter's reaction to the reply he received on behalf of Mr Head was that "RMS was not going to fulfil ... Mr Maguire's request, and Ms Waterhouse's request". He explained this by reference to the role of the PLO earlier outlined and the fact that because issues are generally brought to PLOs by members of Parliament directly, when a PLO interacts with a department, the PLO will indicate that the issue has been raised by the particular member of Parliament. When a response is received from the department, it is communicated to the member of Parliament rather than to the constituent who may be directly impacted.
- 8.222. On 3 November 2017, Mr Sowter forwarded the response he had received from Mr Head to Les Wells, who was a policy advisor – major projects & regional NSW in Ms Pavey's office, advising him, "This is something Daryl McGuire [sic] has brought to me." He did so to keep Mr Wells involved because he "was essentially the policy adviser that would have had briefings with the Department on this matter". He also wanted Mr Wells' advice as the relevant policy adviser to know "where we should proceed on this matter" as Mr Wells was the subject matter expert in their office and he wanted to get his feedback on it before proceeding back to Mr Maguire. Mr Wells' reply on 8 November 2017 at 10:57 am essentially advised Mr Sowter to send the departmental response to Mr Maguire.
- 8.223. Mr Sowter followed Mr Wells' advice and forwarded the department's advice to Mr Maguire a few minutes later. Mr Maguire responded within the hour by sending an email using his parliamentary email account stating:
- That means the land is locked and undevelopable by the owner !!!!!, go back again and please do not accept their BS, find a way to help*
- 8.224. Counsel Assisting submitted, and the Commission so finds, first: that it can be inferred that Mr Maguire's response that the land was "undevelopable by the owner", revealed his true concern that the prospects of the land being either sold and/or developed were not strong and, correspondingly, neither was his prospect of a commission; and secondly, that his reaction was not about some kind of broader concern for prospectively "landlocked" residents west of the Western Sydney Airport generally but, rather, was about the Smartwest.Sydney land specifically and Mr Maguire's desire to leverage a financial return in connection with its sale.
- 8.225. Mr Sowter's understanding of Mr Maguire's email was that "he wanted us to do something that wasn't going to happen". He was perplexed by Mr Maguire's response. He said "I mean there's many times where an MP asks you for assistance on a matter and you can't always provide, provide it, but you never get a response like that. I've never seen one like that." He consulted Mr Wells about it. Mr Wells' response was, "Tell him you can arrange a meeting with RMS/ Transport for NSW in the next sitting period."
- 8.226. Mr Sowter did not make that suggestion to Mr Maguire. Rather, he ignored his email, deciding he had "other things [he could] do with [his] time".
- 8.227. In due course, perhaps a couple of weeks or a month later, Mr Maguire "dobbled on" Mr Sowter to the Hon Andrew Constance, then the senior minister in relation to transport and infrastructure. Mr Constance's chief of staff rang Mr Sowter's chief of staff, Ed Martin, and said "hey mate Daryl's rung upset that Jock hasn't got back to him on something". Mr Sowter gave Mr Martin the communications between himself and Mr Maguire, and that appeared to be the end of that complaint.

- 8.228. Mr Sowter said he did not feel pressured by Mr Maguire having “dobbled on” him as, so far as he was concerned, he had done what his job required of him. It was not a situation that Mr Sowter had found himself in previously.
- 8.229. Nevertheless, as Counsel Assisting submitted, Mr Maguire’s actions were calculated to apply pressure to Mr Sowter in turn to pressure the department for a favourable response to Mr Maguire’s request. It was an attempt by Mr Maguire to use the weight of his office as a member of Parliament to influence a decision with a view to increasing the prospect of his receiving a financial return. This “tactic” was apparent from Mr Maguire’s response to Ms Waterhouse’s query on 23 October 2017 when Mr Sowter had not replied to her email forwarding information to him to “keep the pressure on him”, that is to say, on Mr Sowter.

Writing to the premier

- 8.230. In the meantime, on 8 November 2017, just over an hour after receiving Mr Sowter’s email, Mr Maguire rang Mr Luong and told him the response to him “put[ting] Louise in contact with some RMS people to try and move her road” was “They, they won’t do it so I’ve told them to go back and, and try and help her out. The um, they’re just a pack of bastards I tell ya, unbelievable ... So that means she’s locked up with nowhere to go, so.”
- 8.231. In the same conversation, Mr Luong intimated to Mr Maguire that “really subject to um, re-zoning, then [Country Garden] interested”.
- 8.232. It appears that Mr Maguire then took some more steps to try to resolve Ms Waterhouse’s roads issue. He explained to her on 14 November 2017, in a conversation at about midday, that he had “done the rounds” and “been to Infrastructure/ah, Transport ... [and] Planning and ah, spoken with them. They’ve both now got it. They’re going to go and put their heads together and deal with this um, ah, I guess the issue with Roads not wanting to do anything. So they’re all gonna come back to me, I guess they’ll come back to me within a couple of days. ... they can’t see why it’s a problem, um and I thought there’s just no, there is no energy ah, to deal with this. Um, they’re basically saying no we’re not dealing with that now, that’s the end of story and I said this is stupidity.”
- 8.233. Ms Waterhouse told Mr Maguire that she had seen the premier give a talk recently regarding infrastructure in which the premier had spoken of futureproofing in the context of “deadlines upon us like with the airport”. Mr Maguire suggested she write to the premier and the following exchange took place:

MAGUIRE: Write her a letter, do this now.

WATERHOUSE: Should I? That’s what I was going to ask you also.

MAGUIRE: You write her a letter now. Dear Premier, lovely to see, you gave a great –

WATERHOUSE: Yes.

MAGUIRE: – speech, you know –

WATERHOUSE: Yes, yes.

MAGUIRE: – rub, rub the ego –

WATERHOUSE: Yes.

MAGUIRE: – chat, chat, chat, however, um, I thought I should inform you in the privacy of a correspondence, rather than –

WATERHOUSE: Mmm.

MAGUIRE: – publicly –

WATERHOUSE: Mmm.

MAGUIRE: – this is what’s happened, okay.

WATERHOUSE: Yes.

MAGUIRE: So write that to her.

WATERHOUSE: And should I give her a copy of my ah, letters or not, just talk in gen – or just give her a letter about it?

MAGUIRE: Just, just, just, just a, a letter –

WATERHOUSE: Yes.

MAGUIRE: – about it and –

WATERHOUSE: Yes.

MAGUIRE: – tell, and tell her that you know, you’re really frustrated, you’re getting nowhere with it.

WATERHOUSE: Yes.

MAGUIRE: Okay, and –

WATERHOUSE: Yes.

MAGUIRE: – **and then, then she will then give it a tickle from up top.** I’ve already, I’ve already walked down there this morning but they’re –

WATERHOUSE: Yes.

MAGUIRE: – all in meetings.

(Emphasis added)

8.234. Mr Maguire gave Ms Waterhouse Ms Berejiklian’s direct email address to send the letter to. After Ms Waterhouse suggested she would show Mr Maguire a draft of the letter, he told her, “not to do me in it” (perhaps in relation to giving Ms Waterhouse Ms Berejiklian’s direct email address), but that he would “walk down and tell her”, adding:

MAGUIRE: – well the fact all that stuff is um, ICACable and um and –

WATERHOUSE: No I don’t want to any –

MAGUIRE: – and GIPA.

WATERHOUSE: Freedom of Information or whatever (laughs).

MAGUIRE: All this rubbish they go on with.

WATERHOUSE: Yeah, mmm.

MAGUIRE: So just send it directly to her personal one.

WATERHOUSE: Mmm.

MAGUIRE: Just say, look I didn’t want to contradict you in public but –

WATERHOUSE: No.

MAGUIRE: – but this is what’s happening and just –

WATERHOUSE: Yes.

MAGUIRE: – relay it. ***She’ll, she’ll light a fire, mmm.***
(Emphasis added)

- 8.235. Ms Waterhouse said she understood from the last comment and from Mr Maguire’s earlier remark that Ms Berejiklian would “give them a tickle from up top”, that the effect of her writing to Ms Berejiklian would be that Ms Berejiklian would give her issue concerning the location of the intersection her attention, have a look at it and then draw it to the attention of people. She saw it as a way of getting the issue before ministers who had been busy. The letter was a way of drawing attention to the issue. Ms Waterhouse agreed that in writing to Ms Berejiklian, she wanted Ms Berejiklian to become aware of the roads issues, and to “give it ‘a tickle from the top’ ... and perhaps become a circuit-breaker”.
- 8.236. Mr Maguire agreed that email addresses such as the premier’s, which he gave Ms Waterhouse during this conversation, were “email addresses, [which] at least as a matter of practice, are supposed to be kept between members of parliament and ministers, rather than being more broadly provided”. He also agreed that “that it was a breach of Ms Berejiklian’s privacy, and perhaps security, to provide that email address to Ms Waterhouse”. He would have been aware, as was the fact, that Ms Berejiklian would have regarded giving that email address to someone outside of government as an invasion of her privacy and security.
- 8.237. Sarah Cruickshank, Ms Berejiklian’s chief of staff, agreed the transmission of Ms Waterhouse’s letter using Ms Berejiklian’s direct or personal email address was inconsistent with the ordinary practice for someone outside of the ministry or outside of being a member of Parliament and not an appropriate use of the email address. This was not least because as a matter of probity and disclosure, one wanted a record kept of communications, particularly those asking for a form of action. Communications to Ms Berejiklian’s direct or personal email address did not go through formal probity processes. Ms Berejiklian was the only person who had access to her direct or personal email address.
- 8.238. Mr Maguire first asserted that the reason he said “all that stuff is, um, ICACable”, was because he did not want Ms Waterhouse to pass on Ms Berejiklian’s email address. However, he then agreed that he was concerned that “the kind of extensive activity that [he was] involved in in relation to the Smartwest.Sydney site, if known, might have led to questions being asked as to the appropriateness of the member for Wagga Wagga being closely involved in assisting someone achieving their development interests or sale interests in Western Sydney”. Next, Mr Maguire agreed that he should not have given Ms Berejiklian’s direct or personal email address to Ms Waterhouse in order to assist himself in the sense of seeking to help Ms Waterhouse in at least the hope that some personal profits might flow to him. Finally, Mr Maguire agreed that it was a misuse of his office, including his knowledge of the premier’s private email address, to provide that email address to Ms Waterhouse for her use, but that he had done so because he had hoped that that would be part of a step in the process that would ultimately lead to some personal profits for himself.
- 8.239. Counsel Assisting submitted that the Commission would infer from Mr Maguire’s stated concern about “stuff” being “ICACable” that Mr Maguire was concerned about the propriety of his conduct in working together to lobby the premier to intervene in matters to the advantage of Ms Waterhouse, or interests associated with her, and thus to Mr Maguire as a potential recipient of a commission. That is a matter of particular significance in relation to Mr Maguire given the

nature of his relationship with Ms Berejiklian at the time. The Commission finds that this was a form of black humour on Mr Maguire's part demonstrating a consciousness of the impropriety of his conduct.

- 8.240. Ms Waterhouse said she regarded Mr Maguire's reference to "ICACable" as "silly talk" and "that wasn't anything that was concerning me at the time but I didn't want to embarrass Daryl if he didn't want me to because I'd asked for an email address to, to get to the Premier's Office or whatever, and he turned out he'd given me her private one and I thought that was a bit inappropriate probably".
- 8.241. Ms Waterhouse denied not wanting "the correspondence to the Premier to see the light of day in the sense of being publicly released" and explained her concern about it "being subject to FOI", as being "not to embarrass her," referring to the premier.
- 8.242. In the evening on 14 November 2017, at about 7pm, Ms Waterhouse sent an email to Mr Maguire attaching a draft letter she intended to send to Ms Berejiklian. She had used Ms Berejiklian's direct email address as given to her by Mr Maguire.
- 8.243. A few hours later, Mr Maguire (DM) and Ms Waterhouse (LW) exchanged text messages:
- | | | |
|---------------------------|-----------------|--|
| <i>14.11.2017 9:02 pm</i> | <i>DM to LW</i> | <i>Louise good letter proceed</i> |
| <i>14.11.2017 9:03pm</i> | <i>LW to DM</i> | <i>Thank you. Can we chat tomorrow about the Fed v State influence.</i> |
| <i>14.11.2017 9:04pm</i> | <i>DM to LW</i> | <i>Yes sure Leave it to me now to fix, we understand where the problem is.</i> |
- 8.244. Mr Maguire spoke to Ms Berejiklian on 15 November 2017 at 11.09 am. He asked her if she had received an email from Ms Waterhouse:
- | | |
|---------------------|---|
| <i>MAGUIRE:</i> | <i>Ah did you get an email from Louise Waterhouse?</i> |
| <i>BEREJIKLIAN:</i> | <i>No.</i> |
| <i>MAGUIRE:</i> | <i>You will. She'll send you an email. She's really pissed off now so um, about the you know, the, the airport.</i> |
| <i>BEREJIKLIAN:</i> | <i>Mmm.</i> |
| <i>MAGUIRE:</i> | <i>They're all passing the buck. So RMS is saying no, no, it's the Federal Government's plan and we have to deliver on it. Federal Government's saying no, no RMS are in charge of the roads.</i> |
| <i>BEREJIKLIAN:</i> | <i>Mmm.</i> |
| <i>MAGUIRE:</i> | <i>Just going around in circles, and I said this, this is fucking typical of, of our government with that Blair Comley in charge. He caused all this problem, you know, these bureaucrats passing the buck.</i> |
| <i>BEREJIKLIAN:</i> | <i>Alright.</i> |
| <i>MAGUIRE:</i> | <i>Same out at um, Camellia too.</i> |
| <i>BEREJIKLIAN:</i> | <i>Hokis I've got to-</i> |
| <i>MAGUIRE:</i> | <i>Same out at Camellia.</i> |
| <i>BEREJIKLIAN:</i> | <i>- I've got to go.</i> |

- 8.245. At 6.51 pm on 15 November 2017, Ms Waterhouse emailed her letter to Ms Berejiklian using the direct email address Mr Maguire had given her. She forwarded the email to Mr Maguire a few minutes later at 6:55 pm. The penultimate paragraph of the letter read:

Premier, in summary, we seek your urgent support in this relatively minor design change and a fast track for engineering work for the proposed amended location of The Northern Rd Airport South intersection – so as to not cause significant delays and future proof the new roadway by opening up the potential Badgerys Creek Western Precinct.

- 8.246. The next morning, 16 November 2017 (at 9:31 am), Ms Waterhouse sent another email to Ms Berejiklian in which she observed that “if this Badgerys Creek Western Precinct land were allowed to be landlocked as a result of infrastructure planning not being future-proofed, then the state would be denied not only jobs but also significant value uplift for the whole western precinct”. She suggested that there should be “a short independent engineers’ review of the design of this Western Sydney Airport South Intersection – so that you can be independently and properly informed about the planned location and the way forward to make the minor amendment”. Ms Waterhouse also forwarded the email to Mr Maguire, signing off her email to him, “Thank you for your efforts”.

- 8.247. On 4 December 2017, Ms Waterhouse and Mr Maguire arranged to meet at Parliament House that afternoon. At 4.03 pm, she texted Mr Maguire to say she was in Parliament House “when you are ready”. Also, that day, Mr Maguire and Ken Gillespie (KG), NSW regional infrastructure coordinator, had the following text exchanges:

4.12.2017	2:13:22 PM	DM to KG	<i>Are u around at 4/430 I may need your help with a rms issue at Badgeries [sic] Ck , for Louise Waterhouse</i>
4.12.2017	2:55:51 PM	KG to DM	<i>Maybe at 4.30. Badgerys Creek is out of my patch but will help if I can</i>
4.12.2017	3:26:25 PM	DM to KG	<i>Ok I will asses [sic] situation</i>
4.12.2017	4:22:44 PM	DM to KG	<i>Hey I am talking with Louise Waterhouse re Badgery [sic] creek she wants to meet New DG premier and cabinet re her large land holdings and Sydney commission wanting to designate metro Rural! It’s a joke! Land is next to Airport ideal for Industry, everyone is getting in way not doing a thing.</i>

(Emphasis added)

- 8.248. Mr Maguire and Ms Berejiklian spoke by telephone that evening (4 December 2017 at 7:16pm):

BEREJIKLIAN: Oh what are you up to? What are you doing darling?
MAGUIRE: I’m just um, having dinner with William and um -
BEREJIKLIAN: Mmm.
MAGUIRE: – we’re at the, at the Marigold and then –
BEREJIKLIAN: Mmm.

MAGUIRE: – I’m going to have dinner with um –

BEREJIKLIAN: Oh you’re in Sydney tonight?

MAGUIRE: Yeah because I went to Canberra so um –

BEREJIKLIAN: Alright yep, yep.

MAGUIRE: – so I went to Canberra to do that meeting with Horling –

BEREJIKLIAN: Mmm.

MAGUIRE: – and then **I had to come and meet our friend Louise and then ah, because she’s having problems, big problems now.**

BEREJIKLIAN: Mmm.

MAGUIRE: **They want to make all her area now a greenfield site and just leave it, lock it up.**

BEREJIKLIAN: Mmm.

MAGUIRE: **She’s furious, and um, which is the Sydney Planning Commission. So anyway I met her and, and introduced her to people.**

(Emphasis added)

- 8.249. The reference to the “Sydney Planning Commission” was intended to refer to the Greater Sydney Commission. According to Dr Sarah Hill, the CEO of the Greater Sydney Commission, that body “was established to set the big picture planning for Greater Sydney. It was asked to prepare an overarching plan for the city for the next 20 to 40 years, and also a series of ... district plans, which were mapping out land-use planning and infrastructure corridors at a district level across the five districts of Greater Sydney.”
- 8.250. As part of that function, an overarching plan was prepared for the area of Badgerys Creek surrounding the Western Sydney Airport site. It was not the role of the Greater Sydney Commission to assess individual development applications at the level of specific sites.
- 8.251. Mr Maguire said that around this time, he was taking a number of steps to assist Ms Waterhouse with what were called “the roads issue” (the location of the Northern Road intersection) and “the planning issue”. The “planning issue” was the proposal that Ms Waterhouse’s land be turned into a greenfield site and locked up which Mr Maguire described as “pretty serious” and “almost a game changer” because it affected the whole area. The evidence does not reveal to whom Mr Maguire introduced Ms Waterhouse on 4 December 2017.
- 8.252. The next day, 5 December 2017, there was a text exchange between Mr Maguire, Ms Waterhouse, Mr Gillespie and Ms Pavey (MP). (At that time, Ms Pavey was the minister for roads, maritime and freight.)

5.12.2017	DM to LW	<i>Gday I spoke to Melinda Pavey She will discuss with Jock and come back to you I will send her your contact</i>
5.12.2017	LW to DM	<i>You are the best! Thank you</i>
5.12.2017	DM to MP	<i>(Virtual card of Louise Waterhouse sent)</i>
5.12.2017	DM to KG	<i>If I need help I will give you a call to contact Louise (Virtual card of Louise Waterhouse sent)</i>

- 8.253. As Counsel Assisting submitted, it is apparent from the communications of 4 and 5 December 2017 that Mr Maguire was still trying to advance Ms Waterhouse's interests with respect to both the "roads issue" and the "planning issue", by reaching out to both Ms Pavey and Mr Gillespie. In neither case did Mr Maguire disclose his own interest in the Smartwest.Sydney site in the event of its sale and/or development. He was also keeping Ms Waterhouse well apprised of the steps he was taking to advocate on her behalf.
- 8.254. It is notable that this lobbying was occurring after the point at which Mr Luong had told Mr Maguire on 5 September 2017 that Ms Waterhouse had asked "who will look after Daryl?".
- 8.255. On 14 December 2017, a DLO from Ms Pavey's office contacted Brenda Tritton, one of Mr Maguire's electorate officers, who forwarded to Mr Maguire the following note of the conversation:

DORIS ROADS DLO–MINISTER PAVEY [phone number redacted]

*RE–LOUISE WATERHOUSE EMAIL HAS BEEN REFERRED TO HER REGARDING LAND AT WALLACIA WHICH IS NEAR WESTERN SYDNEY AIRPORT AND WITHIN THE AEROTROPOLIS BOUNDARY **EXECUTIVE DIRECTOR OF RMS WILL MEET WITH LOUISE TO DISCUSS CONCERNS REGARDING THE UPGRADING OF ROAD** (Capitals original, emphasis added)*

- 8.256. Mr Maguire contacted Ms Waterhouse and told her that he had received a message from the minister of "Roads and Maritime ... and they're going to have the boss of RMS meet with you".
- 8.257. When Ms Waterhouse raised some scheduling concerns and suggested her planners could "take the meeting", Mr Maguire responded, "the meeting was for you and nobody else". It appears Ms Waterhouse had already received a formal communication about the meeting. She told Mr Maguire he was "a genius" and "fantastic", to which he replied "No, no I'm just a ... hard working local member. Somebody who likes ... to see you get on, you know".
- 8.258. Ms Waterhouse then told Mr Maguire that she had collated submissions from numerous local owners and asked Mr Maguire what she should do with them, after which the following conversation took place on 14 December 2017:

WATERHOUSE: ...And I wanted to ask your thoughts, I'd like to copy some of the people and, and certainly send it to um, Angus Taylor. Do you think I should send it to that local member, whoever it was?

*MAGUIRE: **No I won't – no I think you should shut up, um –***

WATERHOUSE: Shut up, okay.

MAGUIRE: – shut up and keep that to yourself and drop the bomb on the RMS.

WATERHOUSE: Yes.

*MAGUIRE: **Okay, don't tell the local member. We all, we all know you know that you're working on it. Now, now's the time to shut up and go and, you know go for the throat and make it happen and then pull out the list you've got okay –***

WATERHOUSE: Yes, yes.

MAGUIRE: – so they can see you're serious.

(Emphasis added)

- 8.259. Mr Maguire agreed that he had told Ms Waterhouse not to get her local member of Parliament involved because he wanted to be closely involved in the process of attempting to fix her issues, so that he could get the credit in the event that that was successful, and increase the prospect that Ms Waterhouse, or someone else, might look after him financially in the event of a successful development.
- 8.260. Mr Maguire also agreed that he had not advised the minister's office, or the Greater Sydney Commission either in advance, or during the meeting which ultimately eventuated, that he hoped to make some profits out of the Smartwest.Sydney proposal. He admitted that but for that potential profit motive, he would not have gone to the effort of seeking to set up that meeting.

Meeting with the Greater Sydney Commission

- 8.261. Following the text exchange on 5 December 2017, Ms Pavey passed a note to Dr Hill during a Cabinet Infrastructure Committee (CIC) meeting asking that Mr Maguire be briefed with an overview of the Western Parkland City and the work that was being done by the Greater Sydney Commission. The Western Parkland City is a substantial area which spans from Wollondilly to Hawkesbury to the Blue Mountains and includes the Western Sydney Aerotropolis, in and around Western Sydney Airport. The Greater Sydney Commission was not in the minister's portfolio at the time. There is no suggestion the minister acted inappropriately in communicating Mr Maguire's request to Dr Hill.
- 8.262. Dr Hill contacted Mr Maguire on 15 December 2017. Mr Maguire told her that he was interested in understanding more about the work of the Greater Sydney Commission, as well as mentioning something to do with roads. Reference was also made to the Land Use Infrastructure Plan (LUIP) being prepared by the Department of Planning and Environment (DPE), a document which would inform future rezoning of land within the Western Sydney Aerotropolis. Because Mr Maguire mentioned roads, Dr Hill suggested that the Western Sydney District commissioner join any meeting because he was very proactive in that space. After she spoke to Mr Maguire, Dr Hill emailed her staff advising them of a proposed briefing for him in February 2018, and asking them to arrange for people from the DPE, who were doing some more detailed work with the LUIP and infrastructure to attend, having regard to Mr Maguire's apparent interest in some further details around roads.
- 8.263. Dr Hill understood from their conversation that Mr Maguire was interested in more general topics rather than a particular site or a particular issue. At this time, it was not uncommon for the Greater Sydney Commission to brief members of Parliament in relation to its work more generally. Mr Maguire did not give Dr Hill any indication that in the event a favourable decision might be made by the Greater Sydney Commission, or by some of the other agencies she arranged to attend the meeting, that he personally might stand to gain from that. Had he done so, this would have raised immediate and very significant alarm bells, and required organising a probity adviser to attend the meeting organised in accordance with Greater Sydney Commission practice at the time.
- 8.264. On 15 December 2017 at 11:14 am, Mr Maguire left the following voicemail for Ms Waterhouse:

Louise, g'day. I just had a call from the CEO of the Sydney Planning [sic] Commission. Ah, she wants to meet with me, and I told her February, about ah, the boundaries and the you know, exclusions for further development. I've just chewed her out and told her, she suggested that you wanted to do housing. I said don't be silly. All the neighbours there um, understand you can't do housing, it's industrial. So ah, she's going to arrange for RMS and for them um, to have a discussion with me about um, you know the further development of your land and um, I'll wait 'til you get back at the end of January then we'll have a conflag before we have the meeting. Anyway ah, Happy Christmas, take care and talk to you in New Year. Bye, bye.

8.265. Ms Waterhouse returned his call a few minutes later. Mr Maguire remarked “apparently Melinda Pavey’s been batting for you” and continued:

MAGUIRE: ...So she’s gonna have a briefing for me—I don’t know why but – and I said “Have you met with Louise Waterhouse?”. “Yes, we know her”, blah, blah, blah, and I –

WATERHOUSE: But she doesn’t know of our issues ’cause she’s too, she’s high level.

MAGUIRE: Correct.

WATERHOUSE: Mmm.

MAGUIRE: Yeah well I’m gonna take you to the meeting, ha, ha, ha.

WATERHOUSE: Oh fabulous.

MAGUIRE: That’s why I want you to have the roads one in January and then you can front up and, and they can solve your problem okay.

8.266. Ms Waterhouse again expressed her appreciation for Mr Maguire’s efforts, telling him he was “amazing” and that she was “in awe” of him.

8.267. Mr Maguire shared the news about the proposed meeting with Mr Luong who he called on 18 December 2017 and advised that he had “got an appointment for Louise [Waterhouse] for next year with the ... Sydney Planning [sic] Commission”. The conversation continued:

MAGUIRE: Yep, to talk about her development and getting access to the road.

LUONG: Yep.

MAGUIRE: Yep and um, also about including it in the plan because as it is now they cut her out of the plan.

LUONG: Yep.

MAGUIRE: Yep so I fixed, so I’m fixing that for her so she can at least put a case and see if they can you know make it a bit better for her (yawns).

LUONG: Mmm okay that’s good.

MAGUIRE: Mmm.

LUONG: That’s good for her.

MAGUIRE: Mmm.

LUONG: They’re giving her a bit of value in her land.

MAGUIRE: Yeah a bit of value that’s right.

8.268. The planned meeting ultimately took place on 12 March 2018 in a meeting room at Parliament House. It was attended by Mr Maguire, Ms Waterhouse, Ms Waterhouse’s consultant, Dr Hill and representatives from the DPE and the RMS. Dr Hill agreed that it was unusual for a member of Parliament to bring along a landowner and their consultant to such a meeting at Parliament House – that is, to bring along someone who had a particular interest in a particular site.

8.269. Dr Hill knew Ms Waterhouse from previous public events the Greater Sydney Commission had organised to brief stakeholders on their work, many of which Ms Waterhouse had attended. Ms Waterhouse had also previously met with Greater Sydney Commission commissioners and

made submissions to the plans by that stage. However, Dr Hill was not aware prior to the meeting that Ms Waterhouse was to be in attendance. Had she been she would have arranged for a probity adviser to be present.

- 8.270. Ms Waterhouse's attendance was not a matter that was concealed from Dr Hill's office, it was just not a matter that came to her attention prior to the meeting. The use of a probity adviser was an arrangement the Greater Sydney Commission had implemented largely for its commissioners, given that they had a lot of people interested in briefing them on their sites and the Greater Sydney Commission needed to make sure that they felt comfortable in those meetings. Indeed, it appears that her office considered arranging a probity adviser, but this was not drawn to Dr Hill's attention until well after the meeting.
- 8.271. During the meeting, Dr Hill provided an overview of work being done by the Greater Sydney Commission and other departments in the Western City area. However, she said the meeting "pretty quickly went to a discussion around Ms Waterhouse's land and development potential for it".
- 8.272. It was clear in Dr Hill's mind that Ms Waterhouse, or at least her family, might have a financial interest in the Greater Sydney Commission's draft plan because the Smartwest.Sydney land, which lay to the west of the corridor proposed for the M9 Outer Sydney Orbital, fell outside the boundary of the proposed Western Sydney Aerotropolis and was broadly zoned as Metropolitan Rural under the draft plan. While the Greater Sydney Commission was not empowered to change the zoning of the land directly, it could send a "very strong ... strategic direction that it was appropriate for the land to be rezoned". This could also have been achieved by "the boundary of the Aerotropolis [being] extended out to include" Ms Waterhouse's land, which was the outcome she sought.
- 8.273. Dr Hill's impression was that Mr Maguire was not a passive participant in the meeting. He sat close to Ms Waterhouse but did not say a lot. Nevertheless, Dr Hill sensed he was "more of an advocate" for Ms Waterhouse and "frustrated that we weren't progressing the conversation more the way they [being Ms Waterhouse and her consultant] wanted it to go". His advocacy was, in Dr Hill's assessment, made on behalf of Ms Waterhouse's proposal rather than broader advocacy for the residents and industry in the area.
- 8.274. Following discussion around planning, the focus of the meeting shifted to roads surrounding the site of the Waterhouse land, including the alignment of the M9 Outer Sydney Orbital. Dr Hill's notes of the meeting record the following of the conversation:
- LW [Ms Waterhouse] advised that discussions with Transport had inferred that the outer Sydney orbital would cut through her site. A discussion was then had about the lack of infrastructure to the LW site and the need for on/off ramps on her site. This part of the conversation was led by RMS.*
- 8.275. Dr Hill was sufficiently concerned by what occurred during the meeting that she made detailed file notes and prepared a briefing note for the minister for planning, soon after it ended. Had Dr Hill understood this was to be a site-specific meeting, she would also have arranged an official minute taker.
- 8.276. Dr Hill agreed with the proposition that it was of considerable concern to her as a matter of probity that, in the days leading up to the draft plan becoming a final plan, she was involved in a meeting with a landowner at Parliament House in which that landowner was seeking to advocate changes for their own benefit. Ultimately, no changes were made to the draft plans as a result of the meeting of 12 March 2018.

- 8.277. Following the meeting, Ms Waterhouse sent emails to the chief commissioner on 16 March 2018 and the deputy chief commissioner on 15 and 20 March 2018, regarding the designation of land west of the Western Sydney Airport that forms part of the MRA.
- 8.278. On 28 March 2018, Dr Hill sent a letter to Ms Waterhouse referring to that correspondence and the concerns expressed not only by Ms Waterhouse, but also by other owners of land located west of the airport, specifically that the MRA designation may constrain opportunities for urban development near the airport and that lifestyle amenity will be harmed by aircraft noise and pollution. The letter advised that new employment areas and centres identified as integral to the new airport were to be located generally north, south and east of the airport and would be prioritised for infrastructure over the next 20 years. It suggested steps the Waterhouse Group could take with respect to its specific planning proposals. Finally, the letter noted that the “suggestions are consistent with our discussions at the meeting held with Mr Daryl Maguire MP and representatives from the Commission, the DPE, Roads and Maritime Services and the Waterhouse Group”.

The door opener

- 8.279. Mr Maguire agreed that he acted as a “door opener” in relation to public officials in connection with the proposed Smartwest.Sydney transaction. It is notable that this is the way Mr Elliott described Mr Maguire’s role in relation to G8wayInternational. It was a business model, for want of a better description, which suited a politician seeking to take advantage of his status as such but seeking to act in a manner possibly regarded by most people as appropriate to his role. Ms Waterhouse, for example, saw Mr Maguire acting in his role as a member of Parliament to see how he could help her, and he told her that.
- 8.280. Mr Maguire, however, agreed that the steps that he took in relation to the Smartwest.Sydney land did not have anything to do with his electorate responsibilities as the member for Wagga Wagga. That is a nuance not all would appreciate and, even if they did, would most probably not appreciate was untoward unless they were aware of the pecuniary goal which underlay Mr Maguire’s perceived altruistic assistance. Mr Maguire did not confine his activities to his electorate because of the pecuniary goals he was pursuing. That was wrong. Further, Ms Berejiklian was also alive to the expectation that, not being a minister, Mr Maguire would confine his activities to his electorate.
- 8.281. Mr Maguire agreed that he had taken so many steps in relation to the Smartwest.Sydney issue that it could only be explained by the fact that he was hoping for some financial return at the end of the day. He also accepted he would not have assisted to the same extent but for a personal profit motive. He agreed that he was using his office as a member of Parliament to assist in progressing matters in connection with the Smartwest.Sydney site.

Epilogue

- 8.282. It will be recalled that, on 14 December 2017, after Mr Maguire told Ms Waterhouse about the proposed meeting with the Greater Sydney Commission, he also told her, “the meeting was for you and nobody else” and not to get her local member involved. He said he did not want the local member involved, because he wanted to be closely involved in the process of attempting to fix Ms Waterhouse’s issues, in part so he could get the credit in the event that this was successful, which would increase the prospect that Ms Waterhouse, or someone else, might “look after” him financially in the event of a successful development.
- 8.283. Mr Maguire did not get the local member, Tanya Davies, involved at least until approximately March 2018 when, as Counsel Assisting submitted, it must have been apparent to him that the

prospect of a sale was remote and so, too, was his prospect of a commission. At that stage, he advised Ms Davies that Ms Waterhouse was the best person to include as a contact person regarding a letter she was going to write to Anthony Roberts regarding a landowner group apparently formed to address the greenfield issue.

8.284. Mr Maguire said he did not have any more contact after that introduction to the local member.

Mr Maguire's submissions: Ms Waterhouse

- 8.285. Mr Maguire submitted that there were two discrete matters in relation to his dealings with Ms Waterhouse: the assistance sought in relation to access to properties adjacent to the Western Sydney Aerotropolis; and the possible sale of a property or joint venture with Country Garden.
- 8.286. Insofar as the first identified issue was concerned, he argued that the evidence was that Ms Waterhouse was not seeking Mr Maguire's assistance just for herself but on behalf of other landowners near the Western Sydney Aerotropolis who had formed an action group because of concerns regarding both access to their land and future development of the area. As to this, he contended that there was no evidence to support a finding that his motivation to assist in arranging meetings and/or making representations on behalf of Ms Waterhouse was to secure a financial benefit. Further, Mr Maguire submitted the most that could be said against him in relation to the access issue is that in the course of assisting Ms Waterhouse, he did not disclose and should have disclosed he was assisting her in relation to a separate property transaction and this could create an actual or potential conflict of interest.
- 8.287. Insofar as the second identified issue was concerned, Mr Maguire submitted there was no evidence to suggest he used his position as a member of Parliament in relation to this matter. Rather, he was seeking to use his connection with Ms Waterhouse and Country Garden. He contended that while he sought to "talk up" the possibility that he may receive a very substantial fee and how it might be calculated if Ms Waterhouse entered an agreement with Country Garden, there was no agreement. At its highest, the evidence might establish that he "would be looked after" in some way.
- 8.288. The Commission rejects Mr Maguire's submissions. First, it does not accept the proposition that Mr Maguire's conduct in relation to Ms Waterhouse can be separated into two discrete matters. Rather, his conduct in relation to advancing her cause in relation to the Smartwest.Sydney land at whatever stage of his engagement was, as he admitted, all intended to secure his personal pecuniary benefit. It was a course of conduct he pursued relentlessly, both through Mr Luong's intercession as a middleman in about April 2017, then later in 2017 when he escorted Ms Waterhouse through the corridors of power in Parliament House, putting her in direct contact with public officials with whom she would not have been able to have personal engagement without his involvement and giving her Ms Berejiklian's personal email address.
- 8.289. Throughout this exercise, Mr Maguire agreed that he had an expectation, or at least a hope, that in the event that the Smartwest.Sydney land was sold or was the subject of an investment he would receive a commission or other payment from someone, be that Mr Luong or someone else. He agreed that that was the principal reason that he engaged in the activities in relation to the Smartwest.Sydney land.
- 8.290. Although Mr Maguire's overt attempts to assist with the Northern Road issue did not appear to take place until October 2017, when he arranged a meeting between Ms Waterhouse and Mr Sowter, as the foregoing discussion reveals, it had always been an issue for Ms Waterhouse. It was clearly a real issue for the value of the Smartwest.Sydney land. Mr Maguire agreed that he did not disclose to Mr Sowter when he introduced him to Ms Waterhouse, and when he pursued

her interests in his emails to Mr Sowter, that he hoped to receive a financial reward in connection with the Smartwest.Sydney site and that that was a matter he should have disclosed.

- 8.291. Insofar as the Greater Sydney Commission meeting was concerned, Mr Maguire further agreed that he had not advised the minister's office, or that commission either in advance, or during the meeting he arranged, that he hoped to make some profits out of the Smartwest.Sydney proposal. He admitted that but for that potential profit motive he would not have gone to the effort of seeking to set up the Greater Sydney Commission meeting.
- 8.292. It may have been the case that Ms Waterhouse was not seeking Mr Maguire's assistance just for herself but on behalf of other landowners near the Western Sydney Aerotropolis, but Mr Maguire went out of his way to keep a firm grip on Ms Waterhouse's attempts to resolve both the Northern Road and greenfield site issues. Mr Maguire agreed that he had told Ms Waterhouse not to get her local member of Parliament involved because he wanted to be closely involved in the process of attempting to fix her issues, so that he could get the credit in the event that that was successful, and increase the prospect that Ms Waterhouse, or someone else, might "look after" him financially in the event of a successful development.
- 8.293. The Commission does not accept that Mr Maguire "talked up" the possibility that he may receive a very substantial fee in relation to the Smartwest.Sydney land. Mr Luong agreed that he would have paid Mr Maguire a substantial fee in relation to his admitted assistance in relation to the possible sale of, or investment in, that land. The conversations Mr Maguire had with Ms Berejiklian in September 2017 about being paid enough money which would substantially clear his debts were not expressed as a possibility but a certainty. This was at a time when the prospects of a sale to Country Garden seemed high. Even after that prospect disappeared, Mr Maguire still entertained the belief that he would be rewarded for assisting Ms Waterhouse. Whether that belief was induced by what he was told by Mr Luong, or the understanding that in practice in the property development industry it was common for fees to be paid to those who assisted with a sale, that was the factor which motivated him to act as he did. This is self-evident from the fact that once it became apparent that he could not assist with the greenfield site issue anymore without involving the local member, he walked away.
- 8.294. In short, in pursuit of his goal of personal pecuniary benefit in relation to addressing the issues affecting the value and development potential of the Smartwest.Sydney land, Mr Maguire:
- got a middleman, Mr Luong, involved to seek to procure the sale of, or investment in, the Smartwest.Sydney land
 - communicated with the minister for roads, Ms Pavey, both to arrange for Ms Waterhouse to meet Mr Sowter in October 2017, and in December 2017 to arrange for Dr Hill to contact him about the Greater Sydney Commission meeting
 - escorted Ms Waterhouse to the area of the premier's office to meet a PLO (Mr Sowter) to seek to resolve the Northern Road issue, with whom she would not have been able to engage without his assistance
 - gave Ms Waterhouse Ms Berejiklian's personal email address so she could, and did, send communications directly to the premier when correspondence from a member of the public should have been communicated via an office email address for reasons of probity and disclosure
 - communicated to Ms Waterhouse that the direct effect of her correspondence with Ms Berejiklian was that the latter would give the Northern Road issue a "tickle from up top" or "light a fire"

- arranged an exclusive meeting for Ms Waterhouse with representatives of the Greater Sydney Commission, which the latter understood was for a general briefing, and the former understood was to address the greenfield issue.

8.295. In his involvement with the Smartwest.Sydney land Mr Maguire was leveraging, or seeking to leverage, his position as a member of Parliament for his personal pecuniary benefit. This was a breach of public trust.

William Luong

8.296. As earlier mentioned, in the period 2017–2018, Mr Luong acquired an interest in land at Cawdor, a new suburb near Camden. This is apparent from a message Mr Luong sent on 14 November 2017 that he had an interest in three large properties in Old Razorback Rd, Cawdor. The first part of the message proposed the take-over of a call option deed in respect of 565 Old Razorback Rd, Cawdor, due to be exercised on 23 November 2017. The message noted that in recent months, Country Garden had settled numerous lots of land in Cawdor and had also recently signed a put and call option for an adjacent block of land.

8.297. The following day, Mr Luong sent a message to Mr Lakos asking him if there was “any chance of giving me those potential buyers’ contact details re purchase of my call option on 565 Old Razorback Rd, Cawdor sometime today?”

8.298. On 30 November 2017, Mr Luong exchanged several messages, apparently with Mr Lakos, about the possibility of him being able to get the two other properties at 515 and 519 Old Razorback Road, Cawdor, referred to in the 14 November 2017 message, sold on deferred settlement terms, commenting “this may be good for Country Garden”.

8.299. Mr Maguire agreed that he made enquiries in relation to land at Cawdor with a view to assisting Mr Luong in a potential land deal in the hope of obtaining commissions or other payments in return. He did so by obtaining confidential information not known to the public that was of potential commercial benefit to Mr Luong by making an enquiry with a member of Parliament.

8.300. On 18 December 2017, at 5:25pm, Mr Maguire and Mr Luong had a conversation regarding the proposed path of the M9 Outer Sydney Orbital, the position of which it is apparent was of vital interest to Mr Luong. The conversation proceeded as follows:

MAGUIRE: Mate, I just spoke to him. Do you know where the M9 –

LUONG: Yes.

MAGUIRE: – road is going to go?

LUONG: I don't know, I've got a vague idea.

MAGUIRE: There's a map.

...

LUONG: Remember .in my IM [Information Memorandum] there's a, there's a map.

MAGUIRE: Yep, but –

LUONG: I don't think it'll go – you come across our land, I think it'll be next, next, close to it.

MAGUIRE: Yes, there's a map without lot numbers. Apparently the boys have seen it and um –

...

MAGUIRE: – **they're gonna put it out on exhibition in February for comment.**

LUONG: Would, would I be able to have that map –

MAGUIRE: **No, we, we –**

LUONG: – *in the next few days?*

MAGUIRE: – **couldn't, we couldn't possibly do that. That would be very wrong.**

LUONG: *Oh okay.*

MAGUIRE: *Mmm, yes we could never give you a copy of that map, but others have –*

LUONG: *So what –*

MAGUIRE: – *seen it.*

LUONG: – *what are, what are lot numbers, what are those lot numbers?*

MAGUIRE: *Well we don't know, that's the thing. It hasn't got –*

LUONG: *Yep.*

MAGUIRE: – *the lot numbers on it. But I believe, but I believe –*

LUONG: *Yep.*

MAGUIRE: – *there is a map, okay.*

...

LUONG: *Yeah.*

MAGUIRE: **So, so um, I'm gonna send your um IM to my friend and he's got –**

LUONG: *Yeah.*

MAGUIRE: – **he's going to look and see if he recalls that map in his mindset, okay.**

LUONG: *Okay that's good, that's good.*

MAGUIRE: *Mmm, he's actually seen it. I haven't.*

...

MAGUIRE: – **just let me work on this one now and we'll find out if we can help you.**

LUONG: *Excellent, okay, thanks.*

(Emphasis added)

- 8.301. The “friend” to whom Mr Maguire was referring was a then sitting member of Parliament whom Mr Maguire had, in effect, inducted into Parliament in his capacity as whip for the Liberal/Nationals Coalition parties. The “map” referred to depicted a potential or proposed route of the M9 Outer Sydney Orbital that had not been exhibited in public at that stage. It was a draft of a potential route that was subject to consultation with people, including members of Parliament. Mr Maguire accepted that in making enquiries of his friend, he was taking advantage of their relationship with a view to getting information about the map he could provide to Mr Luong.

8.302. On 12 January 2018, Mr Maguire had a further conversation with Mr Luong, extracts of which included the following:

MAGUIRE: I checked on this thing now he tells me still it's February before we'll know, but what he says to me, he says – he thinks that land in the next five years wouldn't be developed, you know, wouldn't be um structured. And he said he – he –

LUONG: Yep.

MAGUIRE: – he – he said if I was a betting man, and he said he – he quietly he knows the owners, he knows them, he said the price they're asking is outrageous um and – and he said that he couldn't see it, you know, being developed in the near future. That's what he said.

LUONG: Oh –

MAGUIRE: – and I s –

LUONG: – okay.

MAGUIRE: – and I said what about the road? And – and he said to me – he said well I can't tell if – he said the road is near it he s – he said, but it won't affect the land will it? And he said no it definitely not, but um – I said is the road close to it? He said well I – yeah within reason.

LUONG: Okay now I know what Country Garden have done.

MAGUIRE: Yep.

...

MAGUIRE: Yes I think so. Well I'm going to meet the um the person who runs ah greater Sydney. You know the greater –

LUONG: Yep.

MAGUIRE: – Sydney planning [sic] the CEO I'm going to meet her in February.

(Emphasis added)

8.303. Mr Maguire agreed that it was apparent from this conversation that he had obtained information about the general proposed location of the M9 Outer Sydney Orbital, including whether or not the road would be likely to dissect land associated with Mr Luong, and that he passed that information on to Mr Luong because he thought it might be of commercial benefit to him.

8.304. Mr Maguire said at the time he did so, he regarded earning a commission or other payment for himself by so informing Mr Luong as a possibility which exercised his mind.

8.305. Mr Maguire accepted that in providing the information in relation to the M9 Outer Sydney Orbital, he misused his position as a member of Parliament.

Mr Maguire's submissions: Mr Luong

8.306. Mr Maguire submitted that there was no evidence to identify the friend from whom he obtained the information he gave to Mr Luong. The Commission rejects that submission. There was ample evidence, save as to the friend's name, which enabled Mr Maguire to identify that the friend was someone with confidential information who he took advantage of with a view to getting information about the map he could provide to Mr Luong.

- 8.307. Next, Mr Maguire submitted that his recollection in the January 2018 call of the conversation with the friend is vague and does not establish that he received confidential information. He contended that there is no other evidence before the Commission that might enable the Commission to infer from Mr Maguire's recollection of the conversation that he received confidential information.
- 8.308. The Commission rejects that submission. It is clear from the conversations between Mr Maguire and Mr Luong in December 2017 and January 2018 that the information to which Mr Luong sought access was confidential as it had not yet been made public. Mr Maguire had spoken to his parliamentary colleague to whom he provided Mr Luong's information memorandum and asked him, in effect, to put two and two together having regard to his memory of the unpublished map to advise Mr Luong of the probable route of the M9 Outer Sydney Orbital. The information Mr Maguire communicated to Mr Luong was sufficient for the latter to "know what Country Garden have done".
- 8.309. Mr Maguire admitted, and the Commission so finds, that he obtained confidential information not known to the public that was of potential commercial benefit to Mr Luong by making enquiries of a member of Parliament who was his friend. Mr Maguire also admitted, and the Commission so finds, that in providing the information in relation to the M9 Outer Sydney Orbital, he misused his position as a member of Parliament.

Joe Alha

- 8.310. Mr Maguire's close friend, Mr Alha, has already been discussed, particularly in the context of the Immigration Scheme.
- 8.311. Mr Maguire accepted that Mr Alha was an example of a developer to whom he had provided assistance in relation to a number of his development projects. This assistance included making representations on his behalf to ministers and to ministers' staff with the ultimate view to planning applications being approved, including in relation to sites at Campsie and Concord.
- 8.312. Mr Maguire also accepted that he had assisted Mr Alha by forwarding to him information that came to him in his capacity as a member of Parliament, which he thought might be of assistance to Mr Alha in his business.
- 8.313. Mr Maguire admitted that he arranged meetings between Mr Alha or his planners and government officials, including meetings specific to particular sites and projects. He was aware that at the time that he arranged those meetings, it was a matter of government policy for probity reasons that site specific discussions should not take place at such meetings.
- 8.314. Mr Maguire also assisted Mr Alha by introducing him to potential investors, including Country Garden, and marketing his property at 237–239 Canterbury Road, Canterbury, to G8wayInternational associates in January 2013. He also introduced Mr Alha to Mr Li as someone who might be interested in investing in his developments during a trip to China. None of these introductions led to any investments in Mr Alha's projects.

Independent Hearing and Assessment Panels

- 8.315. Independent Hearing and Assessment Panels (IHAPs) were introduced by the NSW Government in 2017, in particular by Anthony Roberts, the then minister for planning, housing and special minister of state. The legislation to enable their creation was introduced by Parliament in August 2017. They were regarded as the minister's signature anti-corruption reform piece, intended to depoliticise the process in councils.

- 8.316. In September 2017, Mr Alha had two sites with which he was concerned, one in Campsie and one in Canterbury.
- 8.317. Mr Alha agreed he saw the creation of IHAPs as a positive step, “because it was taking the decision-making function, at least for some projects, away from local councils and instead putting it into the hands of an Independent Hearing and Assessment Panel of four individuals”.
- 8.318. However, on 27 October 2017, relatively soon after IHAPs were legislated, in a telephone conversation at 4.09 pm, Mr Alha expressed concern to Mr Maguire as to who might be appointed to the panels. Mr Maguire said it would “be done at arm’s lengths from Government”, but asked Mr Alha “Who should we beware of?”, and Mr Alha said he would talk to him “face to face about the names”. It is not surprising that Mr Maguire told Mr Alha the appointments to the IHAPs were to be at arm’s length, because he was aware the panels “were all about introducing a measure against corruption in relation to high-profile and important matters of development application assessments”.
- 8.319. Counsel Assisting submitted that the evidence indicates that it was Mr Maguire who approached Mr Alha in the first instance regarding names to be put forward as unsuitable for appointment to an IHAP. The Commission does not accept that submission. While it is accepted that Mr Maguire asked for specific names during this telephone conversation, it was clearly Mr Alha who raised the topic of IHAPs and it is apparent from Mr Alha’s reluctance to give Mr Maguire names over the telephone that he knew that what they were discussing was wrong.
- 8.320. Asked about this conversation, Mr Alha insisted he did “not really” care about the identity of those on the panels. As Counsel Assisting submitted, Mr Alha’s evidence about his lack of concern should not be accepted. Rather, this call itself reveals a keen interest on Mr Alha’s part as to who was to be appointed to the IHAPs. As a developer, there was a clear and logical reason for him to have such an interest – the desirability of having persons appointed to IHAPs who might look favourably on developments promoted by Mr Alha or persons associated with him.
- 8.321. Mr Alha’s statement about his lack of concern is also belied by the following conversation, also on 27 October 2017, which took place at 4.13 pm when Mr Maguire called Mr Alha back:

MAGUIRE: Ah just thinking about that thing, um, I think there’s some extreme vetting goes on with it. I don’t –

ALHA: Yeah.

MAGUIRE: – think it’s as cut – oh yeah it’s not as carte blanche as people might think, capisce?

ALHA: Yeah.

MAGUIRE: Mm.

ALHA: Yeah.

MAGUIRE: You’ve got to have the right people because otherwise it’s a big worry.

ALHA: Ah it’s just bad – it’s just ba – it’s just bad news that’s all it is.

MAGUIRE: Correct – correct – correct – correct.

ALHA: Very bad news.

MAGUIRE: Yeah.

ALHA: You – you – you know – you – you know what happened to me in Canterbury not long ago, remember that?

MAGUIRE: *Ehm.*

ALHA: *Do you remember the story I told ya?*

MAGUIRE: *Yep.*

ALHA: *With that guy's name.*

MAGUIRE: *Yep.*

ALHA: *Yeah the – the it – it's part of that gang.*

MAGUIRE: *Very bad news. Alright, leave it –*

ALHA: *Yeah alright –*

MAGUIRE: *– leave it – leave it with me, see you mate.*

(Emphasis added)

- 8.322. It is apparent from this conversation that far from “not really” being concerned about who was appointed to an IHAP panel, Mr Alha regarded them as “very bad news”, particularly if the “guy” apparently responsible for something which had happened in Canterbury (presumably in the Canterbury City Council local government area) was appointed to one.
- 8.323. On 1 November 2017 at 6:53 am, Norm Lipson, the media adviser to Anthony Roberts, issued a media release by email advising of the introduction of the IHAPs. The media release explained that “mandatory IHAPs were introduced as a measure against corruption and would bring expertise, transparency and integrity to the assessment of DAs at the local level”. They were seen as being an essential “transparent and accountable process in place when assessing DAs of significant value, when there is a conflict of interest for the council or developer, or when they are of a sensitive nature.” They were to become mandatory for all councils in Sydney and Wollongong City Council from March 2018.
- 8.324. On 1 November 2017, at 8.03 am, Mr Maguire replied to Mr Lipson’s email saying:
- I am told there a lot of shifty characters applying ! Beware will Robinson.* (Spacing in original)
- 8.325. Mr Lipson replied at 8:27 am (and also forwarded Mr Maguire’s email to Robert Vellar, then chief of staff to Anthony Roberts):
- Hi Daryl,*
- Just wondering how you know this? Are you aware who the applicants are? I must point out that there is a very strict probity check done on all applicants. ICAC investigations have shown that there have been many shifty folk who have sat on councils and made major decisions.*
- 8.326. Mr Vellar also sent Mr Maguire an email saying:
- Daryl,*
- Given that we don't even know who the applicants are I hope you're joking.*
- 8.327. Mr Maguire responded to Mr Vellar saying:
- No not joking , my friends are chatting about some of the Nominations cause they know stuff about them and that they nominated.* [Spacing in original]

- 8.328. Mr Vellar replied:
- That's bloody ridiculous.*
- Stay out of it.*
- 8.329. Soon after, Mr Vellar emailed Mr Maguire again asking:
- Actually Daryl,*
- If you are aware of "shifty people" who have made application, please provide their names.*
- 8.330. At this stage, Mr Lipson emailed Mr Vellar advising him:
- Rob it is incumbent for the Department to be informed of anyone with a "shifty" character who is applying for a position. They really should know who poses a risk so he or she is eliminated from m [sic] contention.*
- 8.331. Mr Vellar said he asked Mr Maguire for the names because he was concerned there may have been a flaw in the process, in the sense that someone from the bureaucracy may have leaked the names of one or more people who had been applicants in circumstances, where that process was supposed to be confidential. Mr Lipson was also concerned because of the possibility that there were one or more applicants about whom there was information which suggested that they should not be appointed, which Mr Maguire might have and which therefore should be fed into the formal process.
- 8.332. Mr Vellar was "pretty annoyed" that Mr Maguire was taking what he thought was a "pretty cheap shot" at the IHAPs application process. He had other concerns. First, he questioned how the IHAPs were any of Mr Maguire's concern, given that it was not proposed to appoint IHAPs to regional areas of NSW. Secondly, he was annoyed because Mr Maguire's emails were cutting across the arm's-length process that had been part of the construct of the anti-corruption nature of the new measure. Finally, he was concerned because the IHAPs were intended to operate within the boundary of Sydney, as defined by the Greater Sydney Commission, and Wollongong. Accordingly, they had nothing to do with Mr Maguire's electorate.
- 8.333. On 2 November 2017, at about 2.20 pm, Mr Maguire and Mr Alha exchanged several texts in which Mr Maguire told Mr Alha he "need[ed] a list of badies that have applies to be on lhap" (as in original), and Mr Alha replied "Any former labor mayors or formal council staff" and gave Mr Maguire one name and also referred to the "formal [sic, 'former'] director of planning" of a council. An hour or so later, Mr Maguire texted him again saying, "Name names we have a window of opportunity."
- 8.334. The two men then had a telephone conversation at 4.01 pm in which Mr Alha queried "what did you need, what names did you need besides that grub?" and Mr Maguire re-iterated his text request that Mr Alha, "You know just give me – just text me just a series of – of names." They then discussed the name Mr Alha had given Mr Maguire in the text and Mr Alha also identified the former council director of planning, saying "[they are] the two names you want to stay away from". Mr Maguire responded, "Alright okay, good just – just leave it to me okay."
- 8.335. Mr Alha agreed the two names he gave Mr Maguire were two individuals who he knew, or at least suspected, had applied to become members of an IHAP and that he was of the view that those individuals should not become members of an IHAP, because it would be contrary to his business interests. He thought they "might not give favourable and prompt consideration to the development applications that he was putting forward".

- 8.336. On 2 November 2017, at 4.06 pm, Mr Maguire emailed to Mr Lipson the two names Mr Alha had given him accompanied by the statement (as in original), “be very aware Will Robinson !Danger Danger”. Mr Lipson forwarded that email to Mr Vellar the same day.
- 8.337. On 3 November 2017, Mr Maguire texted Mr Vellar to see if he was available for a “fireside chat” saying he “need[ed] to have a quick chat about the Names further info”. Mr Vellar replied, “Your [sic] best off emailing the details. I have to forward your concerns to the secretary.”, to which Mr Maguire responded, “Can’t do that.”
- 8.338. Mr Vellar said he was “pretty annoyed” at Mr Maguire on or around 2 November. He had spent a lot of time on the signature policy within the minister’s office yet, even though the IHAPs were intended to be an anti-corruption measure, here was a politician getting involved in a process that was deliberately supposed to be at arm’s length from politics.
- 8.339. On 14 November 2017 at 8.22 pm, Mr Vellar forwarded Mr Maguire’s email to Mr Lipson with the two names to Steve Murray, an executive director in the DPE in charge of the assessment process for the IHAPs.
- 8.340. Of the two names Mr Alha gave Mr Maguire, one was appointed to an IHAP.
- 8.341. Mr Maguire agreed that the people he put forward as “shifty characters” on behalf of Mr Alha were people whose appointments to an IHAP would be contrary to Mr Alha’s commercial interests. He further agreed that he would not have engaged in these communications with the minister’s office (putting forward the names) but for his friendship with Mr Alha.
- 8.342. It is a striking matter that Mr Maguire assisted Mr Alha in attempting to thwart the appointment of two possible applicants to an IHAP, a body set up as an anti-corruption measure and the appointments to which he appreciated had to be at arm’s length, to suit Mr Alha’s commercial interests.

Mr Alha visits Parliament House

- 8.343. Counsel Assisting submitted that a further form of assistance that Mr Maguire provided to Mr Alha was in arranging meetings with the premier and the chief of staff (then Mr Vellar) to the minister for planning.
- 8.344. On 28 September 2017, Mr Alha pressed Mr Maguire to arrange an “appointment” for him with Anthony Roberts and Ms Berejiklian for the following week. He told Mr Maguire he wanted “to show ’em my project”, to which Mr Maguire replied “Okay”. Mr Alha continued:

ALHA: *I – I – and – and I’d like to talk about – **well you probably can’t talk about specifics**, but in a holistic point of a view, I just want to show ’em some issue that might you know help them out in one way.*

MAGUIRE: *Yeah.*

ALHA: *And at the same time enlighten them on – on some stuff that’s going out there in the community that (inaudible)*

MAGUIRE: *Alright, no worries. I’ll um – I’ll ask ’em tomorrow*

...

ALHA: *I – I spent – I spent – I spent ten thousand dollars on some – on **some stuff**.*

MAGUIRE: *Yeah.*

ALHA: *So it's all little models of the area and I got my buildings in there, so they're very good presentation I'm gonna make.*

MAGUIRE: *Okay alright. Um, let me talk about it. I'll let you know tomorrow okay.*

(Emphasis added)

- 8.345. At the time of this exchange, as is apparent from his comment “well you probably can't talk about specifics”, Mr Alha was aware that as a matter of policy, neither the premier nor the minister for planning would want to speak to him about site-specific matters. Nevertheless, those were the sort of matters he wanted to discuss at the meetings he asked Mr Maguire to arrange. The “models” to which he referred were models of his sites at Campsie and Canterbury which he intended to take to any meeting Mr Maguire could arrange with Ms Berejiklian and/or Anthony Roberts. Mr Maguire was also aware that, as a matter of probity, both Ms Berejiklian and Anthony Roberts “would refuse to have any meetings with the developer that concerned any site specific issues”.
- 8.346. In a conversation on 12 October 2017, Mr Maguire told Mr Alha he had spoken “to our friend – about you know policy development”. Mr Alha was clearly confused by Mr Maguire's reference to “policy development” and took a while to catch on until Mr Maguire said, “you wanted to have a policy development meeting”, adding, “policy nothing specific about sites and things”. Mr Maguire said the meeting could probably be organised for the following week.
- 8.347. Mr Alha followed up the meeting issue on 22 October 2017, on this occasion asking Mr Maguire, “Whatever happened to that policy meeting anything?” Mr Maguire told him “not this week coming, but maybe the next week”, advising Mr Alha, “You just don't – want to write things in diaries.” Mr Maguire explained:
- MAGUIRE: *What'll happen is you and I will probably have meal together and –*
- ALHA: *Yeah.*
- MAGUIRE: *– and we might have some drinks at my office or something and –*
- ALHA: *Yeah – yeah.*
- MAGUIRE: *– you never know who drops in.* (Emphasis added)
- 8.348. Mr Maguire agreed that he proposed to Mr Alha that the meetings he was seeking should be described as “policy development meetings”, with a view to avoiding the concern about discussions on site specific issues as he appreciated there were probity concerns around ministers meeting with developers in connection with site specific issues. Mr Alha said he was prepared to work with Mr Maguire to call the meetings he sought whatever they needed to be called, and to have them set up in whichever way was necessary so that he got the meeting.

Arranging the meeting

- 8.349. On 14 November 2017 at 9.26 am, Mr Maguire rang Mr Alha who asked him, “alright can I have that meeting urgent or not really?” Mr Maguire said, “I'm just gonna walk down there now and tee that one up for you,” to which Mr Alha replied, “Urgent”. Mr Maguire said, “I'll probably have drinks in my office ... Oh we might have drinks in my office **if you know what I mean**” (emphasis added). Finally, Mr Maguire said, “Well it'll be the Wednesday, oh probably Wednesday okay, leave it with me.” Wednesday was the next day, 15 November 2017. Parliament was sitting that week.

- 8.350. Mr Maguire rang Mr Alha that evening at 9.12 pm and confirmed that he should come to Parliament House at “drink o’clock, you know knock-off time, drinks time ... say you know, five, 5:30, somewhere there”.
- 8.351. Mr Alha arrived at Parliament House shortly before 4:30 pm on 15 November 2017 which, as noted above, was a sitting day. He took the models of his sites at Campsie and Canterbury.
- 8.352. At 4:59 pm, Mr Maguire sent a text message to Mr Vellar saying, “Mate having a drink in my office want to Join me for a Red 1246”. “1246” was Mr Maguire’s office number in Parliament House.
- 8.353. Mr Maguire and Mr Vellar gave differing evidence about how this meeting was arranged. Mr Maguire said he had three or four discussions with Mr Vellar arranging an appointment for Mr Alha to meet with Mr Vellar to discuss his problems. He said that it was not a formal appointment, at Mr Vellar’s request. He claimed the “code” was “We’re having a glass of red” to tell Mr Vellar that Mr Alha had arrived and to “come down and have a red and a chat”. He thought Mr Vellar wanted an informal meeting to avoid any contact or interaction with the minister’s office and a property developer.
- 8.354. It was “highly unusual” for Mr Maguire to invite Mr Vellar for a drink. He had never invited him to his room for a casual drink before. He could not explain why Mr Vellar was prepared to have a meeting with a property developer that was going to be off the record.
- 8.355. Mr Vellar thought that there may have been a text message earlier in the day saying, “Can you come and see me in my room at 5.30 for a glass of red” but accepted his recollection may be wrong. He said he did not go to Mr Maguire’s office at the request of Mr Roberts, but he told the minister after the meeting that it had taken place.
- 8.356. Notwithstanding his annoyance with Mr Maguire about a fortnight earlier in relation to the IHAPs issue, Mr Vellar said that he went to meet him because he did not know what Mr Maguire wanted; he wanted to provide a level of “customer service” to him as a backbencher, and it was an unusual manner of request on a parliamentary sitting day, making him think that something may have been awry. He said that when he got to Mr Maguire’s room at about 5.30 pm, the door was closed and after he knocked and Mr Maguire opened the door, “there was another man sitting on his lounge, a fellow who was in a white shirt, and in front of him, on the table, was a plastic model of a building”. He said he had been unaware anyone else was going to be present in addition to Mr Maguire, and had never heard Mr Alha’s name before.
- 8.357. At the time of this meeting, there was a policy in place for the minister for planning that he would meet with developers and discuss policy issues, as well as macroeconomic issues that impacted the sector, but not site-specific issues. The policy only applied to the minister, not to people within the minister’s office. If a developer met the minister, that person would be forwarded documents to complete, which would outline that the minister did not speak about site-specific matters, and that the meeting would be eventually made public as ministers’ diaries are made public. The developer would also be required to complete a Meeting Disclosure Form.
- 8.358. As Counsel Assisting submitted, it is probable that Mr Maguire’s recollection that there had been communications with Mr Vellar prior to the text sent at 4.59 pm on 15 November 2017 to arrange the meeting is accurate. It is improbable that Mr Maguire would have arranged for Mr Alha to come to Parliament House bringing his plans and models, on the expectation of meeting someone with whom he could discuss his development issues if such an encounter was not a certainty.
- 8.359. Mr Alha said that he did not know that he would be meeting with Mr Vellar on 15 November 2017. However, he did have an expectation that he would be meeting with someone, as is

apparent from the fact he attended with his models. He thought Mr Vellar was already there when he walked in. This is completely inconsistent with the time he arrived at Parliament House, and the time Mr Maguire sent the text to Mr Vellar asking him to come to his room.

- 8.360. Counsel Assisting submitted that Mr Maguire's comment, "you just don't want to write these things in diaries" in the conversation on 22 October 2017 was consistent with Mr Maguire seeking to arrange "off the books" meetings for Mr Alha, as, too, was the remark, "we might have some drinks at my office or something and ... you never know who drops in". They contended that the comment mirrored what took place subsequently in a meeting with Mr Vellar on 15 November 2017, to which reference is made below. They suggested that a plausible explanation for Mr Maguire seeking to arrange meetings "off the books" was an intention to avoid the requirement for a probity adviser to be present in circumstances where site-specific matters were to be raised.
- 8.361. Mr Maguire did not challenge Counsel Assisting's submission, albeit he contested any overriding proposition that anything he did in respect of arranging a meeting for Mr Alha with Ms Berejiklian or Anthony Roberts was improper or gave rise to corrupt conduct on his part and that he was motivated by the prospect of a financial gain or benefit in assisting Mr Alha. There is little doubt from the conversations between Mr Maguire and Mr Alha that Mr Maguire was of the view any meeting he organised should not be "official". Whether or not he was concerned about a probity adviser in the circumstances in which the meetings Mr Alha sought is not apparent.
- 8.362. The fact of a prior communication with Mr Vellar to arrange the meeting is also supported by the fact that the previous evening, Mr Vellar had forwarded to Mr Murray the names Mr Maguire had sent Mr Lipson on 2 November 2017 in relation to the IHAPs. It must have occurred to Mr Vellar that it was possible Mr Maguire would ask him if that had occurred at the mooted meeting.

Drinks with Mr Vellar

- 8.363. Mr Vellar said that Mr Maguire introduced him to Mr Alha, that both those men had a glass of red wine, and Mr Maguire poured one for him. Mr Alha then had a "a whinge" about difficulties he was having getting approval for his project. In Mr Vellar's view, it was a site-specific discussion because it was about planning in relation to a site. It was not the sort of discussion Mr Alha would have been permitted to have with the minister. Nor, had Mr Vellar been forewarned about the likely topic of discussion, was it a meeting Mr Vellar would have attended. Rather, he would have allocated it to someone more familiar with the planning process than himself. Even had he attended with some forewarning of what was to be discussed, he would not have attended alone. His practice when attending such meetings was to be accompanied by either a deputy secretary or executive director level from the DPE.
- 8.364. Mr Vellar said Mr Maguire was clearly supporting Mr Alha's position and was critical of the bureaucracy in the DPE. He did not offer an opinion on what Mr Alha was saying but gave him his card and suggested Mr Alha should write to him and he would put him in contact with someone in the bureaucracy. He said he left the meeting after about 10 minutes. By that time he said he was "pretty cranky with Mr Maguire," partly on the basis of the IHAPs issue a fortnight earlier and also because he felt he had been asked to attend Mr Maguire's room "on the basis of false pretences". He felt Mr Maguire had wasted his time and Mr Alha's because had Mr Maguire said a developer would be present, Mr Vellar would have "got a hearing with the Department of Planning and probably got some advice on the spot".
- 8.365. Mr Alha's recollection was that he showed Mr Vellar his models, they "would have discussed it, Mr Vellar gave him his business card, they had a glass of wine or two and Mr Vellar told him to send him an email after that, and that was all that happened". In a telephone conversation with Mr Maguire at 7.02 pm that evening, Mr Alha thanked him "for today" and said he was

“gonna send him an email with all the information as ... discussed tonight ... thanking him for taking the opportunity ah ... just, just listen to us ... and the site specifics ... and I’ll, and I’ll take from there okay”. The reference to sending the email to “him” was clearly to sending an email to Mr Vellar which is what Mr Alha did at some point between 15 and 21 November 2017, saying:

Dear Rob,

Thank you very much for giving me the opportunity to discuss the J Groups projects.

As mentioned to you at our recent meeting, it has taken me 6 years to put together 2 of these projects, which I have held on the basis that a great outcome can be achieved for both the State Government, local community and myself as a local developer.

- 8.366. Mr Maguire’s recollection of the meeting was somewhat more detailed than Mr Alha’s. He said Mr Alha discussed Campsie and some of the issues about which he wanted to get some advice. Mr Maguire said he thought Mr Vellar could seek advice on what Mr Alha should do. He thought he had not “made much of a contribution at all except for the bottle of red perhaps”.
- 8.367. However, Mr Maguire denied Mr Vellar was “ambushed” when he attended the meeting and said Mr Vellar knew Mr Alha would be present. He said Mr Vellar knew the purpose of the meeting was for him “to come and have a discussion, an informal discussion with Mr Alha and give him some advice on what he should do”. He also said he told Mr Alha that Mr Vellar would be there, or at least made it sufficiently clear to Mr Alha that it was something to do with his request for a meeting with Anthony Roberts.
- 8.368. All three men were consistent that Mr Vellar left the meeting first and that, so far as Mr Maguire and Mr Alha were concerned, they remained in Mr Maguire’s room and had another glass or two of wine.

Washup

- 8.369. The conversations between Mr Maguire and Mr Alha prior to the 15 November 2017 meeting demonstrate that it was Mr Maguire who was prepared to engage in subterfuge in relation to arranging the meetings on behalf of Mr Alha. Nevertheless, as Counsel Assisting submitted in relation to the 4:13 pm, 27 October 2017 conversation, both men were deliberately speaking in veiled terms, consistent with each being concerned about the propriety of what they were discussing.
- 8.370. However, it was Mr Maguire who made it clear an informal meeting should take place between Mr Alha and someone who could give him advice about his planning issues. Even if, as Mr Maguire asserted, he had a conversation with Mr Vellar prior to texting him on 15 November, it is improbable that Mr Vellar was aware that Mr Alha, or at least a developer, would be present at the meeting having regard to his limited knowledge of planning issues at the time, and his practice in such circumstances of being accompanied by an expert from the department. It also seems improbable that he would have attended such a meeting alone if he had known a developer would be present having regard to his recent unpleasant experience with Mr Maguire and the IHAPs.
- 8.371. The Commission finds that Mr Maguire did not inform Mr Vellar prior to the meeting as to who would be present and that Mr Vellar was, as he said, “ambushed” by Mr Maguire when Mr Alha was in the room when he arrived. The fact Mr Vellar remained for only about 10 minutes is also consistent with him being courteous in listening to what Mr Alha said, but proffering no advice (not being sufficiently experienced with planning to do so), rather, giving Mr Alha his contact details so he could presumably refer anything Mr Alha sent to the appropriate people in the DPE.

Meeting the premier

- 8.372. Mr Alha had had two objectives for the meeting on 15 November. One was to meet Anthony Roberts, a meeting which did not happen, albeit of course that he met the minister's chief of staff. The other was to meet the premier. Mr Maguire agreed that when he was contemplating the meeting with Mr Alha the possibility of doing a drop-in meeting with the premier may have crossed his mind. He said that such drop-in meetings were regular events on sitting nights.
- 8.373. According to Mr Maguire, "as the night wore on a little, Joe became a little insistent that we just pop in and say hello to Glad". Accordingly, he said, "so down we went and, and I asked, Can we pop in? Would have taken less than two minutes, and we left". His recollection was that "The Premier was working at her desk... Niceties were spoken... the Premier knew Mr Alha from various functions and things that occur." He denied that Mr Alha took the opportunity of the meeting to complain to the premier about his planning issues.
- 8.374. Mr Alha said he wanted to see the premier to congratulate her on becoming premier, even though by the time of the meeting, Ms Berejiklian had been premier for almost a year. As he described it, Mr Alha was a regular habitué of Parliament House and, while Mr Maguire's guest, it was "normal" to drop in for drinks with premiers. He claimed to have met every premier since John Brogden was opposition leader. He said the meeting with Ms Berejiklian "was a quick visit, it didn't last too long" and that "The Premier knew me because I met her at ... a charity fundraiser, that organisation that Mr Maguire has an orphanage that he looks after."
- 8.375. Ms Berejiklian said she had no recollection of a "bump-in type meeting" with Mr Alha. However, she did know Mr Alha to be a friend of Mr Maguire and involved in property development.
- 8.376. Mr Alha left Parliament House at 6.40 pm, carrying what he agreed was the same box he arrived with. Mr Maguire farewelled him on the Parliament House verandah.
- 8.377. Within 15 minutes, Mr Alha had sent Mr Maguire a text saying, "Please honestly send the premier a message that I'm really happy for her!!and I really wish her all the best and that she looks better than ever." Five or so minutes later, he sent another text to Mr Maguire saying, "U know for the first time I felt very personal!!!i saw her from than [sic] to now and she is good value".
- 8.378. Just after he sent the second text, Mr Alha rang Mr Maguire. Their conversation commenced with Mr Alha saying he "was feeling a bit tipsy when I walked into her office" and queried whether he had said "anything wrong". Mr Maguire reassured him that he was "fine". There was further short discussion about the meeting, none of which suggested that there was any mention during it of anything concerning planning, let alone any of Mr Alha's development sites, in contrast to the part of the same conversation which made it clear such matters had been discussed with Mr Vellar.

Other assistance to Mr Alha

- 8.379. On other occasions in 2017, Mr Maguire assisted Mr Alha to get either him or his planning people meetings with relevant individuals from the DPE through the minister's office, who might be able to discuss the problems he was having in the planning area.
- 8.380. On 17 February 2017, Mr Maguire wrote to Anthony Roberts, forwarding correspondence received from Matt Daniel of Pacific Planning in relation to Beamish Street, Campsie, and asking if an appointment could be made with one of the minister's planning officers to speak with Mr Daniel. Mr Daniel was a planning consultant engaged by Mr Alha's construction business, J Group.

- 8.381. The letter was written on Mr Maguire's parliamentary letterhead and bore a handwritten notation, "This week would be good". Beamish Street, Campsie, was the site of one of Mr Alha's development proposals at the time. Mr Maguire agreed that he was seeking something in the nature of a shortcut for Mr Alha – inviting the minister or his staff to intervene and organise Mr Alha's prompt access to relevant officials.
- 8.382. Mr Maguire said he wrote the letter because Mr Alha was having difficulties, and he wanted to arrange for his planners to meet with the minister's staff or whomever he nominated, to try and work through some of the issues and give them advice. He acknowledged it had nothing to do with his electorate, but said he did this out of friendship. Mr Maguire said that Anthony Roberts never asked him why he was advocating for somebody in relation to a property in Campsie, a long way from Wagga Wagga, and that he never told Anthony Roberts or anyone in his office.
- 8.383. Anthony Roberts replied to Mr Maguire's letter on 7 April 2017. From the reply, it is apparent that Mr Daniel had "met with Department of Planning and Environment representatives on 28 February 2017" in connection with Mr Alha's developments at 124–142 Beamish Street and 16–19 Ninth Avenue, Campsie.
- 8.384. Mr Maguire agreed that in writing the letter on Mr Alha's behalf, on his parliamentary letterhead, he was lending the weight of his office to Mr Alha's request and that it was more likely that a member of Parliament would be able to organise a meeting as sought in the letter than a member of the general public. He said he had made similar representations on other developers' behalves.
- 8.385. Indeed, on the same day he wrote the letter on Mr Alha's behalf to Anthony Roberts, Mr Maguire also wrote to the minister on Mr Demian's behalf about his development at 181 James Ruse Drive, Camellia, in respect of which Mr Maguire was hoping that, in the event that that development was successful, some money would flow to him. Once again, he did not draw that fact to Anthony Roberts' attention, nor to the attention of anyone in his office.
- 8.386. Mr Maguire also said he never informed Anthony Roberts or any other minister, or any ministerial staff to whom he made representations on behalf of developers, that he was hoping he might make a commission or other fee in the event that the development was successful. He agreed he should have done so but said it did not occur to him at the time.
- 8.387. Perhaps emboldened by his experience the week before, on 22 November 2017, Mr Alha rang Mr Maguire and asked to have a meeting with the minister for transport, then Mr Constance, "because the location of the train station, I just want some clarity if they are going to move the train station and if, if they're looking at it". While Mr Maguire initially said, "no problem" when Mr Alha asked about the meeting, when he heard the subject, Mr Maguire appeared a bit taken aback and said, "I don't know, eh, I don't know, um, don't know", and said he would "go and have a chat ...[and] come back to you". He agreed that he thought Mr Alha was "pushing the envelope a bit with that request," and that was why he never made the enquiry.
- 8.388. Mr Maguire agreed that this conversation was an example of the kind of relationship that he had with Mr Alha, at least in 2017, that he was something in the nature of Mr Alha's direct line to government if he wanted the assistance or advice of a minister or someone in a minister's office. He never informed the people who were being asked for that advice or asked to set up meetings, that the reason, or at least a substantial reason, as to why he was asking for their assistance was not anything to do with his electorate or his public responsibilities, but rather because he was a friend of Mr Alha.
- 8.389. Another example of the sort of advice Mr Maguire gave Mr Alha and other property developers from time to time is a telephone call, on 28 February 2018, in which Mr Maguire advised Mr Alha

to write a “stinking letter” to Anthony Roberts in which he “pour[ed] his heart out”, to “cc Gladys Berejiklian” and also send him a copy of the letter. He assured Mr Alha that he would then give the letter to Ms Berejiklian. He also told him, “what I want you to do, pour year [sic] heart out, give me the letter okay and I will go and complain bitterly about it and I might even produce it at the planning meeting when I’ve got that Sydney Commission woman there, okay?” Mr Maguire accepted that this was a further example of the kind of assistance he offered to developers.

Mr Maguire’s motivation in assisting Mr Alha

- 8.390. Mr Alha said that around September or October of 2017, “Daryl was doing it pretty tough, and he had no money. And he was refinancing stuff to do his settlement with his wife”, so he made it clear to Mr Maguire that if he wanted to give up his other job and work with Mr Alha after he was a member of Parliament, then he would be quite keen for that to happen.
- 8.391. Mr Maguire also agreed that, at some point in time, perhaps by 2017, he and Mr Alha had had general discussions about the possibility of working together, perhaps as an employee, perhaps as a consultant, perhaps in some other way once Mr Maguire’s parliamentary career was over. However, he denied that the possibility of future work with Mr Alha was a factor that motivated him to provide Mr Alha with the assistance he did. He did agree that he would not have provided Mr Alha with the level of assistance that he did if Mr Alha had not been a close friend.
- 8.392. Counsel Assisting submitted that in doing what he did for Mr Alha, Mr Maguire may have been motivated by his close friendship with Mr Alha and that this was the principal or perhaps sole driver of his actions. They did not submit that the Commission should find that that Mr Maguire would not have provided the assistance he did to Mr Alha but for the prospect of a personal financial gain on his part.
- 8.393. However, they contended that the absence of such a finding did not mean that Mr Maguire did not breach public trust by taking the steps that he took for the benefit of Mr Alha.

Mr Maguire’s submissions: Mr Alha

- 8.394. Mr Maguire submitted that there was no evidence that he knew or sought to find out who was being considered for appointment to IHAPs, or that he sought to explain why those named should not be appointed to IHAPs. He argued there was nothing improper in a member of Parliament raising concerns regarding a potential government appointment.
- 8.395. Once again, these submissions pay no regard to the evidence. Mr Maguire and Mr Alha identified two people whose appointment would concern Mr Alha. Those were the names Mr Maguire ultimately provided to those involved in the appointment process.
- 8.396. Secondly, as to explaining why those names should not be appointed, Mr Maguire responded to Mr Lipson’s distribution email announcing the IHAPs with the warning, “I am told there a lot of shifty characters applying !” The use of the word “shifty” was clearly intended to alarm the recipient who had just announced a process intended to bring “expertise, transparency and integrity to the assessment of DAs at the local level”. If that were not enough, Mr Maguire added the flourish “Beware will Robinson”, an allusion to the well-known “phrase which warns someone that they are about to make a mistake or that they are overlooking something”.
- 8.397. As to the third submission, Mr Maguire’s conduct in attempting to thwart the potential appointment of persons to IHAPs who could have harmed Mr Alha’s commercial interests constituted a serious misuse of Mr Maguire’s office and thus a breach of public trust as outlined below.

Corrupt conduct findings

Mr Maguire

Section 8(1)(c), ICAC Act

- 8.398. Counsel Assisting submitted that Mr Maguire's conduct in connection with the sale and/or development of land in NSW as summarised above included corrupt conduct of an analogous kind to some of the conduct of Mr Obeid that the Commission found constituted corrupt conduct in connection with the investigation known as Operation Cyrus.
- 8.399. In that investigation, the Commission found that Mr Obeid engaged in corrupt conduct including by misusing his position as a member of Parliament by making representations to those within government for the benefit of Circular Quay leaseholders in circumstances where Mr Obeid's family had interests in Circular Quay leases and would benefit financially from the course in respect of which Mr Obeid was making representations.¹⁹⁸
- 8.400. The Commission found that Mr Obeid's conduct as summarised in the previous paragraph constituted or involved a breach of public trust within the meaning of s 8(1)(c) of the ICAC Act and found that it was satisfied for the purposes of s 9(1)(a) of the ICAC Act that, if the facts as found in relation to Mr Obeid were proven on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, there would be grounds on which such a tribunal would find that Mr Obeid committed a criminal offence of misconduct in public office.
- 8.401. Counsel Assisting submitted that the Commission should make similar findings in relation to Mr Maguire's conduct in connection with the sale and development of land in NSW.
- 8.402. Counsel Assisting submitted that it was apparent from the above survey of Mr Maguire's dealings with Mr Demian, Mr Hawatt, Ms Waterhouse and Mr Luong, or on their behalf or for the benefit of one or more of them or persons associated with them, that Mr Maguire took many steps in the use of his office as a member of Parliament over an extended period with a view to advancing his own private financial interests in connection with the sale and/or development of land. Those steps were centred on engaging with public officials in relation to development proposals and/or in relation to matters which could facilitate the sale or development of land. None of them had anything to do with his electoral district. They argued that in so doing, Mr Maguire leveraged, or sought to leverage, his public office for private financial gain.
- 8.403. Counsel Assisting also drew on the statement in *Horne v Barber* referred to previously in this report, but which they adapted to read, "[s]o long as [Mr Maguire] remains a Member of Parliament he could not ... effectively divest himself of that character in dealing with [public officials], and he in fact made no attempt to do so."¹⁹⁹

¹⁹⁸ See NSW ICAC, *Investigation into the conduct of the Hon Edward Obeid MLC and others concerning Circular Quay Retail Lease Policy* (June 2014) (Operation Cyrus Report). The Commission also found that Mr Obeid made certain representations influenced "by the knowledge that Circular Quay leaseholders had donated \$50,000 to the Australian Labor Party (ALP) as payment for the carrying out of what they understood to be a promise that their interests as leaseholders would be looked after by the government" but was not of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Obeid in relation to that matter given that certain evidence available to the Commission would not be admissible in criminal proceedings: see Operation Cyrus Report at 61.

¹⁹⁹ See *Horne v Barber* [at 499].

- 8.404. Accordingly, Counsel Assisting submitted the Commission should find that, in the course of his dealings with Mr Demian, Mr Hawatt, Ms Waterhouse and Mr Luong, or on their behalf or for the benefit of one or more of them or persons associated with them, Mr Maguire engaged in conduct that involved a breach of public trust and which therefore falls within the description of “corrupt conduct” in s 8 of the ICAC Act.
- 8.405. Mr Maguire submitted:
- 8.405.1. The fact that Mr Maguire was a member of Parliament does not of itself establish that he was using (misusing) that position for private financial gain.
- 8.405.2. Even if it were established in relation to Mr Maguire’s dealings with Charbel Demian, Michael Hawatt, Louise Waterhouse and William Luong that there might be a prospect of a financial gain, that does not establish that he used (misused) his position in breach of public trust.
- 8.405.3. There is no evidence that there was a possibility of any potential financial benefit for Mr Maguire arising from any of these matters and no evidence that any payment was made.
- 8.406. Once again, these submissions pay little or no regard to the evidence including Mr Maguire’s many admissions to the precise opposite of that for which he now contends.
- 8.407. The evidence of Mr Maguire’s conduct in relation to each of those named is set out above. It is manifest that he used his position as a member of Parliament to arrange meetings on behalf of the vendors and/or property developers with public officials and/or to obtain information to their commercial benefit from other public officials, and on one occasion in relation to Mr Luong, from another member of Parliament.
- 8.408. In evidence, Mr Maguire agreed:
- that he used his office to assist Mr Demian and that he had done so in the hope that some profits may eventually flow to him
 - in connection with the proposed Smartwest.Sydney transaction that he acted as a “door opener” in relation to public officials, that he was attempting to assist Ms Waterhouse with her issues in the hope of there being a sale of the land, and that he thought there was a possibility he would receive a substantial commission in the event of a sale. He contemplated a commission that would have been able to pay off his debts, which were in excess of \$1 million at the time
 - in relation to Mr Luong and Cawdor, that, by providing information on what was then confidential information regarding the proposed route of the M9 Outer Sydney Orbital to Mr Luong, he was misusing his position as a member of Parliament.
- 8.409. In the case of Mr Hawatt, who it will be recalled was a councillor at Canterbury City Council, Mr Maguire and he agreed to share commissions for introducing properties to Country Garden. Mr Maguire was to use his position as a member of Parliament in this respect because he had “more chance of opening the door to our friends than” Mr Hawatt had, while Mr Hawatt was to attend the actual meetings. One of the developers whose properties they sought to put to Country Garden was Mr Demian, on whose behalf Mr Maguire made representations which gave him access to planning officials.
- 8.410. Insofar as Mr Maguire submits there was no evidence any payment was made in relation to the vendors/property developers, it will be recalled as explained in chapter 3, that there can be a

breach of public trust, and accordingly, an offence of misconduct in public office (assuming other elements of the offence are satisfied) whether or not a parliamentarian (or other public official) benefits financially.²⁰⁰

- 8.411. Mr Maguire also sought to distinguish the findings in Operation Cyrus on the basis that in that case, Mr Obeid's family had a direct financial interest in Circular Quay Restaurants Pty Ltd as tenants in properties owned by the RMS, that Mr Obeid clearly used his position as a member of Parliament to seek to reduce the rent payable on the shops at Circular Quay to gain a financial benefit for himself and that he did in fact receive cash from the takings of the shops at Circular Quay.
- 8.412. Each form of corrupt conduct has unique features. What is important in the case both of Mr Maguire and Mr Obeid was the use of their positions as members of Parliament to make representations to those within government with the intention of procuring a personal pecuniary benefit whether directly (Mr Maguire) or indirectly (Mr Obeid). As just observed, the question whether that pecuniary benefit was actually derived does not answer the question of whether the conduct can be characterised as corrupt for the purposes of s 8(1)(c) of the ICAC Act.
- 8.413. As is apparent from the evidence in this chapter, Mr Maguire used his position as a member of Parliament to make representations on behalf of the vendors and/or property developers. He secured meetings for Mr Demian and Mr Alha's planning experts through his correspondence with Anthony Roberts, for Ms Waterhouse with Mr Sowter and through him the minister for roads, and the members of the Greater Sydney Commission; he also put Ms Waterhouse directly in touch via correspondence with the premier, Ms Berejiklian. The meetings he secured for Mr Demian assisted his and Mr Hawatt's hope that Mr Demian's land would be bought by Country Garden and that they would share in the commission reaped from introducing Mr Demian to that company. In the case of Ms Waterhouse's land, Mr Maguire hoped to share the commission Mr Luong had told him about.
- 8.414. In making findings about Mr Maguire's dealings with vendors and/or property developers, the Commission is conscious of the statement made at the outset of this chapter, that at the time of the events concerning Mr Maguire, there was no general prohibition on members of Parliament who were not ministers engaging in secondary employment, including in the property development industry. However, it is a breach of public trust for a member of Parliament to leverage, or seek to leverage, that position for private financial gain.
- 8.415. The Commission finds on the basis of the findings made in this chapter and the above summary, that in the course of his dealings with Mr Demian, Mr Hawatt, Ms Waterhouse and Mr Luong, or on their behalf or for the benefit of one or more of them or persons associated with them, that Mr Maguire leveraged, or sought to leverage, his position as a member of Parliament for his private pecuniary benefit.
- 8.416. Rather than acting in the interests of the public and the electorate, Mr Maguire made the representations and took the steps on behalf of Mr Demian, Mr Hawatt, Ms Waterhouse and Mr Luong set out in this chapter to advance his personal pecuniary benefit.²⁰¹ None of the vendors and/or property developers in respect of whose property dealings he sought to procure a pecuniary benefit was a resident of his electorate.
- 8.417. Mr Maguire's conduct in relation to, and on behalf of, Mr Alha in attempting to thwart the potential appointment of persons to IHAPs who could have harmed Mr Alha's commercial

²⁰⁰ See *Question of Law Reserved (No 2 of 1996)* (1996) 88 A Crim R 417, 418 per Doyle CJ, referring to PD Finn, above (at 308).

²⁰¹ See *Obeid v R 2017* at [62] per Bathurst CJ, Leeming JA, R A Hulme, Hamill and N Adams JJ agreeing.

interests also constituted a serious misuse of Mr Maguire's office and thus a breach of public trust. Mr Maguire clearly knew the IHAPs were, in effect, an anti-corruption measure and that the application process was intended to be done at arm's length from the government. Yet he thumbed his nose at that by responding to the email announcing their creation (and their purpose) by seeking to undermine the process, and in due course actually doing so in relation to two named people at Mr Alha's behest and for his commercial benefit.

- 8.418. Similarly, as Counsel Assisting submitted, and the Commission finds, the meetings that Mr Maguire arranged for Mr Alha with both Mr Vellar and Ms Berejiklian are examples of Mr Maguire using his office to facilitate access by a developer to senior figures within the NSW Government and doing so in circumstances in which there would be no formal records of such meetings. That constituted a misuse of Mr Maguire's public office and thus a breach of public trust because it was done to advance Mr Alha's commercial interests rather than the public interest.
- 8.419. Mr Maguire's misconduct was wilful and in bad faith. It was intentional and performed in circumstances where he knew that it was wrong to act as he did.
- 8.420. The Commission finds that Mr Maguire engaged in conduct which constituted or involved a breach of public trust within the meaning of s 8(1)(c) of the ICAC Act by misusing his office as a member of Parliament with a view to advancing his own private financial interests and/or those of persons associated with him in connection with the sale and/or development of land in NSW by:
- 8.420.1 agreeing with Mr Hawatt that in exchange for Mr Hawatt introducing property developers who would pay a commission the men could share for being introduced to potential purchasers, or financiers, of their properties who were Mr Maguire's clients, Mr Maguire would make representations to government officials who could assist the property developers in relation to planning issues
 - 8.420.2 agreeing with Mr Luong that in exchange for Mr Maguire introducing Mr Luong to property developers such as Mr Demian, who would pay a commission the men could share for being introduced to a financier of his property development such as Country Garden who were Mr Maguire's clients, Mr Maguire would make representations to government officials who could assist Mr Demian in relation to planning issues without disclosing to those government officials his hope and expectation of receiving a personal pecuniary benefit from Mr Demian's property development at Camellia
 - 8.420.3 making representations to the minister for planning, Mr Stokes, and the minister for roads, Anthony Roberts, government officials and ministerial staff to secure meetings for Mr Demian with planning and roads departmental officials without disclosing to those ministers, government officials and ministerial staff his hope and expectation of receiving a personal pecuniary benefit from Mr Demian's property development at Camellia
 - 8.420.4 making representations to ministerial staff and government officials on behalf of Ms Waterhouse in relation to the sale, or financing of, her Smartwest.Sydney property development at Badgerys Creek without disclosing his expectation of receiving a personal pecuniary benefit from the possibility of a commission or other payment to be paid to him by Mr Luong in the event that the sale of the land or investment in it was successful
 - 8.420.5 attempting to thwart the potential appointment of persons to IHAPs at Mr Alha's behest and for his commercial benefit without disclosing his personal relationship with Mr Alha

- 8.420.6 facilitating Mr Alha's access to senior figures within the NSW Government in circumstances in which there would be no formal records of such meetings to advance Mr Alha's commercial interests without disclosing his personal relationship with Mr Alha
- 8.420.7 obtaining information from another member of Parliament, regarding the proposed location of the M9 Outer Sydney Orbital, and supplying it to Mr Luong, appreciating that it may be of commercial benefit to him in the hope and expectation of obtaining a commission or other payment from Mr Luong for having done so.

Section 9(1)(a), ICAC Act

- 8.421. As explained below, the Commission also finds that Mr Maguire's conduct in using his office as a member of Parliament with a view to advancing his own private financial interests and/or those of persons associated with him in connection with the sale and/or development of land in NSW is not excluded by s 9 of the ICAC Act because it involved conduct of a kind that could constitute or involve a criminal offence, namely, the offence of misconduct in public office.
- 8.422. Mr Maguire as a member of Parliament was a public official throughout the period of his activities in connection with the sale and/or development of land in NSW.
- 8.423. As found in relation to s 8(1)(c), Mr Maguire's conduct in relation to those activities was in the course of or connected to his public office because he used that office to make the representations and take the steps on behalf of Mr Demian, Mr Hawatt, Ms Waterhouse and Mr Luong set out in this chapter to advance his personal pecuniary benefit.
- 8.424. In the case of Mr Alha, Mr Maguire used his office to facilitate access by a developer to senior figures within the NSW Government and to do so in circumstances in which there would be no formal records of such meetings. That constituted a misuse of Mr Maguire's public office and thus a breach of public trust because it was done to advance a private interest (that is, Mr Alha's interest) rather than the public interest. Mr Maguire also used his office to attempt to corrupt the IHAPs process to thwart applications which might be made by persons who could have harmed Mr Alha's commercial interests. His conduct in both these respects constituted a serious misuse of his office.
- 8.425. As also found in relation to Mr Maguire's breach of s 8(1)(c), Mr Maguire's misconduct was wilful and in bad faith. It was intentional and performed in circumstances where he knew that it was wrong to act as he did.
- 8.426. As Mr Maguire admitted in relation to developers other than Mr Alha, but for the potential profit motive, he would not have engaged in, or would not have provided the level of assistance that he did. He also admitted that he would not have engaged in his communications with the minister's office in relation to the IHAPs but for his friendship with Mr Alha.
- 8.427. There was no reasonable excuse or justification for Mr Maguire's conduct in acting to advance his personal pecuniary interests and those of his associates while misusing his position as a member of Parliament with a view to advancing his private financial interests in connection with the sale and/or development of land in NSW.
- 8.428. As to the fifth element of the offence of misconduct in public office (all of the elements of this offence are set out in chapter 3 of this report), the Commission finds that, having regard to the fundamental obligations of members of Parliament as outlined in chapter 3 to act in the public interest, and the nature and extent of Mr Maguire's departure from those obligations as found in this chapter, Mr Maguire's conduct in leveraging, or seeking to leverage, his position as a member of Parliament for his private pecuniary benefit in connection with the sale and/or development of land in NSW is serious and could merit criminal punishment.

- 8.429. As Bathurst CJ said in *Obeid v R 2017*, “[m]embers of Parliament are appointed to serve the people of the State, including their constituents, and it would seem that a serious breach of the trust imposed on [members of Parliament] by using their power and authority to advance their own position or family interests, rather than the interests of the constituents whom they are elected to serve, could constitute an offence of the nature of that alleged”, namely, misconduct in public office.²⁰²
- 8.430. The Commission finds that if the facts as found in relation to Mr Maguire’s conduct in relation to vendors and/or property development were to be proved on admissible evidence to the requisite standard of beyond reasonable doubt and accepted by an appropriate tribunal there would be grounds on which such a tribunal could reasonably conclude that Mr Maguire committed the offence of misconduct in public office. Accordingly, that conduct could constitute or involve a criminal offence within the meaning of s 9(1)(a) of the ICAC Act.

Section 13(3A), ICAC Act

- 8.431. The Commission is satisfied for the purposes of s 13(3A) of the ICAC Act, that, if the facts it has found in relation to Mr Maguire’s dealings with vendors and/or property developers were to be proved on admissible evidence and accepted by an appropriate tribunal to the requisite standard of beyond reasonable doubt, there would be grounds on which such a tribunal would find that Mr Maguire engaged in conduct that constitutes the offence of misconduct in public office.
- 8.432. Accordingly, the Commission is satisfied that the jurisdictional requirements of s 13(3A) of the ICAC Act are satisfied.

Section 74BA, ICAC Act

- 8.433. The Commission is satisfied, for the purposes of s 74BA of the ICAC Act, that Mr Maguire’s conduct in connection with the sale and/or development of land in NSW is serious corrupt conduct for the reasons already set out above, but which in short are as follows.
- 8.433.1. It was a serious breach of the trust imposed on members of Parliament for Mr Maguire to leverage, or seek to leverage, his position as a member of Parliament for his personal pecuniary interests in connection with the sale and/or development of land in NSW.
- 8.433.2. Mr Maguire misused his public office over an extended period of time with a view to advancing his own private financial interests in connection with the sale and/or development of land in his dealings with Mr Demian, Mr Hawatt, Ms Waterhouse and Mr Luong, or on their behalf. The steps he took involved engaging with other public officials in relation to development proposals or matters that could facilitate the sale or development of land, none of which had anything to do with the electorate for which he was the local member.
- 8.433.3. Mr Maguire made no attempt to divest himself of his role as a member of Parliament when dealing with other public officials in relation to the sale or development of land; instead, he used his position as a member of Parliament as a “door opener” when advocating on behalf of the interests of land owners and property developers with the intention of procuring a personal pecuniary benefit. This was a serious breach of public trust.

²⁰² *Obeid v R 2017* (at [62]), Leeming JA, R A Hulme, Hamill and N Adams JJ agreeing.

- 8.433.4. Mr Maguire's actions, which were calculated to apply pressure on Mr Sowter to obtain a favourable response for Ms Waterhouse, involved Mr Maguire using the weight of his office to attempt to influence the official functions of another public official motivated by the potential of a personal pecuniary advantage. This was a serious misuse of his public office for private gain.
- 8.433.5. Mr Maguire's conduct in providing Ms Waterhouse with Ms Berejiklian's direct email address, intended for use only between members of Parliament, was a serious invasion of Ms Berejiklian's privacy and, potentially, security. It was motivated by the prospect of personal pecuniary gain and was a serious misuse of Mr Maguire's public office.
- 8.433.6. Mr Maguire's conduct in obtaining confidential information to the commercial benefit of Mr Luong, from another member of Parliament, motivated by his own pecuniary interests, was a serious breach of public trust.
- 8.433.7. Mr Maguire's conduct on behalf of Mr Alha, in attempting to thwart the appointment to IHAPs of persons who Mr Alha asserted could have harmed Mr Alha's commercial interests, was a particularly egregious interference with what Mr Maguire knew to be an anti-corruption measure and the application process for which was intended to be kept at arm's length from the government and was a serious misuse of his position.
- 8.433.8. Mr Maguire's conduct in arranging the meetings for Mr Alha with both Mr Vellar and Ms Berejiklian and thereby facilitating access by a developer to senior figures within the NSW Government in circumstances in which there would be no formal records of such meetings was another egregious circumvention of probity and was a serious misuse of his position.

Corrupt conduct conclusion

- 8.434. The Commission therefore finds that Mr Maguire engaged in serious corrupt conduct which constituted or involved a breach of public trust within the meaning of s 8(1)(c) of the ICAC Act by misusing his office as a member of Parliament with a view to advancing his own private financial interests and/or those of persons associated with him in connection with the sale and/or development of land in NSW by:
- 8.434.1. agreeing with Mr Hawatt that in exchange for Mr Hawatt introducing property developers who would pay a commission the men could share for being introduced to potential purchasers, or financiers, of their properties who were Mr Maguire's clients, Mr Maguire would make representations to government officials who could assist the property developers in relation to planning issues
- 8.434.2. agreeing with Mr Luong that in exchange for Mr Maguire introducing Mr Luong to property developers, such as Mr Demian, who would pay a commission the men could share for being introduced to financiers of his property development, such as Country Garden who were Mr Maguire's clients, Mr Maguire would make representations to government officials who could assist Mr Demian in relation to planning issues without disclosing to those government officials his hope and expectation of receiving a personal pecuniary benefit from Mr Demian's property development at Camellia
- 8.434.3. making representations to the minister for planning, Mr Stokes, and the minister for roads, Anthony Roberts, government officials and ministerial staff to secure meetings for Mr Demian with planning and roads departmental officials without disclosing to those

- ministers, government officials and ministerial staff his hope and expectation of receiving a personal pecuniary benefit from Mr Demian's property development at Camellia
- 8.434.4. making representations to ministerial staff and government officials on behalf of Ms Waterhouse in relation to the sale, or financing of, her Smartwest.Sydney property development at Badgerys Creek without disclosing his expectation of receiving a personal pecuniary benefit from the possibility of a commission or other payment to be paid to him by Mr Luong in the event that the sale of the land or investment in it was successful
- 8.434.5. attempting to thwart the potential appointment of persons to IHAPs at Mr Alha's behest and for his commercial benefit without disclosing his personal relationship with Mr Alha
- 8.434.6. facilitating Mr Alha's access to senior figures within the NSW Government in circumstances in which there would be no formal records of such meetings to advance Mr Alha's commercial interests without disclosing his personal relationship with Mr Alha
- 8.434.7. obtaining information from another member of Parliament, regarding the proposed location of the M9 Outer Sydney Orbital, and supplying it to Mr Luong, appreciating that it may be of commercial benefit to him in the hope and expectation of obtaining a commission or other payment from Mr Luong for having done so.

Section 74A(2) statements

- 8.435. The Commission is satisfied that Mr Maguire, Ms Waterhouse, Mr Luong and Mr Alha are "affected persons" in relation to the matters discussed in this chapter.

Daryl Maguire

- 8.436. Mr Maguire's evidence was the subject of a declaration under s 38 of the ICAC Act and cannot be used against him in criminal proceedings, except in relation to prosecution for offences under the ICAC Act. However, evidence of witnesses other than Mr Maguire would likely be available in any prosecution of him for the offence of misconduct in public office in respect of his involvement with the property developers referred to in this chapter. That, coupled with the substantial documentary evidence that is available in relation to his activities in this respect and as evident from the references to it in this chapter, warrants consideration being given to obtaining the advice of the DPP with respect to the prosecution of Mr Maguire for misconduct in public office in respect of the misuse of his role as a member of Parliament with a view to advancing his personal pecuniary interests and/or those of persons associated with him in connection with the sale and/or development of land in NSW.

Louise Waterhouse

- 8.437. Counsel Assisting submitted that the Commission should form the opinion that substantial allegations have been made in the course of or in connection with Operation Keppel against Ms Waterhouse and that, accordingly, Ms Waterhouse is an "affected person" pursuant to s 74A(3) of the ICAC Act.
- 8.438. Ms Waterhouse submitted that she was not notified that she was or could become an "affected person" until Counsel Assisting's submissions were served on 15 February 2022 and that she was denied procedural fairness during the public inquiry in the respects outlined and addressed above.

- 8.439. The Commission is satisfied that, contrary to Ms Waterhouse's submission, she is a person against whom substantial allegations were made in the course of the Commission's investigation and that she is therefore an "affected person" for the purposes of s 74A(2) of the ICAC Act.
- 8.440. The substantial allegations, discussed above, are the claims Mr Luong made about Ms Waterhouse to Mr Maguire on 5 September 2017, and in his interview with Commission officers on 12 April 2019, when he alleged that she had requested that Mr Maguire be "looked after" for his assistance in relation to the sale of her land to Country Garden should it proceed.
- 8.441. Ms Waterhouse herself submitted that these were "damaging claims" against her made by Mr Luong.
- 8.442. Further, they were allegations that were put to her during both her compulsory examination and her evidence in the public inquiry and which she emphatically denied.
- 8.443. As outlined above, the Commission has found that there is insufficient cogent evidence in the face of Ms Waterhouse's denials to find to the requisite standard that at some point proximate to 5 September 2017, Ms Waterhouse had a conversation with Mr Luong in which she asked him whether Mr Maguire would be "looked after" (or words to similar effect).
- 8.444. In all the circumstances, therefore, the Commission is of the opinion that consideration should not be given to obtaining the advice of the DPP with respect to the prosecution of Ms Waterhouse for any offence.

William Luong

- 8.445. Counsel Assisting submitted that the Commission should form the opinion that substantial allegations have been made in the course of or in connection with Operation Keppel against Mr Luong, such that, pursuant to s 74A(2)(a), the report must include a statement as to whether or not in all the circumstances the Commission is of the opinion that consideration should be given to the obtaining the advice of the DPP with respect to his prosecution for a specified criminal offence.
- 8.446. Counsel Assisting rely for this submission on a conversation between Mr Maguire and Mr Luong in or about December 2018, in which the deletion of WeChat messages was discussed, and on Mr Maguire's conduct in or about December 2017/January 2018 in seeking access to confidential information that could have been of commercial benefit to Mr Luong.
- 8.447. Mr Luong was asked during the public inquiry whether Mr Maguire had given him any advice about what he should say to the Commission if he were asked questions in a hearing or by an investigator coming and speaking to him. He said he did not recall. When asked whether Mr Maguire had suggested he should do anything with any documents, emails, telephone records or other documents that might relate to Mr Maguire, Mr Luong responded, "I think, yeah, I think he said that he delete all the WeChat messages ... And then I think he, I think, I think there was, and then he sort of asked me to delete the WeChat messages."
- 8.448. When pressed about what Mr Maguire had said about WeChat messages, Mr Luong said he could not recall exactly, but said "I think it was delete the, the WeChat messages ... Something like that."
- 8.449. When asked whether he did delete the WeChat messages, Mr Luong responded, "I think I did".
- 8.450. Mr Luong could not recall when this conversation between himself and Mr Maguire took place but thought it may have been around the time he attended a Christmas lunch at Mr Maguire's house in Wagga Wagga in 2018.

- 8.451. Counsel Assisting submitted, and the Commission accepts, that the evidence of Mr Luong's recollection is vague and uncertain and there is no other evidence before the Commission that tends to prove the commission of an offence by him in relation to this conduct.
- 8.452. As outlined in this chapter, in the period 2017–2018, Mr Luong acquired an interest in land at Cawdor. Mr Maguire admitted, and the Commission has found, that he obtained confidential information not known to the public that was of potential commercial benefit to Mr Luong by making enquiries of a member of Parliament who was his friend. He did this to assist Mr Luong in a potential land deal in the hope of obtaining commissions or other payments in return.
- 8.453. Mr Maguire agreed that he obtained information about the general proposed location of the M9 Orbital including whether the road would be likely to dissect land associated with Mr Luong and that he conveyed this information to Mr Luong during a telephone conversation on 12 January 2018. He accepted that one of the matters operating on his mind at the time he supplied the information was the possibility that he might obtain a commission or other payment for having done so. He accepted that by providing what was then confidential information he was misusing his position as a member of Parliament.
- 8.454. Counsel Assisting submitted, and the Commission accepts, that the evidence does not establish that Mr Luong counselled or procured Mr Maguire to conduct himself in this manner. Further, there is no evidence of Mr Luong having offered any direct payment or reward for Mr Maguire having sought out the information.
- 8.455. In all the circumstances outlined above, the Commission is not of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Luong for any offence.

Joe Alha

The Immigration Scheme

- 8.456. Counsel Assisting submitted that insofar as the evidence in relation to the Immigration Scheme, discussed in chapter 6 of this report, discloses that Mr Alha may have committed, or been complicit in, one or more offences under federal immigration law, the Commission should exercise its powers to furnish evidence relevant to the Immigration Scheme to the Department of Home Affairs (or such other agency identified by a responsible officer of that department) to be dealt with as that department or other agency sees fit.
- 8.457. As noted above, between 17 August 2018 and 26 August 2021, the Commission has made seven disseminations of material to the Australian Border Force pursuant to s 16(3) of the ICAC Act which contained evidence assembled by the Commission which has assisted the Department of Home Affairs in determining that breaches of Commonwealth legislation have occurred.
- 8.458. The Commission is accordingly not of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Alha for any offence in connection with the Immigration Scheme, as these matters have been referred to the appropriate federal agency.

The IHAPs selection process

- 8.459. As outlined above, the NSW Government introduced IHAPs in 2017 as a key anti-corruption measure, designed to depoliticise the development application assessment process at the local government level. As also set out above, in a lawfully intercepted telephone call on 27 October 2017, relatively soon after IHAPs were legislated, Mr Alha expressed concern to Mr Maguire about who might be appointed to the panels.

- 8.460. Counsel Assisting submitted that a particular form of assistance that Mr Maguire provided to Mr Alha was using his office to identify potential applicants as unsuitable for inclusion on the IHAPs, being applicants who Mr Alha thought would not accommodate his commercial interests.
- 8.461. The Commission has rejected Mr Alha's evidence that he did not care who was appointed to the IHAPs. The Commission has found, instead, that Mr Alha had a keen interest in who was appointed and that, as a developer, the desirability of having persons appointed to IHAPs who might look favourably on developments promoted by Mr Alha, or persons associated with him, provided a clear and logical reason for that interest.
- 8.462. Counsel Assisting submitted that the evidence indicates that it was Mr Maguire who approached Mr Alha in the first instance regarding names to be put forward as unsuitable for appointment to an IHAP. In the telephone conversation on 27 October 2017, after Mr Alha observed that there were "some interesting characters applying for the position", Mr Maguire asked, "Who should we be aware of?" Mr Alha responded, "Okay well I'll talk to you face to face about the names."
- 8.463. While it is accepted that Mr Maguire asked for specific names during this telephone conversation, it was clearly Mr Alha who raised the topic of IHAPs and it is apparent from Mr Alha's reluctance to give Mr Maguire names over the telephone that he knew that what they were discussing was wrong.
- 8.464. As set out above, in a text message on 2 November 2017, Mr Maguire told Mr Alha "I need a list of badies that have applies to be on Ihap" (as in original). Further text messages and a telephone conversation ensued that day, during which Mr Maguire reiterated his request for names from Mr Alha. Mr Alha ultimately gave Mr Maguire two names.
- 8.465. Mr Alha agreed in evidence that the two names he gave Mr Maguire were the names of individuals he at least suspected had applied to become members of an IHAP, and who he did not want to be appointed to an IHAP because he thought their appointment would be contrary to his business interests.
- 8.466. Immediately after his telephone conversation with Mr Alha on 2 November 2017, Mr Maguire provided the two names Mr Alha had given him in an email to the media adviser to the minister for planning.
- 8.467. The Commission has found that by his conduct, Mr Maguire assisted Mr Alha in attempting to thwart the appointment of two possible applicants to an IHAP, a body set up as an anti-corruption measure and the appointments to which he appreciated had to be at arm's length, to suit Mr Alha's commercial interests.
- 8.468. The Commission accepts that while Mr Alha raised the issue of IHAPs in the first instance and apprehended that there was something wrong in giving names to Mr Maguire, he supplied names to Mr Maguire in response to Mr Maguire's repeated requests for them. There is no evidence to suggest that Mr Alha offered a financial or other incentive to Mr Maguire or otherwise procured Mr Maguire to do what he did.
- 8.469. In all the circumstances, the Commission is not of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Alha for any offence in relation to his conduct in connection with the IHAP selection process.

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Chapter 9: United World Enterprises (UWE)

Background

- 9.1. United World Enterprises Pty Ltd (UWE) was founded in 1993 and operated as an importer and exporter of agricultural products and a brokerage service provider. Jimmy Liu served as UWE's managing director and the manager of its day-to-day operations from 1993. At the time of this report's finalisation, UWE was under external administration.
- 9.2. UWE did not operate in Mr Maguire's electorate of Wagga Wagga during the period the subject of the Maguire allegation. However, UWE Hay Pty Ltd (UWE Hay), one of its subsidiaries, operated an oaten hay factory in Leeton, which is in the Riverina. UWE Hay was a joint venture between its primary company UWE (49% shareholding) and Shanghai Dairy Group (51% shareholding) which in turn was a subsidiary of Bright Foods (Group) Co (Bright Foods).
- 9.3. Oaten hay is an annual crop that is used for livestock feed. The Leeton factory processed hay from surrounding regions, including Wagga Wagga, for export to China, Korea and Japan. Leeton is in the electorate of Murray. It is approximately 100 kilometres from Mr Maguire's electorate of Wagga Wagga.
- 9.4. In 2017, Bright Foods underwent a change of management structure. That change led to the new management raising concerns about the direction of UWE Hay leading to financial difficulties for the company. The change in the management structure of Bright Foods caused UWE Hay concerns around indecision, a lack of planning and direction and, distressingly, a lack of funding. UWE relied on Shanghai Dairy to help fund the purchase of fodder from farmers in advance of crop harvest to ensure a constant supply for the processing factory in the Riverina.
- 9.5. This chapter examines the chain of events that led to Mr Maguire involving himself in the UWE/Bright Foods business relationship by using his parliamentary position to try and leverage a profitable outcome for UWE Hay. This was done in the hope of achieving a position on the board of UWE when he retired from Parliament.
- 9.6. At the time of the events concerning UWE Hay and Bright Foods, Mr Maguire was a parliamentary secretary for the centenary of ANZAC, counter terrorism, corrections and veterans. He had been a parliamentary secretary to the premier for rural and regional affairs, but his last term in that position ceased on 28 March 2015.
- 9.7. UWE Hay was opened on 19 October 2015 in Griffith at a ceremony attended by former premier Mr O'Farrell, Stuart Ayres (who was then the minister for trade) and a number of other people including the mayor of Wagga Wagga, and representatives from four or five local councils.

The business philosophy: you introduce me, you get some commission

- 9.8. Mr Liu believed he was introduced to Mr Maguire in 2013 at a 20-year anniversary dinner for UWE, although Mr Maguire said he thought he had met him a bit earlier than that year. Mr Maguire attended the function in his capacities as government whip and chair of the APFG. The two men developed what, according to Mr Maguire, was a “strong friendship”. Mr Maguire introduced Mr Liu to local suppliers of various products including wine, meat and barley which Mr Liu might sell overseas, and Mr Liu introduced Mr Maguire to people in China with whom he might do business.
- 9.9. Whilst none of these introductions resulted in commercial transactions, it was accepted by Mr Liu that had any been successful he “would have at least offered Mr Maguire a fee”. Mr Liu described his business philosophy, namely, that the prices needed to be right so that everyone who was involved in the deal would make an appropriate profit for themselves, as “common for business ... you introduce me, you get some commission”.
- 9.10. At Mr Liu’s invitation, Mr Maguire attended a UWE conference held in Shanghai between 13 and 16 October 2014. Mr Liu told the Commission that he invited Mr Maguire because he wanted government representatives from Australia in attendance. As with all invitees, UWE paid for some of Mr Maguire’s expenses including his airfare, visa, accommodation, transport and some meals. Mr Maguire said he paid the expenses initially, and that UWE made a contribution by way of reimbursement for an airline ticket.
- 9.11. Mr Liu told the Commission that throughout their friendship, Mr Maguire provided “a lot” of assistance to UWE. For example, Mr Maguire arranged functions for UWE at Parliament House, hosted potential investors in UWE for lunch in Parliament House, arranged signing ceremonies at Parliament House and arranged for Mr Liu to use the facilities at Parliament House to pursue private business interests. Mr Liu explained the advantage of Mr Maguire’s assistance as follows:

[Counsel Assisting]: And so you want to show the potential investors that you have good contacts within government.

[Mr Liu]: Exactly.

[Q]: And you can help demonstrate that by having for example a lunch or a signing ceremony in Parliament House in Macquarie Street. Is that right?

- [A]: *Yes, this is more, looks like a more, most like people they believe you are really serious sort of businessman, they're more happy to work with you.*
- [Q]: *And that's quite important, isn't it, from investors from China in particular.*
- [A]: *Yes.*
- [Q]: *They want to be sure that you have contacts not just with businesspeople, but contacts with government people as well. Is that right?*
- [A]: *Yes, yes...*
- [Q]: *And it's very good to be able to show the investors when they come to visit in New South Wales that I have enough contacts that I can invite you, I can offer you a lunch in Parliament House or maybe a signing ceremony in Parliament House.*
- [A]: *Yes, yes.*
- [Q]: *That's something that shows some good prestige for your company. Is that right?*
- [A]: *Yeah, yes.*

- 9.12. Mr Liu said that Mr Maguire had some involvement in the selection of Leeton as the site for the UWE Hay factory – introducing potential suppliers of hay in the region and introducing a prospective site for the factory with pre-existing council approval for development – although the final siting decision was that of the Shanghai Dairy Group as the largest shareholder. Mr Maguire was engaged as early as June 2013 in discussions regarding UWE supplying hay into the Chinese market.

Hopping on a plane to China

- 9.13. In about February 2017, the Shanghai Dairy Group indicated to UWE that it did not want to be part of the joint venture with UWE Hay anymore. This led to financial difficulties for UWE in its proposed expansion process, something Mr Liu confided in Mr Maguire and with which he sought his assistance.
- 9.14. Mr Maguire said that as a result of a change of management in the Shanghai Dairy Group, there were concerns about UWE being able to meet its debts and pay its suppliers. As the situation progressed, according to Mr Maguire, “funds became critical, and there 6 or 20 jobs at risk”, and he saw the issue as “quite serious”. Mr Maguire said that he had a particular desire for UWE Hay to succeed as he understood expansion plans for the company to include a plant in Wagga Wagga that would have brought investment and jobs into the community. He described these as the “driving factors” behind him trying to resolve UWE’s problems.
- 9.15. On 26 July 2017, Mr Maguire sent an email to a Mr Zhou, the general manager for Shanghai Dairy Group in China and a secretary general of the Communist Party. The subject line of that email was “**Mr Zhou I need your assistance with a matter affecting a company in my area of Wagga Wagga**” (bold as in original). Mr Maguire sought Mr Zhou’s “assistance to help a local Australian company”. Mr Maguire said that Bright Foods’ “lack of direction and their indecision” were putting “UWE [employed] staff, contract farmers, engineers ect” [sic] at risk. Mr Maguire copied the email to Mr Liu.

- 9.16. Mr Liu agreed that the subject line of the email was incorrect as the factory was in Leeton, not in Wagga Wagga. However, he agreed that paragraph accurately described the issue that was happening as at 26 July 2017.
- 9.17. It also appears to have been around 26 July 2017 when discussions were held between UWE and Mr Maguire about the possibility of Mr Maguire joining the UWE board. Those discussions were sufficiently advanced for Mr Maguire to seek the advice of John Evans, the parliamentary ethics adviser, as to the possibility of secondary employment on the same date. The parliamentary ethics adviser's notes of the conversation, dated 26 July 2017, record:

Wednesday 26 July 2017 – Daryl Maguire MP – secondary employment

Phone discussion with Daryl Maguire [redacted] regarding possibility of secondary employment.

China firm has approached him to join board. He is undecided whether to contest next election.

Accept position with UWE (United World Exports) [sic] – export to China of hay and oats.

Has helped company to get through process of land deal and export process

Advised I would provide notes of advice on secondary employment.

- 9.18. Although as explained in chapter 8, by July 2017 Mr Maguire had made a firm decision not to contest the next election, he did not tell that to Mr Evans.
- 9.19. On 1 August 2017, Mr Evans forwarded some notes for guidance on secondary employment to Mr Maguire. The attachment reminded Mr Maguire of the Preamble to the members' code and its injunction to members "to maintain the public trust placed in them by performing their duties with honesty and integrity" as well as their principal responsibility as members being "to serve the people of New South Wales". It flagged the necessity for members "to be cautious in not using their entitlements and staff with respect to any secondary employment" and drew attention to Commission reports emphasising that obligation. It also flagged the necessity for those engaged in secondary employment to make disclosures relating to sources of income, secondary employment and directorships.
- 9.20. At 10.27 am on 17 August 2017, Mr Maguire and Mr Liu spoke. Mr Liu's frustration was palpable. He told Mr Maguire that he had been told, "top dog in Bright Food got the information is not the full. Is something maybe is part of the information, some information is wrong so that's why, as you know, government people in China they very – very scared take any – any responsibility if they – ... not, you know, they always – they [unintelligible] better to keep away ... so that meaning everybody they know they just take it – take the time to process it, you know ... And nobody will give you yes or no". He also explained to Mr Maguire that he would soon need \$2.5 million to pay the growers once the October harvest started and, in effect, how tight money was becoming.
- 9.21. Mr Maguire said they had to "solve the problem". He told Mr Liu:
- Niall Blair is the Minister. Now what I'll do ... I will go and sit down with the Minister and ask if he'll write a letter for you to support the business okay ... So I need to know – I need you to get who it is exactly that we have to write to and it might be the boss of Bright Food – so I need to know his name, his address, get all of that now.*
- 9.22. Mr Maguire sought a meeting with Mr Blair's staff.

- 9.23. Charles Cull was a senior policy adviser to Mr Blair between March 2017 and April 2019, at which time Mr Blair had portfolio responsibilities in primary industries and trade. On 17 August 2017, Mr Cull texted Mr Maguire at 16.15 pm and told him to “feel free to text or email me ... once you work out the best time to meet tomorrow morning. I’m happy to host at the Minister’s office.” Mr Maguire confirmed that he and Mr Liu would meet Mr Cull between 10.00 am and 10.30 am.
- 9.24. When Mr Cull organised the meeting for 18 August 2017, he understood that Mr Maguire wanted to raise a trade issue regarding UWE which he understood to be a matter relevant to Mr Maguire’s constituency.
- 9.25. Before the meeting, Mr Cull’s chief of staff, Sean O’Connell, advised him to take “particularly detailed notes” as he (Mr O’Connell) “didn’t entirely trust Mr Maguire” for reasons that were not expanded upon.
- 9.26. The meeting was attended by Mr Maguire, Mr Cull, a Department of Trade representative (organised by Mr Cull) and several representatives of UWE, including Mr Liu. Mr Cull told the Commission that he believed that UWE could have secured a meeting with the Department of Trade themselves, however, with the involvement of Mr Maguire, it was dealt with at ministerial level rather than departmental level.
- 9.27. Mr Cull said that both during the meeting and indeed subsequently, he did not entirely understand the real issue UWE was seeking to resolve. He understood the general connection between UWE, Shanghai Dairy Group and Bright Foods and believed the issue related to a particular facility that UWE held. He said, “And so we were initially asked, I think, to assist with communication, opening lines of communication to China. But as we went further along, it was not really entirely clear what the core problem was.”
- 9.28. Mr Cull understood that Mr Maguire was supportive of UWE’s position. He told the Commission that he found the level of Mr Maguire’s engagement to be “unusual” for a member of Parliament and “that the intensity of his engagement with the issue [was] unusual”.
- 9.29. Mr Cull told the Commission that he understood the issue was related to Mr Maguire’s electorate duties and that he raised it as an electorate matter concerning the potential loss of local jobs. Mr Cull thought that the UWE facility was “in [Mr Maguire’s] electorate or, certainly, directly relevant to”. At no time did Mr Maguire declare that he was contemplating a board position with UWE or that he had any contemplated or actual interest in UWE. Mr Cull told the Commission that had such matters been disclosed, he would have at least sought advice from his superiors and that he imagined “things would have played out differently”. There was maybe some discussion during the meeting of potential solutions, but the potential solution was not clear.
- 9.30. The meeting appears to have ended without the UWE interests securing any agreement from Mr Cull on the minister’s behalf to send a letter for Mr Liu supporting the business as Mr Maguire had suggested to Mr Liu the previous day would occur. However, when Mr Maguire telephoned Mr Liu that evening to ask if he was happy with “today’s progress”, Mr Liu said he was.
- 9.31. Shortly after the meeting, Mr Maguire telephoned Mr Cull and “threatened to travel to China at the same time as the minister was planning on being in China for his first overseas trip as Trade Minister”. There were immediate concerns in Mr Blair’s office about this mooted trip. This was Mr Blair’s first trade mission to China. Mr Cull explained, “I was, having limited experience of Mr Maguire and his behaviour, which I had judged to be, as I said, intense and erratic. I think as well I was worried about what might happen if he was in China at the same time as the minister.” In short, Mr Cull was concerned that Mr Maguire might turn up in China, cause some trouble, and potentially embarrass the minister. He was also concerned Mr Maguire could also embarrass

the state of NSW, bearing in mind, Mr Cull said, the “relationship with China is important and delicate to balance at any point in time”. The minister’s office sought to dissuade Mr Maguire through whatever means available from attending China as he had threatened to do.

- 9.32. Around the time Mr Maguire called Mr Cull after the 18 August 2017 meeting, he also provided to Mr Cull a draft of a letter he was proposing to send to the chair of Bright Foods in China. Mr Cull did not try and shape the letter which he thought was “appalling...[and] very provocative... Because of the language involved and the, just the suggestion that you would turn up and demand a meeting ... in China”.

“Loss of face by my political leaders”

- 9.33. On 29 August 2017, Mr Maguire’s staff emailed a letter from Mr Maguire to Bright Foods. The letter was on Mr Maguire’s parliamentary letterhead bearing the NSW coat of arms. It was addressed to Shi Ming Fang, the chair of Shanghai Dairy Group (SDG) and a party committee secretary. It was signed by Mr Maguire over his title, “Daryl Maguire MP, Member for Wagga Wagga”. It identified him not only as the member for Wagga Wagga, but also as parliamentary secretary for the centenary of ANZAC, counter terrorism, corrections and veterans. It bore a red “Urgent” stamp. The email to which the letter was attached was sent from Mr Maguire’s electorate office and reiterated its urgency, seeking the recipient’s “URGENT attention and reply”. The email was copied to Mr Liu at his UWE email address and to Mr Cull at his ministerial email address.

- 9.34. In his letter, Mr Maguire stated:

I write to you regarding an issue relating to the Riverina District of New South Wales and the relationship concerning Bright Foods China ... It is understood that an agreement has been reached between the parties to divest Bright Food’s 51% to another preferred shareholder but this transaction has not occurred for some unknown reason.

I seek an appointment with you in Shanghai on Thursday 7th September 2017 to discuss the serious implications for UWE and the State of New South Wales. The delay is causing issues for the operators, farmers and loss of face by my political leaders who have supported this joint venture with China very publicly.

You must understand that unless this agreement is honoured and a replacement shareholder installed quickly, that can partner with UWE, to purchase additional crops and finance extension plans, failure of the venture will most likely leave 20 unemployed and raise very serious questions by our government both State and Local about future joint ventures with Chinese companies.

In order to avoid this potential embarrassment, I will fly to Shanghai to meet with you face to face in a genuine effort to resolve this pending crisis.

I seek your assistance to avoid the potential loss in confidence in Bright Foods joint venture with SDG and UWE and look forward to confirmation of my appointment with you as soon as possible. (Underlining in original)

- 9.35. Mr Cull said he was “surprised” the letter was copied to him.

- 9.36. Mr Cull said that correspondence addressed to senior figures overseas ordinarily required some consultation with the relevant department, in this instance the Department of Trade, the federal Department of Foreign Affairs and Trade and potentially the Department of Premier and Cabinet, or even the premier. He told the Commission that, to his knowledge, Mr Maguire did not have

approval from anyone at the ministerial level to express the views that there might be concerns at the government level with future joint ventures or that there was a risk of political leaders losing face.

- 9.37. Mr Cull said that he was so concerned about the contents of the letter and Mr Maguire's proposed trip to Shanghai that he telephoned Mr Maguire immediately. He then got the premier's office involved by raising the matter with Maddy McCure, then trade adviser to the premier, who in turn raised the issue with Ms Cruickshank, the premier's chief of staff.
- 9.38. Ms McCure told Ms Cruickshank that she had "just been talking to Minister Blair's office. Daryl's threatening to go to China and the minister's office is really worried it's going to impact the trade mission that's happening."
- 9.39. Ms Cruickshank spoke to Mr Cull who "sort of briefed me on the fact that Daryl had a company that was in his electorate that he was upset that the company wasn't, or something to this effect anyway, upset that the company arrangements with a company in China wasn't going ahead, so he was threatening to jump on a plane and could we help stop him from jumping on a plane". Ms Cruickshank understood Mr Blair's office reaching out as "an escalation of, can you help us, because we've got this random MP proposing to fly to China just before we go on our official trade mission". She explained:

[Ms Cruickshank]: It's not unusual for an MP to be fervent about, you know, what's happening in their electorate and, you know, economic development opportunities, that bit's not unusual, but yes, you're right, the threat to jump on a plane, and I was looking at it more from the point of view of I knew Minister Blair was doing an important trade mission and so this was an unnecessary distraction and not one that should be happening.

[Counsel Assisting]: Was that the extent of what was ridiculous, namely the possibility that it would interfere with the trade mission, or was it also ridiculous the idea of, as I think you put it, a random MP getting on a plane and trying to deal with a trade issue themselves?

[A]: Well, yes, because he wasn't the Minister for Trade.

- 9.40. Ms Cruickshank said she "expressed [her] displeasure, [and] said to Charlie (Cull), 'That's ridiculous. Of course Daryl can't do that.'" She "probably said something like, 'Yeah, we'll get in touch with him,' or I might have said, 'Let him know we're onto it,' or something ... to the effect of the Premier's Office is saying no, you can't do this."
- 9.41. As with Mr Cull, at all times during this period, Ms Cruickshank assumed that the issue about UWE was being raised by Mr Maguire as it concerned his electorate and would result in the loss of jobs in his electorate. She was not aware that the UWE factory was based in the electorate of Murray, nor was she aware that Mr Maguire was interested in a position on the board of UWE or had a financial interest or other business interest or at least a contemplated interest with the company.
- 9.42. Ms Cruickshank told the Commission that had she been aware of those matters, she would have done "Quite a lot":

If that had – well, put it this way. If that had been brought to my attention, let me think which order I would have done this in. The first thing I would have done is I probably would have reported it to DPC legal counsel just for the sake of having something recorded. Not because they have a specific responsibility in that, but things like conflicts of interest, you usually would want to do that. I probably would have spoken to Minister Blair, rather than the

*Premier, and I would have asked Minister Blair if he agreed with me that this was significantly concerning, because I feel like it is, sort of thing. And then someone, whether it would have been the minister – probably would have been the minister, not me – would then have probably called Mr Maguire out on it and said, ‘This is completely inappropriate and don’t ever come to my office or my staff again with this.’ And I suspect there’s probably a series of other things you would do. Fortunately, I’ve never been in this position. **But I suspect you would also probably report it to the relevant presiding officers in Parliament House. I mean, it’s pretty serious. To be acting, to be using your position to act for personal gain is directly contrary to not just ministers and parliamentary secretaries but also just members of parliament.** (Emphasis added)*

- 9.43. Ms Cruickshank agreed that if she had been aware of even the possibility of Mr Maguire having an interest in UWE, that would have rung “very big alarm bells” in her head. She surmised that her first call to DPC Legal would have elicited the response, “We need to report it,” so then probably her second call would have ended up being to the Commission.
- 9.44. Ms Cruickshank did not see Mr Maguire’s letter to Shi Ming Fang while she was Ms Berejiklian’s chief of staff. She was shown it during the First Public Inquiry. She said that the reference to a “loss of face by political leaders” was “absolutely not appropriate” and that “not even the Minister for Trade or the Premier would write a letter in that tone”. She said that Mr Maguire was not authorised to say anything like “And raise very serious questions by our government, both state and local, about future joint ventures with Chinese companies”. Ms Cruickshank agreed with Mr Cull’s opinion that such a letter required consultation with senior members of the government.
- 9.45. Ms Cruickshank also told the First Public Inquiry that, as a matter of practice, “unless you’re the portfolio holder of the particular portfolio – in this case Trade – you don’t go round expressing opinions on behalf of the government on that particular portfolio issue”. She was clear that Mr Maguire’s role as chair of the APFG did not afford him the authority to speak on behalf of the executive government.
- 9.46. Ms Berejiklian said she had not seen Mr Maguire’s letter to Shi Ming Fang around the time it was sent. When she was shown the letter in the First Public Inquiry and her attention was drawn to the passage, “The delay is causing ... loss of face by my political leaders”, she said she “gaped because ... that is not right”. She said neither she, or to her knowledge, anyone else in government, had authorised Mr Maguire to make a complaint about a loss of face and that was “a shocking thing to write”. Ms Berejiklian also said that the passage in the letter, “and raise very serious questions by our government, both state and local”, was “highly inappropriate”. She agreed that it was “quite wrong” for Mr Maguire to have written purportedly on behalf of the NSW Government.
- 9.47. Mr Maguire defended the wording of his letter. He told the Commission the letter represented his “perspective” on the issue, his thoughts on what could occur and that he “thought it was appropriate at the time”. He denied that the letter indicated he was representing the views of the executive government and maintained that he was only expressing his own views. He maintained this position even when it was pointed out to him that the letter was on his parliamentary letterhead with a coat of arms on the top right-hand corner.
- 9.48. Counsel Assisting submitted that it must have been apparent to Mr Maguire – an experienced member of Parliament – that the letter he was sending was highly inflammatory and inappropriate. Further, given that it:
- 9.48.1. was sent on Mr Maguire’s official letterhead which included the NSW coat of arms

- 9.48.2. referred to Mr Maguire's offices as the member for Wagga Wagga and parliamentary secretary
- 9.48.3. asserted "serious implications for ... the State of New South Wales" and was sent to a party committee secretary who would not necessarily understand the role and status of a member of Parliament and parliamentary secretary who was not a minister of the Crown

they contended it must have been appreciated by Mr Maguire that it was apt to convey the impression that the views expressed in his letter were views held by the NSW Government.

- 9.49. The Commission accepts that submission. Mr Maguire's letter created the impression that it was sent with the imprimatur of the NSW Government both in its appearance and in its contents. Mr Maguire's representation as to the "loss of face by my political leaders" was conveyed as a statement of fact and as having been a consequence of UWE entering a joint venture with a Chinese company. Not only did the letter seek to convey the embarrassment caused to "my political leaders" by their "loss of face", but by using that expression it invoked a Chinese cultural concept which would have struck a real chord with the reader – and possibly concern that the recipient too would suffer such a "loss of face" if he did not respond as demanded.
- 9.50. Mr Maguire would have well understood the significance to a Chinese reader of invoking the concept of "loss of face" having regard to his lengthy association with members of the Chinese community and dealings in China. The letter also pointed out to Shi Ming Fang that the company whose board he chaired had inexplicably delayed and/or not honoured an agreement, continuing failure to do which would cost jobs and bring into question future state and local government joint ventures with Chinese companies. It is clear that Mr Maguire brought into play references to the NSW Government to give extra clout to the letter's demand: complete the Bright Foods' share divestiture or imperil future trade between Chinese companies and NSW.

How to stop a "random" MP from flying to China

- 9.51. Ms Cruickshank believed she took one of two courses to stop Mr Maguire going ahead with his flight plan. She said that she either told Mr Cull to relay to Mr Maguire that the premier's office was not going to allow him to travel to China, or she directly left a message with Mr Maguire himself "to the effect of cease and desist and, no, you're not going to". She did not recall ever speaking to Mr Maguire, however, she recalled being told within a few hours of the issue being raised with her that Mr Maguire had rescinded his threat to travel to China.
- 9.52. In the meantime, as advised in an email at 6.52 pm on 31 August 2017 to Ms Cruickshank and Ms McCure, Mr Cull reported he had spoken to Mr Maguire and advised him of information which had come to him apparently from "the trade team", that, "Bright Foods were positively disposed towards resolving the matter". He suggested in that light, that Mr Maguire "consider not travelling to China next week given the progress we have made and given that the Minister will be in China". Mr Maguire "indicated that while he didn't want to travel, he would still do so if he had to, and that he would also consider seeing the National Assets Management Group (a high-level CCP coordination body)". At 7.13 pm on 31 August 2017, Ms Cruickshank acknowledged Mr Cull's email as indicating "good progress".
- 9.53. Earlier on 31 August 2017, at 1.10 pm, Mr Maguire was still representing in a telephone call with Mr Liu that he may go to China himself. Mr Maguire told him, "...apparently the Ministers' [sic] office they're getting very nervous about my activities" and laughed. Mr Liu asked why they were nervous, and Mr Maguire replied, "Well because they're – they're worried that – that my

interference right is going to upset things and I said well it will um—... Yeah well with the Chinese – I said – with the Chinese I said it will, you can bet your – you can bet your bottom dollar I’m gonna fuckin upset them. Right.” The telephone call continued in the same vein:

LIU: *Yeah you – you making them nervous of course –*

MAGUIRE: *That’s right.*

LIU: *– make – make the Chinese people nervous.*

MAGUIRE: *Correct.*

LIU: ***Because they not – they not realise it is so – so important for us. We nearly –***

MAGUIRE: *Correct.*

LIU: ***– nearly bankruptcy if we not –***

MAGUIRE: *Mm.*

LIU: *– moving.*

MAGUIRE: *That’s right.*

...

MAGUIRE: *Mm, and that’s – and that’s – and so anyway someone from – someone from the Premier’s office or whatever was going to call me.*

LIU: *Yeah.*

MAGUIRE: *And they haven’t called me yet because they’re not game that’s – that’s the thing ‘cause I’ll tell them off. And um –*

LIU: *Yeah.*

MAGUIRE: *– so anyway I – ‘cause I – I had the conversation this morning and I said you know you can all go and get fucked. I said all you gonna do is mention something, you know–*

LIU: *Yeah.*

MAGUIRE: *– you’re not gonna bang your fists on the table, you’re not gonna help us, you’re just gonna be a typical bloody Government bureaucrat.*

LIU: *Political*

...

MAGUIRE: *– I said I’ll go and do – I said I’ll go and do it myself you can all go and get fucked. Anyway we’ll see what happens.*

(Emphasis added)

- 9.54. Mr Maguire then told Mr Liu he had sent him another email about a potential investor and finished off the call advising that if he had not heard from Bright Foods by Friday (31 August 2017 being a Thursday) he would telephone them.

“They seem to think it’s in your electorate, I didn’t say anything”

- 9.55. On 24 August 2017, after Mr Maguire’s meeting with Mr Cull, but before he sent his letter to the chair of Bright Foods, Mr Maguire spoke to Ms Berejiklian and told her of the problems that UWE was facing. He explained that “Bright Foods are the national . . . food entity for China communist government.” He told her he had spoken with the Speaker of the Lower House and asked him if he got the “tick off” to go to Shanghai, could the Speaker go with him. He told Ms Berejiklian, “It’s pretty serious. Like there’s 20 jobs on the line.” He explained that “I need to go and tell them to sort out their problem now ’cause . . . UWE can’t buy product”. He relayed that the Speaker advised him that Mr Blair was doing a China tour on 4 September and Mr Maguire encouraged him (the Speaker) to “tag along with Niall, and I’ll, I’ll send some people from UWE”. Mr Maguire then told Ms Berejiklian, **“I may even pack my bag in the next few days and just go over myself and see if I can sort them out it’s ’cause they listen to government MPs** (emphasis added). Anyway I’ll, I’ll let you know what happens.”
- 9.56. On the evening of 30 August 2017 at 9.42 pm, Ms Berejiklian and Mr Maguire again spoke on the telephone about this issue. By this stage Mr Maguire’s letter had been sent and Mr Cull had raised the issue with Ms Cruickshank. Ms Berejiklian said she could not recall if she knew that Mr Maguire was interested in being appointed to the board of UWE or some associated entity.
- 9.57. The 30 August 2017 conversation relevantly proceeded as follows:

BEREJIKLIAN: Hello hokis.

MAGUIRE: Alright (unintelligible), what are you doing?

BEREJIKLIAN: I just got home.

MAGUIRE: Oh, that’s good.

BEREJIKLIAN: Did Sarah ring you from my office?

MAGUIRE: (Coughs) No, why?

...

BEREJIKLIAN: Oh she sent me a text ’cause whenever she has to ring a Member of Parliament she lets me know.

MAGUIRE: Mmm.

BEREJIKLIAN: Apparently Niall Blair’s rung up -

...

BEREJIKLIAN: – to say “Tell Daryl not to worry, I’m raising the issue on his behalf in China”.

MAGUIRE: Good.

BEREJIKLIAN: And, and, and, and I, and, I said “Well what’s that got to do with us” and Sarah said **“Oh they want us to tell him so that he doesn’t go off his brain in China against all these people because the Minister’s promised to, promised to fix it for him”**.

MAGUIRE: No but the issue is, the issue is that what they’ve done is they’ve promised to raise it, they’re not, **they’re not gonna**

fix it because Ministers can't involved [sic] in individual problems.

BEREJIKLIAN: *Right.*

MAGUIRE: *That's the issue. So what they're frightened of is, is, is the, the problem is, is that he's gonna have a round table so they've invited all these people, shake hands and suck dicks right but, in the end, they're gonna invite Bright Foods but not the, not the director of Bright Foods.*

BEREJIKLIAN: *And they seem to think it's in your electorate, I didn't say anything, I just –*

MAGUIRE: *I know it's at –*

BEREJIKLIAN: *– said let me know how it goes, yeah.*

MAGUIRE: *Well it's not, but the issue is this...*

...

*...so what I've said is well I'm going anyway, I'll be there the day before, so I'll light a fire. Um, you know, you got to put these people on toast otherwise they'll do nothing. **So she hasn't rung me and, and, and the problem is, they're all that fucking shit scared of me now and they're, and they're—they don't know what I'll do. So whether I'll just go feral or, or whatever.***

BEREJIKLIAN: *I think that's what they're worried about and I –*

MAGUIRE: *Well fuck 'em.*

BEREJIKLIAN: *– but I wouldn't (unintelligible).*

MAGUIRE: *I've been there for 25 years. I've been dealing with China for 30 years right.*

BEREJIKLIAN: *I know Hokis. It's none of my business, I'm just letting you know that's all.*

MAGUIRE: *Yeah, yeah and, and they're petrified that I'm gonna interfere, well I will right, I will because this is, this is you know, this is, this is people's life's work.*

...

BEREJIKLIAN: *– and you can calmly tell Sarah exactly what you're telling me.*

MAGUIRE: *Look, and I will. And they don't care -*

BEREJIKLIAN: *Mmm.*

MAGUIRE: *– um, what they're doing is they're there, they're shaking hands, they're sucking people's dicks and they're turning up to everything and they do nothing. **And in the end then they'll tell you, oh no look the Minister can't raise individual issues, oh no that's, look that wouldn't be right.***

BEREJIKLIAN: *Mmm.*

MAGUIRE: Well who's gonna do it? Who's gonna do it for Jimmy? Nobody, absolutely nobody. Left to his own devices, right. They can get fucked, and I'll tell her that too...

...

BEREJKLIAN: Well she only texted me like at seven-thirty tonight so she'll probably call you tomorrow.

(Emphasis added)

9.58. Of note from the 30 August 2017 telephone call is Mr Maguire's focus on "who's gonna do it for Jimmy". Mr Maguire's concern is not about his constituents, or those who may lose jobs or those who may lose valuable hay sales, but for his friend, Mr Liu.

9.59. Mr Maguire and Ms Berejikian spoke again about the UWE issue on 1 September 2017, the day after Mr Liu had told Mr Maguire that UWE was "nearly bankruptcy", as Mr Maguire pointed out to Ms Berejikian in the course of the following conversation:

MAGUIRE: – Niall Blair's office, don't want me to go to China. (Laughs)

...

*MAGUIRE: Oh look it'd be really (unintelligible) when the Minister's there. I said "**Why, 'cause you're frightened I'll blow up the place**". And he said "Well look, you know, it just would be good". I said but needs to go and solve his problem, you know.*

BEREJKLIAN: Mmm.

*MAGUIRE: He can just mention it, what's the point and um, anyway I said "**I'll go where I please**". I said "But if you manage to get some movement and get some, a result" I said "I don't want to go". I said "I don't want to go, but you know what, **I'm not gonna let this company fold and, and go under.**"*

BEREJKLIAN: Mmm

...

*MAGUIRE: It's all about their Minister and um, so anyway so the um, **so that was Sarah's call that she must've got him to do.** (Laughs)*

BEREJKLIAN: Mmm.

MAGUIRE: Anyway, it doesn't matter. But they've, they've made some progress which is real good so.

BEREJKLIAN: Oh that's good. Do you still need to go if it gets it fixed?

MAGUIRE: No.

BEREJKLIAN: Oh good.

MAGUIRE: That's why I'm pushing.

BEREJKLIAN: It might get fixed.

MAGUIRE: Well I'm hoping, that's what I'm pushing them for.

BEREJKLIAN: Yeah and then well you, you need to to – yeah but, you can't make them think that you're gonna go regardless. Just say well if you fix it I won't need to go.

MAGUIRE: I told him, that's what I told him.

BEREJKLIAN: Oh good, oh good.

MAGUIRE: I said what if you fix it, you know, but trouble is I said well, they said "Oh we just don't want you there when the Minister's there right".

BEREJKLIAN: Mmm.

MAGUIRE: And it, you know, and I thought oh thanks colleagues, you fuckers.

BEREJKLIAN: Mmm, mmm.

MAGUIRE: Um, mind you they've got reason to be frightened, um.

BEREJKLIAN: (Laughs). Yeah I don't blame them, I'm frightened.

MAGUIRE: Well you should be. Um, now you need -

BEREJKLIAN: I don't care, to be honest I don't care yeah.

(Emphasis added)

- 9.60. Ms Berejikian said that she could not recall why she said she did not care in the context of a discussion about people being scared of Mr Maguire in her office. This indicates a degree of tolerance about what was clearly abusive behaviour on Mr Maguire's part towards staffers in both her, and perhaps Mr Blair's, office.
- 9.61. Ms Berejikian said that she did not suspect, at this time, that Mr Maguire may have been engaged in corrupt conduct and did not regard it as strange that Mr Maguire was dealing with a matter that was not in his electorate. Her evidence was that she could not recall what was happening at the time but thought it was about regional jobs and "didn't have any other information". She did not question why he was involved as she "wouldn't have had an interest at the time" and would have expected her office to "deal with it".
- 9.62. Ultimately, Mr Maguire did not travel to China as he had threatened. He said that Shanghai Dairy Group would not engage with UWE. He did not know whether it ever engaged with the minister and/or his staff. And it did not respond to any correspondence or any attempt to contact it that he knew of.
- 9.63. Mr Cull understood Mr Maguire did not travel to China because the premier's office was successful in dissuading him from doing so. Nor did Mr Blair's office ever countenance the minister's involvement because it did not understand the issue and did not understand the need for government involvement to resolve it. The office took the understandable view that deploying the minister to solve a problem it did not understand would have been very inappropriate.
- 9.64. In addition, Mr Cull agreed it would be unusual for the minister to get involved in an individual transaction as opposed to trying to assist parties or potential interested investors and others to invest in a more general sense, particularly in the UWE case because there was an established business relationship between two or three parties, another reason he did not see any need for government involvement. Finally, Mr Cull understood the NSW Government's representatives in China attempted to assist UWE, and he understood they also enlisted the help of Austrade.

Mr Maguire's submissions

- 9.65. Mr Maguire submitted that at all times his conduct in relation to UWE was motivated by a “passionate belief” that UWE would provide new jobs and opportunities in his local area and that this passionate belief was exhibited well before any mention of a possible personal benefit. He contended that the notion that a member of Parliament advocating for a matter outside of their electorate is not proper or may be corrupt was not sustainable as a member of Parliament has a duty not only to their constituents but to all the people of NSW. In Mr Maguire’s case, he suggested this was amplified by both his previous position as parliamentary secretary to the premier for regional and rural affairs from February 2015 to March 2015 when the UWE facility was being planned, and because of his role as chair of the APFG whose aims were to promote trade and investment with China.
- 9.66. Mr Maguire pointed to evidence he said supported the proposition that he sought to find Wagga Wagga business people to become involved in the UWE joint venture. He said there was no evidence that he was to receive any financial benefit from the establishment of the UWE facility in 2015 or for his involvement in this issue generally. Likewise, while Mr Liu gave evidence that upon a successful commercial introduction by Mr Maguire, he “would have offered him a fee”, Mr Maguire submitted there was no evidence he was aware of this.
- 9.67. Mr Maguire accepted that while the Commission could find his letter to the chair of Bright Foods was “inappropriate, unauthorised and should not have been sent” and that the efforts to stop Mr Maguire from traveling to China were “proper and appropriate”, he submitted that such findings do not lend themselves to a corrupt conduct finding.
- 9.68. Mr Maguire submitted that even if the Commission were to conclude that there was at some future time a possibility of a commercial arrangement with UWE motivating him, the Commission could not, having regard to the matters referred to above, conclude that his actions “would not have been undertaken but for [that] improper purpose”.

Mr Maguire's motivation to assist UWE

- 9.69. Mr Maguire agreed that a factor in his mind in getting involved with UWE was the possibility that he might ultimately accept a board position or otherwise have some involvement in that company or an associated entity. Another factor was his friendship with Mr Liu, and his concern that Mr Liu and his wife could “lose everything” they had worked for since they had come to Australia. He said he would “have given as much help as I possibly could to, to help him”.
- 9.70. Mr Maguire said he would have taken the steps he did for UWE regardless of his prospective appointment to the board of the company, even though the company was not situated in his electorate. That was so because, in addition to the “driving factors” referred to earlier, UWE had invested heavily in the region and serviced his electorate and he had a “strong attachment to it”. Mr Maguire also made reference to his role as parliamentary secretary for regional and rural affairs when the plant opened. As noted, he had not had any responsibilities in that role since 28 March 2015.
- 9.71. In his written submissions, Mr Maguire also invoked the role he held as chair of the APFG, mention of which was notably absent in relation to any step he took in pursuing the UWE/Bright Foods issue. Further, it will be recalled that parliamentary friendship groups were not permitted to undertake any commercial activities (other than obtaining sponsorship for charitable donations).

- 9.72. To say this, however, is not to downplay the significance of UWE's operations in the economy of the Leeton area, and also Mr Maguire's electorate. Mr Liu gave evidence that while the processing plant for UWE Hay was located in Leeton, some of the hay was sourced from farms in the Wagga Wagga area.
- 9.73. However, there were clearly other strong forces motivating Mr Maguire to act as he did.
- 9.74. By April 2017, as explained in chapter 8, Mr Maguire had decided that he was not going to contest the 2019 election, albeit he had not made a public announcement of that fact. During 2017, and into the first half of 2018, one of the things he was very keen to do was to explore opportunities to put himself in the best possible financial position to retire at the next election. He wanted to receive actual real money before he retired, so that when he did retire he was in a good financial position, although he asserted he would have retired regardless of his financial position. In that context, he was "exploring opportunities" for post-parliamentary employment, and was "desirous to put [himself] in the best opportunity to engage in work once [he] retired".
- 9.75. Mr Maguire agreed that in 2018 he was hoping at least in his post-parliamentary career to have some kind of business relationship with Mr Liu. However, insofar as a position on the UWE board was concerned, he said it was "touched on briefly," and there was "no formal offer". As Counsel Assisting submitted, that may have been the case but whatever the "mention" was, it was apparent that Mr Maguire felt that a board position was a sufficiently concrete prospect, and that he had sufficient interest in that prospect, that he considered it worthwhile to seek the advice of the parliamentary ethics adviser on 26 July 2017. He said that at the time he sought the parliamentary ethics adviser's advice, the possibility of him joining the UWE board was in "serious contemplation".
- 9.76. In a conversation with Ms Berejikian on 14 February 2018, Mr Maguire told her, "Jimmy's we got his over the line that's good". Mr Maguire said that this comment related to solving Mr Liu's problems with UWE. In the same conversation after this remark about "Jimmy", Mr Maguire added "I can't not go to nothing I have to go to something there is no future doing things for NSW government...". Mr Maguire agreed that remark reflected his concern about making sure that there were post-parliamentary opportunities for himself.
- 9.77. Mr Maguire had also confided in Mr Elliott, at least by 29 January 2018, that he regarded Mr Liu as a potential source of money whether through acting as a consultant for him, or as a director, which might affect his decision as to whether he would stand for Parliament at the 2019 state election.
- 9.78. Mr Liu clearly made overtures to Mr Maguire in relation to a business relationship between the men, or more probably between Mr Maguire and UWE, or a commercial entity associated with Mr Liu. Mr Liu denied that he made Mr Maguire an offer to act as a consultant or become a director, but said he discussed the possibility of him becoming "an advisor".
- 9.79. Mr Maguire submitted that as there was no evidence of any discussion of a board position after he sought advice from the parliamentary ethics advisor, one could conclude that Mr Maguire did not wish to pursue a board position. He further argued that this was confirmed by the fact that he was never appointed to any position at UWE, such that the possibility of a board appointment could not be a factor motivating Mr Maguire's conduct in relation to UWE.
- 9.80. The Commission rejects this submission. It is clear from the terms of Mr Maguire's discussion with the parliamentary ethics adviser, who he told, "China firm has approached him to join board", that Mr Liu had approached him in this respect. Mr Maguire agreed in relation to this note, that UWE had "touched on" a "potential board position" for him. Such a board position was clearly the sort of

opportunity Mr Maguire envisaged exploring to put himself in the best possible financial position to retire at the next election.

- 9.81. Further, Mr Maguire’s submission does not take into account the close proximity between when he sought that advice, (26 July 2017), and his efforts over the next month to assist UWE as outlined above, and the writing of the letter to the chair of Bright Foods on 29 August 2017. It is sufficient for the purposes of the Commission’s inquiry into the UWE aspect of the Maguire allegation to find, as the Commission does, that Mr Maguire would not have engaged in the activities discussed in relation to UWE but for the possibility of gaining the board position UWE had approached him about.
- 9.82. The Commission finds that Mr Liu did make, or intimate to Mr Maguire that he was making, an offer of a UWE board position that was sufficiently substantive for him to seek advice from the parliamentary ethics adviser on 26 July 2017 about secondary employment. It is apparent from that consultation that Mr Maguire believed that the position Mr Liu offered him was to be on the board of UWE. As noted below in relation to a conversation Mr Maguire had with Ms Berejiklian on 14 February 2018, when Mr Maguire spoke to Ms Berejiklian about having got Mr Liu “over the line”, it is clear he was still hoping at that time there would be a future with UWE.
- 9.83. The Commission is satisfied that Mr Maguire was of that belief during the following weeks when he wrote to Shi Ming Fang of Bright Foods, threatened the minister for trade’s staff that he would go to China during their minister’s first trade mission there, and generally engaged in strenuous efforts not merely to save his friend Mr Liu’s business and the jobs of those employed there but, more importantly, to save it from “bankruptcy” as Mr Liu described it, and, as he told Ms Berejiklian on 1 September 2017, from go[ing] under”. It can be inferred that Mr Maguire was not only trying to save UWE from “go[ing] under”, but also trying to preserve the prospects of taking up his proffered position on its board.
- 9.84. It is not to the point that Mr Maguire may have had other purposes in mind in the UWE rescue mission. Although he sought to downplay it, he acknowledged that one factor was the prospect of a remunerative board or other position with UWE. In the Commission’s opinion, the evidence reveals that that was the driving factor, in other words, Mr Maguire would not have so conducted himself but for that prospect.
- 9.85. Mr Maguire’s conduct must be considered in the context that he was acting in defiance of the wishes of the office of the minister for trade. His contumelious conduct in so doing can be seen from the conversation he had with Mr Liu on 31 August 2017 in which he relayed, with a sense of pride, the abusive way in which he had responded to those in the minister’s office who were trying to dissuade him from making good his threat to fly to China during the minister’s first trade mission to China. It can also be seen in the conversation he had with Ms Berejiklian on 30 August 2017 again relaying, on this occasion, the abusive way he had dealt with her staff, and in his conversation with her on 1 September 2017, from which it is clear he understood Mr Blair’s staffers’ concern: they were “frightened I’ll blow up the place”.
- 9.86. It defies credulity that Mr Maguire could have believed he was acting appropriately as a member of Parliament in taking the steps he did to seek to remedy UWE’s financial predicament. The Commission finds that Mr Maguire would not have given Mr Liu “as much help as I possibly could to, to help him”, but for his concern to stave off UWE’s possible financial collapse for his own possible personal pecuniary benefit.
- 9.87. In these circumstances, the Commission finds that Mr Maguire would not have acted as he did, namely, writing the inflammatory letter to the chair of Bright Foods, threatening to fly to China, defying Mr Blair’s office requests to remove himself from the issue and threatening to undercut

Mr Blair's first trade mission, but for the prospect of his close friend, Mr Liu (and his corporations, UWE and UWE Hay), becoming an income source (whether via a board position on UWE, UWE Hay or through business dealings) whether in the twilight of his parliamentary career, or in his planned retirement. The Commission finds that he undertook the steps he did, acting as a member of Parliament, for the purpose of conferring a personal pecuniary benefit on himself, and would not have done so but for that purpose.

- 9.88. As to Mr Maguire's submission, in effect, that the "possibility of a board appointment was no longer being discussed" (quite what time period Mr Maguire was referring to in this respect is not clear), it is notable that on 14 February 2018, when Mr Maguire spoke to Ms Berejiklian about having got Mr Liu "over the line", it is clear he was still hoping there would be a future with UWE, as witness his statement in this context, "I can't not go to nothing I have to go to something there is no future doing things for NSW government...". He agreed that remark reflected his concern about making sure that there were post-parliamentary opportunities for himself. It is an available inference that at that stage, too, Mr Maguire's conduct was still being influenced by the prospect of personal pecuniary opportunities with UWE.
- 9.89. Indeed, on 3 May 2018, Mr Maguire told Ms Berejiklian that "Jimmy's made me an offer". He was still keeping her informed about the kinds of things that he was thinking about.

Corrupt conduct findings

Mr Maguire

Section 8(1)(c), ICAC Act

- 9.90. Counsel Assisting submitted that the Commission should conclude that Mr Maguire acted in breach of public trust in misusing his position as a member of Parliament to assist Mr Liu, UWE and UWE Hay in pursuit of his private pecuniary interest in the possibility of being appointed to the board of UWE.
- 9.91. The Commission accepts that submission. In pursuing the Bright Foods issue, Mr Maguire breached his obligation as a member of Parliament "to serve and, by serving, to act with fidelity and with a single-mindedness for the welfare of the community".
- 9.92. The Commission finds that Mr Maguire engaged in conduct which constituted or involved a breach of public trust within the meaning of s 8(1)(c) of the ICAC Act by misusing his office as a member of Parliament informed by his own private pecuniary interest to assist Mr Liu, UWE and UWE Hay in the possibility of being appointed to the board of UWE.

Section 9(1)(a), ICAC Act

- 9.93. As explained below, Mr Maguire's conduct is not excluded by s 9 of the ICAC Act as it could constitute or involve the common law offence of misconduct in public office such as to fall within s 9(1)(a) of the ICAC Act.
- 9.94. The elements of misconduct in public office have been set out in chapter 3.
- 9.95. Mr Maguire was a member of Parliament and a public officer throughout the period of his activities in relation to UWE. Mr Maguire's conduct was connected to his public office in that he used his public office to advance his personal interests, rather than those of the constituents he was elected to serve.

- 9.96. Mr Maguire abused his public office to further his personal interests rather than act in the public interest. His misconduct was wilful and in bad faith in that it was intentional and undertaken in circumstances where he knew that it was wrong to act as he did and where he would not have engaged in the relevant conduct but for the improper purpose of the pursuit of his personal pecuniary interests.
- 9.97. There was no reasonable excuse or justification for Mr Maguire's conduct in acting to advance his personal interests in relation to UWE. As he conceded in his written submissions, Mr Maguire knew that his letter to the chair of Bright Foods was "inappropriate, unauthorised and should not have been sent". The Commission finds that Mr Maguire knew this to be the case when he sent the letter. The fact that his conduct was impelled by his undisclosed hope (at least to those in Mr Blair's office) for a position on the UWE board was a betrayal of his duties as a member of Parliament.
- 9.98. Mr Maguire's conduct was serious and could merit criminal punishment having regard to the responsibilities of his office, the importance of the public objects which his responsibilities served and the nature and extent of his departure from those objects. His conduct in seeking to advance his personal interests by writing to a high-ranking member of the Chinese Communist Party suggesting improper conduct on the part of the company whose board the member chaired had caused NSW political leaders a loss of face and could lead to a reconsideration of Australian/Chinese business interests was highly inflammatory, and a breach of protocol. It could have imperilled Mr Blair's imminent trade mission to China and generally have had serious trade consequences for NSW business relations with China. As earlier discussed, Mr Maguire knew this to be the case, and almost revelled in the concern his conduct had engendered on the part of those in Mr Blair's office.
- 9.99. The Commission finds that Mr Maguire breached his duty "to serve and, by serving, to act with fidelity and with a single-mindedness for the welfare of the community" and therefore breached public trust by using his office, informed by his own private pecuniary interest, to assist Mr Liu, UWE and UWE Hay in the possibility of being appointed to the board of UWE such as could constitute or involve the criminal offence of misconduct in public office.
- 9.100. The Commission finds, for the purposes of s 9(1)(a) of the ICAC Act, that if the facts as found in relation to Mr Maguire's conduct by misusing his office informed by his own private pecuniary interest to assist Mr Liu, UWE and UWE Hay in the possibility of being appointed to the board of UWE were to be proved on admissible evidence to the requisite standard of beyond reasonable doubt and accepted by an appropriate tribunal, there would be grounds on which such a tribunal could reasonably conclude that Mr Maguire committed the offence of misconduct in public office and could constitute or involve a criminal offence within the meaning of s 9(1)(a) of the ICAC Act.

Section 13(3A), ICAC Act

- 9.101. The Commission is satisfied for the purposes of s 13(3A) of the ICAC Act, that, if the facts it has found in relation to UWE were to be proved on admissible evidence and accepted by an appropriate tribunal to the requisite standard of beyond reasonable doubt, there would be grounds on which such a tribunal would find that Mr Maguire engaged in conduct that constitutes the offence of misconduct in public office.
- 9.102. Accordingly, the Commission is satisfied that the jurisdictional requirements of s 13(3A) of the ICAC Act are satisfied.

Section 74BA, ICAC Act

- 9.103. The Commission is satisfied, for the purposes of s 74BA of the ICAC Act, that Mr Maguire's conduct in misusing his office to assist Mr Liu, UWE Hay and UWE, motivated by the hope of achieving a position on the board of UWE when he retired from Parliament, is serious corrupt conduct for the reasons already set out above, but which in short are:
- 9.103.1. Mr Maguire's conduct in writing to a high-ranking member of the Chinese Communist Party on official letterhead, which included the NSW coat of arms, and asserting "serious implications for the State of New South Wales", and that certain conduct of which he complained had caused NSW political leaders a loss of face and could lead to a reconsideration of Australian/Chinese business interests, was highly inflammatory and a breach of protocol. It could have imperilled Mr Blair's imminent trade mission to China and generally have had serious trade consequences for NSW business relations with China.
 - 9.103.2. The Commission has found that Mr Maguire knew, when he sent his letter to the senior Chinese official, that it was inappropriate, unauthorised and should not have been sent. He sent it regardless, seeking to advance his personal interest in a potential appointment to the board of UWE.
 - 9.103.3. Mr Maguire's conduct involved acting contumeliously in defiance of the wishes of the office of the minister for trade and involved him treating in an abusive fashion the staff of that office who were trying to dissuade him from making good his threat to fly to China during the minister's first trade mission to China. His behaviour was serious, unacceptable and entirely unbecoming for a member of Parliament.
 - 9.103.4. The actions Mr Maguire took, and threatened to take, in relation to UWE's problems in China were not on behalf of Mr Maguire's constituents, but were on behalf of his friend, Mr Liu, and UWE, which was a company not even located in Mr Maguire's electorate, and were ultimately motivated by the possibility of a post-parliamentary appointment to the board of UWE, or some other pecuniary gain in connection with Mr Liu and UWE and/or UWE Hay.
 - 9.103.5. In favouring his personal pecuniary interests over the public interest, Mr Maguire's conduct amounted to a significant betrayal of his duties and obligations as a member of Parliament. As an elected, and long-serving, member of Parliament, Mr Maguire's conduct is made more serious having regard to the responsibilities of his office, the importance of the public objects which he served and the nature and extent of his departure from those responsibilities.

Corrupt conduct conclusion

- 9.104. The Commission therefore finds that Mr Maguire engaged in serious corrupt conduct which constituted or involved a breach of public trust within the meaning of s 8(1)(c) of the ICAC Act by misusing his office as a member of Parliament to assist Mr Liu, UWE and UWE Hay, informed by his own private pecuniary interest in the possibility of being appointed to the board of UWE.

Section 74A(2) statement

Daryl Maguire

- 9.105. The Commission is satisfied that Mr Maguire is an affected person for the purposes of the ICAC Act.
- 9.106. Mr Maguire's evidence was the subject of a declaration under s 38 of the ICAC Act and cannot be used against him in criminal proceedings, except in relation to prosecution for offences under the ICAC Act. However, evidence of witnesses other than Mr Maguire, such as Mr Liu, Mr Cull and Ms Cruickshank, would likely be available in any prosecution of him for the offence of misconduct in public office in relation to UWE. That, coupled with the substantial documentary evidence, including the letter to Bright Foods, lawfully intercepted telephone calls and emails that is available and is evident from the references to it in this chapter, warrants consideration being given to obtaining the advice of the DPP with respect to the prosecution of Mr Maguire for misconduct in public office in relation to his activities in connection with UWE.



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