



CORRUPTION AND CRIME COMMISSION

REPORT ON THE INVESTIGATION OF ALLEGED MISCONDUCT BY EMPLOYEES OF LANDGATE AS A RESULT OF ASSOCIATIONS WITH EXTERNAL CLIENTS INVOLVED IN THE PROPERTY DEVELOPMENT INDUSTRY

18 June 2009

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Dear Mr President
Dear Mr Speaker

In accordance with section 84 of the *Corruption and Crime Commission Act 2003*, the Commission presents the *Corruption and Crime Commission Report on the Investigation of Alleged Misconduct by Employees of Landgate as a Result of Associations with External Clients Involved in the Property Development Industry*.

Yours faithfully

A handwritten signature in black ink that reads "Len Roberts-Smith".

The Hon LW Roberts-Smith, RFD, QC
COMMISSIONER

18 June 2009

ABBREVIATIONS AND ACRONYMS

“the CCC Act”	<i>Corruption and Crime Commission Act 2003</i>
CCC	Corruption and Crime Commission
“the Commission”	Corruption and Crime Commission
DLI	Department of Land Information
DPI	Department for Planning and Infrastructure
ICAC	Independent Commission Against Corruption (NSW)
LSLB	Land Surveyors Licensing Board of Western Australia
“the PSM Act”	<i>Public Sector Management Act 1994</i>
“the SD Act”	<i>Surveillance Devices Act 1998 (WA)</i>
“the Surveyors Act”	<i>Licensed Surveyors Act 1909</i>
“the TI Act”	<i>Commonwealth Telecommunications (Interception and Access) Act 1979</i>
TI	Telecommunications Intercept (or Interception)

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EXECUTIVE SUMMARY

Introduction

- [1] During 2007 and 2008 the Corruption and Crime Commission (“the Commission”) investigated allegations of misconduct by public officers in connection with possible attempted bribery of officers at Landgate (previously known as the Department of Land Information) by private sector business owners.
- [2] The investigation was commenced as the result of a notification of possible misconduct to the Commission by Mr Grahame Searle, then Chief Executive Officer of Landgate. That notification was made in accordance with section 28 of the *Corruption and Crime Commission Act 2003* (“the CCC Act”). Section 28 imposes an obligation on public sector departments and agencies to notify the Commission in writing of any matter that they suspect on reasonable grounds concerns, or may concern, misconduct as defined in section 4 of the CCC Act.

Landgate

- [3] Landgate is the corporate name of the current Western Australian Land Information Authority. This Authority was established when the *Land Information Authority Act 2006* came into effect on 1 January 2007.
- [4] Landgate currently maintains Western Australia’s official register of land ownership and survey information and is responsible for valuing the State’s land and property for government interest. Landgate provides land and property information, a secure land titles system and land valuations services.¹
- [5] Members of Landgate’s staff are employed under the *Public Sector Management Act 1994*, and are thus public officers for the purpose of the CCC Act.
- [6] One of Landgate’s core functions is to examine lodged strata plans to ensure that they comply with the various legislative and planning regulations in Western Australia.
- [7] Strata plans are required to be lodged by a licensed surveyor. The plan is then examined to ensure it complies with the statutory requirements.

Commissioner Investigation and Opinion

- [8] The matter which prompted the investigation was brought to the attention of Landgate management in early June 2007, after Mr Ronald Arthur Acott, a former Landgate employee then operating a strata title consultancy service, hand-delivered two envelopes to Landgate staff at Midland. On the front of the envelopes the names “Ian Croasdale” and “Terry Hawser” were typewritten. The one addressed to Mr Croasdale

was passed on to him. Mr Hawser was then on leave, so the envelope addressed to him was opened by Mr Nick Pallotta, who was acting in his position.

- [9] Inside each envelope were five Liquorland vouchers and five Coles Myer vouchers, each valued at \$50.
- [10] Also contained in each envelope was a “With Compliments” slip in the name of Gordon Poulton of Paramount Settlements. The slips were marked “Ian and staff” and “Terry and staff” respectively and thanked them for their “assistance” in relation to two specifically identified strata plans.
- [11] The two identified strata plans referred to multi-million dollar development projects which were, at the time, being examined by Landgate to ensure their regulatory compliance prior to new titles being issued.
- [12] The developer in each case was Finbar Group Ltd (“Finbar”).
- [13] When Commission investigators first spoke to Mr Pallotta he informed them that when Mr Acott handed him the envelope for Mr Hawser Mr Acott asked Mr Pallotta if he could “push this job through”.
- [14] Mr Pallotta recalled that Mr Hawser had received a separate envelope which he had left in his desk drawer. Information received by the Commission indicated that this envelope had been received from Mr Hoot Khoon (James) Teoh. Mr Teoh has subsequently confirmed this was so.²
- [15] Mr Teoh’s company, Tuscom Subdivision Consultants Pty Ltd (“Tuscom”), was the major surveyor engaged by Finbar, and was such on each of the developments referred to.
- [16] The third envelope (from Mr Teoh) was opened by Landgate staff and found to contain a further six Liquorland vouchers, valued at \$50 each. Inquiries by the Commission found that the vouchers had not been declared to management, nor recorded on the Landgate gift registry.
- [17] Landgate management directed that the vouchers be returned to those who had provided them.
- [18] The Commission investigation was conducted between June 2007 and June 2009, and included the use of telecommunications interception, physical and technical surveillance, search warrants, integrity testing and private hearings.
- [19] The investigation revealed that a practice had apparently arisen of developers or persons acting for them providing, initially in the months approaching Christmas, alcohol gift vouchers or cash to Mr Croasdale and Mr Hawser, for themselves and the members of their teams, in appreciation for their work during the year. It had started some years ago, with the giving of cartons of beer. It later became gift vouchers. The cash payments were generally said to be for such things as Christmas or other staff lunches or dinners.

- [20] In evidence, those involved sought to portray the practice as innocuous and merely some recognition of past hard work and assistance afforded by the Landgate officers in their dealings with the developers. It may well have started that way, but the reality is that (as intercepted telephone calls revealed) even then there was an expectation by the developers that Landgate staff would continue to be of assistance to them in the future.
- [21] Once Landgate management directed the vouchers be returned in June 2007, the practical difficulty was recognised by Mr Poulton. In a telephone conversation with Mr Acott on 6 July 2007, he explained he would have to work out a way of getting around the problem that vouchers could no longer be given to Landgate staff for what he described as his “reward scheme”. The Commission notes that by this time the arrangement obviously had nothing to do with Christmas.
- [22] In a telephone conversation on 14 August 2007 between Mr Poulton and Mr Teoh, the former again referred to “our rewards scheme”. When Mr Teoh said “... the quicker you work, the more you get. Is that what it is?” Mr Poulton said that was right.
- [23] The practice of giving gifts of vouchers or cash for past “good service” had evolved into one of providing benefits for Landgate staff to expedite the issue of titles on pending applications. In turn, this further evolved into one of simply secretly paying \$500 to Mr Croasdale for each application which he expedited. This became known to other developers, who also made similar payments to him for similar assistance.
- [24] Mr Croasdale also provided other assistance to Mr Teoh on the latter’s title dealings.
- [25] There are strict requirements that details of the lots, illustrated buildings and all other relevant information on a lodged strata plan must be correct. They must be certified correct by a licensed surveyor. In relation to Tuscom that was Mr Teoh. Whilst minor errors may be corrected by Landgate examining officers, more significant ones should not be. The plans may have to be withdrawn, corrected and resubmitted (with another fee) and the dealing may be “stopped”. This causes delay and further expense—which can be significant.
- [26] On 29 August 2007 Mr Teoh telephoned Mr Croasdale at his work and asked for his help with the plans for the Capital Square Development. He said it would be “more of a cashy sort of thing later on”. Mr Croasdale agreed. They arranged for the plans and documents to be delivered to Mr Croasdale at Landgate. That was done. Later, on 6 September 2007 Mr Croasdale went to the Tuscom offices after work, where he gave detailed advice to Mr Teoh about the drawings and plans to be lodged. He received at least \$100 worth of alcohol gift vouchers for this.
- [27] This incident is of concern because once the plans were lodged they would have gone to Mr Croasdale’s section for examination. He was compromised because he had placed himself in a position of conflict of interest.

- [28] At the same time, Mr Croasdale was also expediting applications for other developers in exchange for financial benefits, one of whom was concerned he would lose his \$1380 application fee if it wasn't "fixed" soon. Some of the money Mr Croasdale received he passed on for a Christmas function for Landgate officers.
- [29] Even by early September 2007 others in the industry were aware that approvals could be expedited by making a payment to Mr Croasdale. One developer, who had lodged strata title applications for two developments worth some \$2 million, was told by a real estate agent that he was aware of an arrangement which involved making payments to a particular Landgate employee for the quick issue of titles. He said the employee was Ian Croasdale, the "fee" for this was \$500 and a cheque could be mailed to his home address. That is in fact what the developer did, posting a cheque for \$500 to Mr Croasdale who deposited it into his bank account the day the strata plan was passed for dealing.
- [30] The agent who had passed on this information himself made at least two \$500 payments to Mr Croasdale for the same purpose, in respect of separate developments, in March and November 2007. In respect of the latter he told Mr Croasdale in an email that he would like a "faster turnaround" than the five to seven days then current and that he "... will follow the normal procedure".
- [31] Four persons were charged with criminal offences in the course of the Commission's investigation. Three of them were charged with a total of six offences of bribery of a public officer, contrary to section 82 of the *Criminal Code* and one (Mr Croasdale) was charged with three offences of receiving a bribe as a public officer, contrary to the same section. All four pleaded guilty and have been convicted and sentenced.
- [32] In the Commission's opinion Mr Croasdale's actions constituted serious misconduct under section 3, 4(b) and 4(c) of the CCC Act.
- [33] Shortly after his appearance in a private hearing before the Commission in March 2008 Mr Croasdale resigned before any disciplinary action was initiated by Landgate. As a result, no departmental disciplinary action is now possible.
- [34] The Commission's investigation revealed a number of problematical systemic issues within Landgate. These included –
- Although Landgate had a detailed gift policy at the relevant time (which required disclosure of all gifts valued at \$30 or more, whether accepted or not), it was overdue for review, failed to state what was to occur once a declaration was made, was not well-known to Landgate staff and compliance with it was poor.
 - There was an established "tradition" within Landgate of accepting "gifts", mainly in the form of alcohol or gift vouchers, without declaring them.

- One feature of the Land Boundary Services section of Landgate was the longevity of employment of the staff. Service of 30 to 40 years was not uncommon. There were small teams working to managers who had a high degree of autonomy but a lack of oversight and accountability. This allowed a situation to evolve in which cash or other gifts could be received in exchange for giving preferential treatment to particular developers and others, to the detriment of other persons whose applications for new titles were not afforded such treatment.
- A lack of management control of, or responsibility for, the maintenance of quality standards in lodged plans and accompanying documentation, as a result of which Landgate examining staff were confronted with having to spend excessive time rectifying problems which should have been rectified by the lodging party or certifying surveyor.
- There was uncertainty about and inconsistent application of the policy for according priority to urgent applications. This was a corruption risk because it created an opportunity for examiners to be paid to expedite applications. It also led to lodging parties seeking priority falsifying settlement dates.

Recommendations

[35] The Commission makes the following 8 recommendations.

Recommendation 1

It is recommended that the *Offer and Acceptance of Gifts, Benefits and Hospitality* policy is reviewed by Landgate. As part of this review, issues requiring elaboration within the policy include: whether an officer should be able to receive a gift; the process of declaring a gift (or offer); the location and handling of the registry; and the clarification of the declarable amount.

Recommendation 2

It is further recommended that after review and finalisation of the policy all staff should be subjected to an education program to communicate the new policy. Regular reviews should be undertaken not only of the policy to ensure currency but also of the register itself to allow management to monitor approaches by external parties to Landgate staff.

Recommendation 3

The Commission recommends that the *Private Employment and Commercial Business Undertakings* policy be reviewed and completed from its current draft state. The issue about the definition of “employment” needs to be covered, possibly by broadening the term as it applies to Landgate staff performing work for reward that is in line with their duties.

Recommendation 4

The Commission further recommends that after review and finalisation, all staff should be subject to an education program to communicate the new policy. Regular reviews should be undertaken not only of the policy to ensure currency but also of Landgate staff to ensure that the policy is not being circumvented.

Recommendation 5

The Commission recommends that Landgate instigates some form of identification of associations so that they can ensure that matters are processed by staff with no perceived conflict of interest. This identification requirement should be included in Landgate’s conflict of interest policy.

Recommendation 6

The *DLI Financial and Private Interests Policy (Conflict of Interest)* is currently in a draft state with the next review date showing as July 2005. In order to successfully endorse this policy it is recommended that Landgate should review, amend, finalise and disseminate the policy to all staff as a priority.

Recommendation 7

A review of salary levels within the Land Boundary Services section, and possibly the positions themselves in terms of updating job descriptions is recommended. This may result in decreasing the potential for corruption as staff receive a pay level commensurate with the importance of the decisions that they make, and the commercial value of the developments that are impacted.

The Commission further recommends that if no such increase is found warranted after independent review, staff be fully apprised of the rationale for the current salary level structure.

Recommendation 8

The Commission recommends that Landgate: reviews its procedures for accommodating requests for urgent or expedited examination of plans and the issue of titles; establishes clear guidelines or criteria on which such requests may be approved; and implements a requirement for dealing with such requests to be properly documented and appropriately audited.

- [36] The Commission worked with Landgate in the course of the investigation and notes that Landgate responded positively and proactively to address issues as they were revealed during the course of it.
- [37] Landgate advises that the recommendations made above have already been implemented, are in the course of being implemented or will be implemented.³

EXECUTIVE SUMMARY: ENDNOTES

All references to telephone intercepts are references to lawfully intercepted telephone intercepts.

¹ Landgate Website at <http://www.landgate.wa.gov.au/corporate.nsf/web/About+Us>, viewed 2 December 2008.

² Teoh section 86 representations: letter from Patti Chong Lawyer dated 2 June 2009.

³ Landgate section 86 representations dated 1 May 2009.

CHAPTER ONE

FOREWORD

1.1 Commission Investigation

- [1] During 2007 and 2008 the Corruption and Crime Commission (“the Commission”) investigated allegations of misconduct by public officers in connection with possible attempted bribery of officers at Landgate (previously known as the Department of Land Information) by private sector business owners.
- [2] In accordance with section 22 of the *Corruption and Crime Commission Act 2003* (“the CCC Act”) the purpose of the investigations was to assess the allegations and form an opinion as to the possible occurrence of “misconduct”, as defined in section 4 of the CCC Act.
- [3] Private hearings were held at the Commission in respect of these matters in March 2008. Additional investigations were conducted by the Commission into these matters before, at the time of, and following these hearings.

1.2 Jurisdiction of the Commission

- [4] The Commission is an executive instrument of the Parliament (albeit an independent one). It is not an instrument of the government of the day, nor of any political or departmental interest. It must perform its functions under the CCC Act faithfully and impartially. The Commission cannot, and does not, have any agenda, political or otherwise, other than to comply with the requirements of the CCC Act.
- [5] It is a function of the Commission, pursuant to section 18 of the CCC Act, to ensure that an allegation about, or information or matter involving, misconduct by public officers is dealt with in an appropriate way. An allegation can be made to the Commission, or made on its own proposition. The Commission must deal with any allegation of, or information about, misconduct in accordance with the procedures set out in the CCC Act.

1.3 Definitions

1.3.1 Public Officer

- [6] The term “public officer” is defined in section 3 of the CCC Act by reference to the definition in section 1 of the *Criminal Code*. The term “public officer” includes any of the following: police officers; Ministers of the Crown; members of either House of Parliament; members, officers or employees of any authority, board, local government or council of a local government; and public service officers and employees within the meaning of the *Public Sector Management Act 1994* (“the PSM Act”).

1.3.2 Misconduct

- [7] The term “misconduct” has a particular and specific meaning in the CCC Act and it is that meaning which the Commission must apply. Section 4 of the CCC Act states that:

Misconduct occurs if —

- (a) *a public officer corruptly acts or corruptly fails to act in the performance of the functions of the public officer’s office or employment;*
- (b) *a public officer corruptly takes advantage of the public officer’s office or employment as a public officer to obtain a benefit for himself or herself or for another person or to cause a detriment to any person;*
- (c) *a public officer whilst acting or purporting to act in his or her official capacity, commits an offence punishable by 2 or more years’ imprisonment; or*
- (d) *a public officer engages in conduct that —*
 - (i) *adversely affects, or could adversely affect, directly or indirectly, the honest or impartial performance of the functions of a public authority or public officer whether or not the public officer was acting in their public officer capacity at the time of engaging in the conduct;*
 - (ii) *constitutes or involves the performance of his or her functions in a manner that is not honest or impartial;*
 - (iii) *constitutes or involves a breach of the trust placed in the public officer by reason of his or her office or employment as a public officer; or*
 - (iv) *involves the misuse of information or material that the public officer has acquired in connection with his or her functions as a public officer, whether the misuse is for the benefit of the public officer or the benefit or detriment of another person,*

and constitutes or could constitute —

- (v) *an offence against the “Statutory Corporations (Liability of Directors) Act 1996” or any other written law; or*
- (vi) *a disciplinary offence providing reasonable grounds for the termination of a person’s office or employment as a public service officer under the “Public Sector Management Act 1994” (whether or not the public officer to whom the allegation relates is*

a public service officer or is a person whose office or employment could be terminated on the grounds of such conduct).

1.4 Reporting by the Commission

- [8] Under section 84(1) of the CCC Act the Commission may at any time prepare a report on any matter that has been the subject of an investigation or other action in respect of misconduct. By section 84(3) the Commission may include in a report:
- (a) *statements as to any of the Commission's assessments, opinions and recommendations; and*
 - (b) *statements as to any of the Commission's reasons for the assessments, opinions and recommendations.*
- [9] The Commission may cause a report prepared under this section to be laid before each House of Parliament, as stipulated in section 84(4).
- [10] Section 86 of the CCC Act requires that, before reporting any matters adverse to a person or body in a report under section 84 the Commission must give the person or body a reasonable opportunity to make representations to the Commission concerning those matters.
- [11] Accordingly, a number of persons were notified by letter of possible adverse matters which it was proposed to include in this report. They were invited to make representations about those matters by a particular date, and were advised that they and their legal adviser could inspect the transcript of hearings before the Commission and evidentiary material going to matters identified and any other matters about which they might wish to make representations. A number of persons provided representations and the Commission has taken those into account in finalising this report.
- [12] A list of persons who received notifications under section 86 in respect of this report is detailed in the Appendix to this report.

1.5 Disclosure

- [13] The Commission has powers that include the capacity to apply for warrants to lawfully intercept telecommunications, utilise surveillance devices, compel the production of documents and other things, compel attendance at hearings and to compel responses to questions on oath in hearings conducted by the Commissioner.
- [14] Section 151 of the CCC Act controls the disclosure of a "restricted matter". A "restricted matter" means any of the following:
- (a) *any evidence given before the Commission;*

- (b) *the contents of any statement of information or document, or a description of any thing, produced to the Commission;*
- (c) *the contents of any document, or a description of any thing, seized under this Act*
- (d) *any information that might enable a person who has been, or is about to be, examined before the Commission to be identified or located; or*
- (e) *the fact that any person has been or may be about to be examined before the Commission.*¹

[15] Restricted matters cannot be disclosed unless particular criteria are met. Section 151(4)(a) of the CCC Act states that: “A restricted matter may be disclosed in accordance with a direction of the Commission”.² Further, pursuant to section 152(4), “official information” (that is, “in relation to a relevant person, means information acquired by the person by reason of, or in the course of, the performance of the person’s functions under this Act”³) may be disclosed by a relevant person (that is, “a person who is or was ... an officer of the Commission ... or a Commission lawyer”⁴) if it is disclosed:

- (a) *under or for the purposes of this Act;*
- (b) *for the purposes of a prosecution or disciplinary action instituted as a result of an investigation conducted by the Commission ... under this or any other prosecutions or disciplinary action in relation to misconduct;*
- (c) *when the Commission has certified that disclosure is necessary in the public interest;*
- (d) *to either House of Parliament ...;*
- (e) *to any prescribed authority or person; or*
- (f) *otherwise in connection with the performance of the person’s functions under this Act.*⁵

[16] The Commission takes decisions about releasing information to the public very seriously. Consistently with the considerations to which it is required to have regard in deciding whether or not an examination (hearing) should be conducted in public, when considering the disclosure of information in a report the Commission takes into account the benefits of public exposure and public awareness against privacy considerations and the potential for prejudice.

1.6 Telecommunications Interception Material

[17] The Commonwealth *Telecommunications (Interception and Access) Act 1979* (“the TI Act”) contains stringent controls and safeguards in relation to telecommunications interception and handling, and communicating

information gathered from lawfully intercepted telecommunications. Section 63 of the TI Act prohibits the communication of lawfully intercepted information unless given particular restricted circumstances.

- [18] Section 67(1) of the TI Act allows certain intercepting agencies, including the Commission,⁶ to make use of lawfully intercepted information and interception warrant information for a “permitted purpose”. “Permitted purpose”, as defined in section 5(1) of the TI Act, in the case of the Commission “means a purpose connected with ...: (i) an investigation under the Corruption and Crime Commission Act into whether misconduct (within the meaning of that Act) has or may have occurred, is or may be occurring, is or may be about to occur, or is likely to occur; or (ii) a report on such an investigation”.⁷

1.7 Privacy Considerations

- [19] In formulating this report the Commission has considered the benefit of public exposure and public awareness and weighed this against the potential for prejudice and privacy infringements. The Commission has also complied with the strict requirements of the TI Act and the *Surveillance Devices Act 1998 (WA)* (“the SD Act”) in the utilisation of intercepted information in this report.
- [20] As a result of these considerations the Commission may decide not to include names of various individuals who assisted the Commission during its investigation. Similarly, some extracts from Telecommunications Intercept (TI) material set out in this report may have been edited by omitting the names of individuals or other information collateral to this investigation of alleged public sector misconduct.

1.8 Opinions of Misconduct: Standard of Proof

- [21] The Commission fully appreciates that any expression of opinion by it in a published report, that a public officer has engaged in misconduct, is serious. The publication of such an opinion or any adverse matter against a public officer, or any other person, may have serious consequences for the public officer, or person, and their reputation.
- [22] The Commission is careful to bear these matters in mind, when forming opinions, when conducting inquiries and when publishing the results of its investigations.
- [23] The Commission may form an opinion as to misconduct on the evidence before it only if satisfied of misconduct on the balance of probabilities. The seriousness of the particular allegation and the potential consequences of the publication of such an opinion by the Commission, also go to how readily or otherwise it may be so satisfied on the balance of probabilities.
- [24] The balance of probabilities is defined as:

The weighing up and comparison of the likelihood of the existence of competing facts or conclusions. A fact is proved to be true on the balance of probabilities if its existence is more probable than not, or if it is established by a preponderance of probability ...⁸

- [25] The balance of probabilities is a standard used by courts when considering civil matters. It is a standard which is less than the criminal standard of beyond reasonable doubt. This was confirmed by the High Court in a unanimous judgement in Rejfeke v McElroy (1965) 112 CLR 517:

... The difference between the criminal standard of proof and the civil standard of proof is no mere matter of words: it is a matter of critical substance. No matter how grave the fact which is to be found in a civil case, the mind has only to be reasonably satisfied and has not with respect to any matter in issue in such a proceeding to attain that degree of certainty which is indispensable to the support of a conviction upon a criminal charge ...

- [26] The balance of probabilities can be applied to circumstantial evidence, as explained by the High Court in Luxton v Vines (1952) 85 CLR 352:

... The difference between the criminal standard of proof in its application to circumstantial evidence and the civil is that in the former the facts must be such as to exclude reasonable hypotheses consistent with innocence, while in the latter you need only circumstances raising a more probable inference in favour of what is alleged. In questions of this sort, where direct proof is not available, it is enough if the circumstances appearing in evidence give rise to a reasonable and definite inference: they must do more than give rise to conflicting inferences of equal degrees of probability so that the choice between them is mere matter of conjecture ... But if circumstances are proved in which it is reasonable to find a balance of probabilities in favour of the conclusions sought then, though the conclusion may fall short of certainty, it is not to be regarded as a mere conjecture or surmise ...

- [27] The degree of evidence necessary to reach a conclusion on the balance of probabilities varies according to the seriousness of the issues involved. This was explained by Sir Owen Dixon in Briginshaw v Briginshaw (1938) 60 CLR 336:

... Except upon criminal issues to be proved by the prosecution, it is enough that the affirmative of an allegation is made out to the reasonable satisfaction of the tribunal. But reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the fact or facts to be proved.

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

- [28] Or, as Lord Denning said in Hornal v Neuberger Products Ltd (1956) 3 All ER 970: “The more serious the allegation the higher the degree of probability that is required ...”.
- [29] Furthermore, the Commission could not reach an opinion of misconduct on the basis of a “mere mechanical comparison of probabilities”, without any actual belief in its reality. That is to say, for the Commission to be satisfied of a fact on the balance of probabilities, it would have to have an actual belief of the existence of that fact to at least that degree.⁹
- [30] The Commission has borne all of the foregoing considerations in mind in forming its opinions about matters the subject of the investigation. Any expression of opinion in this report is so founded.

CHAPTER TWO BACKGROUND

2.1 Introduction

- [31] On 1 June 2007 two employees of Landgate, Midland, Mr Nick Pallotta, Senior Spatial Information Officer, Strata Plan Audit Team, and Mr Warwick Arthur Davies, Senior Examiner, New Title Creation Team, each received an envelope hand-delivered by Mr Ronald Arthur Acott, a former employee of Landgate. Mr Acott operates a consultancy firm Strata Title Consultancy Services Pty Ltd.
- [32] One envelope had the name “Ian Croasdale” and the other envelope had the name “Terry Hawser” typewritten on the front.
- [33] Mr Davies passed the relevant envelope to Mr Ian David Croasdale. Mr Croasdale was Team Leader, New Title Creation Team. Mr Pallotta opened the other envelope as he was acting in Mr Hawser’s position. Mr Hawser, Team Leader, Strata Plan Audit Team, was on leave at the time.
- [34] Inside each envelope were five Liquorland vouchers and five Coles Myer vouchers, each voucher being valued at \$50.
- [35] Also contained in each envelope was a “With Compliments” slip in the name of Gordon Poulton of Paramount Settlements. The slips were marked “Ian and staff” and “Terry and staff” respectively and thanked them for their “assistance” in relation to two specifically identified strata plans.
- [36] The two identified strata plans referred to multi-million dollar development projects which were, at the time, being examined by Landgate to ensure their regulatory compliance prior to new titles being issued.
- [37] The developer in each case was Finbar Group Ltd (“Finbar”).
- [38] Concerned about the envelope’s contents Mr Pallotta brought the envelope to the attention of Mr Barry Cribb, his Manager at Landgate, who subsequently informed Mr Grahame Searle, the Chief Executive Officer. At this point the Commission was notified of concerns raised by the provision of the vouchers.
- [39] When Commission investigators first spoke to Mr Pallotta¹⁰ he informed them that when Mr Acott handed him the envelope for Mr Hawser he asked Mr Pallotta if he could “push this job through”.¹¹
- [40] The Commission was also advised that other staff had brought the matter to Mr Cribb’s attention and that Mr Pallotta recalled that Mr Hawser had received a separate envelope which he had left in his desk drawer. Information received by the Commission indicated that this envelope had been received from Mr Hoot Khoo (James) Teoh.

- [41] Mr Teoh's company, Tuscom Subdivision Consultants Pty Ltd ("Tuscom"), was the major surveyor engaged by Finbar, and was such on each of the aforementioned developments referred to.
- [42] This third envelope was opened by Landgate staff and found to contain a further six Liquorland vouchers, valued at \$50 each. Inquiries by the Commission found that the vouchers had not been declared to management, nor recorded on the Landgate gift registry.
- [43] According to Mr Cribb, he returned all of the vouchers to their providers and personally contacted Mr Acott and Mr Teoh by telephone to advise them of Landgate's policy concerning gifts and that he had deemed the vouchers to be inappropriate considering the manner and circumstances in which they were received.¹²

2.1.1 Landgate

- [44] Landgate is the corporate name of the current Western Australian Land Information Authority. This Authority was established when the *Land Information Authority Act 2006* came into effect on 1 January 2007.
- [45] Members of Landgate's staff are employed under the *Public Sector Management Act 1994*, and are thus public officers for the purpose of the CCC Act.
- [46] Landgate currently maintains Western Australia's official register of land ownership and survey information and is responsible for valuing the State's land and property for government interest.
- [47] Landgate provides land and property information, a secure land titles system and land valuations services.¹³
- [48] Landgate's main offices are located within the main business area in Midland, with an additional office located on St Georges Terrace, Perth.

2.2 Processing of Strata Plans

- [49] One of Landgate's core functions is to examine lodged strata plans to ensure that they comply with the various legislative and planning regulations in Western Australia.
- [50] Strata plans define the lots in a strata scheme, individually owned areas, and common property, jointly owned by all lot owners in the strata scheme.
- [51] Strata lots are limited in height and depth: known as the "stratum" of the lot.¹⁴
- [52] Strata plans are required to be lodged by a licensed surveyor and currently can be lodged in hard document form or electronically. Once an application for a strata plan is received it goes to the Strata Plan Audit Team for examination to ensure it complies with all the statutory requirements. The strata plan cannot be issued until the plan is approved

as being “in order for dealings”. Once it has been classified as in order for dealings an application for new titles is submitted and it is then progressed through to the New Title Creation Team for a new title to be issued. At the relevant times, Mr Terry Hawser was the Team Leader of the Strata Plan Audit Team and Mr Ian Croasdale was the Team Leader of the New Title Creation Team.

2.3 Paramount Settlements

[53] The Paramount Settlements business is solely owned by Mr Poulton and commenced operation in 1985. The business employs a number of staff, who deal with the settlement and conveyancing of residential real estate.

[54] Mr Poulton advised the Commission that approximately 50 percent of Paramount Settlements’ turnover in late 2007 resulted from settlements from Finbar.¹⁵ These settlements all related to multi-storey, multi-unit residential developments historically located within the Central Business District of Perth.

2.4 Tuscom Subdivision Consultants Pty Ltd

[55] The company Tuscom Subdivision Consultants Pty Ltd is solely directed by Mr Teoh. Originally registered in 1990, the business employs approximately 11 staff and provides planning, surveying and administrative organisation for subdivisions of properties.

[56] Prior to establishing this business Mr Teoh was previously employed by the Lands and Surveys Department (now know as Landgate) between 1982 and 1989. Mr Teoh is a licenced surveyor who holds directorships of various companies involved in property development.

[57] Mr Teoh told the Commission that Tuscom performs surveying and strata planning for Finbar’s developments and is the company’s biggest client in terms of regular work.

2.5 Strata Title Consultancy Services Pty Ltd

[58] Strata Title Consultancy Services Pty Ltd, which provides consultancy advice in relation to developments and strata title property, was originally registered in 1995 and is solely directed by Mr Acott.

[59] Prior to establishing this business Mr Acott was employed by Landgate from 1962, working in the strata plan audit section from 1982 to his resignation in 1998.

[60] It is through his employment with Landgate that Mr Acott became associated with Mr Hawser and Mr Croasdale, at times acting as a supervisor to them both.

2.6 MLV Real Estate Pty Ltd

[61] MLV Real Estate Pty Ltd (“MLV”) specialises in industrial real estate and provides consultancy on subdivisions, strata titling and property development. Mr Michael Edwin McKenna is the Managing Director of MLV.

[62] Mr McKenna is a licensed real estate agent who also conducts industrial property development.

2.7 Complex Land Solutions Pty Ltd

[63] Complex Land Solutions Pty Ltd is directed and managed by Mr Franklyn John Borrello and performs consultancy work in relation to property developments and land subdivisions, including strata titling.

[64] Prior to establishing this business Mr Borrello was employed by Landgate for eight years. During this employment Mr Borrello worked with Mr Croasdale.

2.8 Commonwealth Constructions

[65] Commonwealth Constructions is a trading name for Mr Peter Gordon Clark, a registered builder with a business located in Bentley. Mr Clark specialises in the construction of industrial premises, primarily tilt-panel factory units and has previously been engaged to construct units for Mr McKenna.

CHAPTER THREE

COMMISSION INVESTIGATION

3.1 Introduction

[66] On 11 June 2007 Commissioner the Hon Len Roberts-Smith, RFD, QC, authorised an investigation into the alleged bribery of management staff at Landgate by private sector business owners pursuant to section 33 of the CCC Act.

[67] The scope and purpose of the Commission investigation was:

To determine the nature and extent of associations that employees of Landgate maintain with external clients involved in the property development industry and whether those employees have engaged in misconduct through these associations.

[68] The Commission's investigation included the utilisation of lawful telecommunications interception material, search warrants and integrity testing.

[69] Private hearings into this matter were conducted at the Commission between 6 and 11 March 2008. Witnesses who were summonsed to these hearings included Mr Hawser, Mr Croasdale, Mr Haddow, Mr Braithwaite, Mr Acott, Mr Poulton, Mr Teoh, Mr Borrello and Mr McKenna, amongst others.

3.2 Gift Vouchers

[70] The Commission carried out inquiries in an attempt to ascertain who was responsible for the purchase of the gift vouchers. Retail Decisions Pty Ltd, the company that oversees the sale and use of this type of gift voucher, assisted the Commission in these inquiries. As all of the vouchers were in credit card form each could be electronically tracked from purchase through to use.

[71] The Commission's inquiries established that the cards purported to have been provided by Mr Poulton were purchased from the North Perth Liquorland store on two separate occasions and were paid for by cash. Whilst a cash transaction fails to provide direct evidence of who personally purchased the cards, each was purchased in the Liquorland store in close proximity to the Northbridge premises of Paramount Settlements, Mr Poulton's business.

[72] The cards purported to have been purchased by Mr Teoh were purchased from the Booragoon Liquorland store on 14 May 2007. Commission inquiries established that the cards were purchased using an American Express credit card linked to an account in the name of Ms Sau Thean Chiew. Ms Chiew is Mr Teoh's wife. Additionally, a Fly Buys reward card in the name of Teoh was used with the transaction.

[73] Ten cards were purchased on 14 May 2007, but only six were located at the Landgate offices. Checks on the remaining four cards indicated that they had been used on 18 May 2007 at the Alexander Heights Liquorland store. Commission inquiries established that this is the closest Liquorland store to Mr Croasdale's residential premises.

3.3 "Rewards"

[74] The Commission's lawful interception of telecommunications services showed that directly upon his return from leave Mr Hawser contacted Mr Acott on 2 July 2007 to discuss the gift vouchers that had been detected. The following is an excerpt from that call:

HAWSER: *It was dealt with probably correctly because it was, and it comes at a bad time of the year as well, the end of the financial year.*

ACOTT: *Yeah but I wished*

HAWSER: *Uhm*

ACOTT: *the person who received it had said to me look you know we can't accept it, uhm, uhm, you know come in and pick up and take it back or something, you know.*

HAWSER: *Ah, well there was different ways of handling it and uhm, it may have been the case had I not been on holidays, yes.*

ACOTT: *Mm.*

HAWSER: *It would have, it would never have gone down a different pathway.¹⁶*

[75] On 4 July 2007 Mr Teoh was contacted by Mr Cribb and advised that the gift vouchers would be returned.¹⁷ Later that day Mr Poulton, who was aware that this had happened, during a telephone call discussed the provision of vouchers with his wife. The following is an excerpt from that call:

VIVIAN POULTON: *That was a thankyou, that's all you ever say. Okay get moving.*

GORDON POULTON: *Yeah but they said do you often thank people before they do anything (laughs).*

VIVIAN POULTON: *Yeah but they helped you all through the beginning of the year (laughs). No,*

but you do, you say thanks for past services and for hopeful future services.

GORDON POULTON: *(laughs)*

VIVIAN POULTON: *End of story.¹⁸*

[76] On 5 July 2007 Mr Teoh further informed Mr Poulton of Landgate's actions:

POULTON: *Oh. What's the story?*

TEOH: *Nothing, they're just gonna send it back.*

POULTON: *Oh.*

TEOH: *Your appreciation is much appreciated but it ... (laughs)*

POULTON: *Is that what they say (laughs). I was thinking of wearing a panama hat on when I went in yesterday.¹⁹*

[77] Later that same day Mr Croasdale left a message for Mr Acott as follows:

CROASDALE: *Ah, Ron it's Crowie, just letting you know that uhm, that stuff's been all the way up and's come all the way down again, and ah it's just gonna be returned to ya, with a letter from uhm, ah Barry Cribb, that's it. Looks like you've ah, got off very easy, so, yeah. Expect it all back in the next couple of days.²⁰*

[78] This excerpt from a later telephone call on 5 July 2007 reiterated this course of action by Landgate:

CROASDALE: *... even Hawser said, you know cause he came and see me when he came back to work and said, yeah I think I would have handled it a lot differently. Yeah well so will I but unfortunately my hands are tied because of who's already dobbed them in so.²¹*

[79] On 6 July 2007 Mr Poulton contacted Mr Acott to discuss the vouchers, and Mr Pallotta's actions in reporting their receipt. The following is an excerpt from that call:

ACOTT: *Because you know if he did not want to accept them he should have said oh,*

rung us up and said oh come and pick them up I'm not going with it you know?

POULTON: *Exactly, exactly but all he's done is he's put, he's put Terry and all his staff*

ACOTT: *Yeah.*

POULTON: *and Ian and Warwick*

ACOTT: *Yeah.*

POULTON: *and the whole crew*

ACOTT: *Yeah.*

POULTON: *under observation.*

ACOTT: *Uhm.*

POULTON: *He's put the whole lot under the microscope.²²*

[80] Later in the same call Mr Poulton lamented at being unable to provide vouchers to Landgate staff:

POULTON: *But I, I'm going to have to work out a way of bloody getting around this.*

ACOTT: *Yeah, I'd*

POULTON: *The vouchers, the vouchers are gone completely.²³*

[81] Mr Poulton then indicates that he has another idea for providing gifts to Landgate staff, without the use of the vouchers:

POULTON: *But I, I thought about it and I thought the only, the only way I can do it now in future is to open, is, is to, is to pay the money to, uhm, to a liquor store out there, uh, physically go in. Do you know what I mean?*

ACOTT: *Mm.*

POULTON: *And then just give them the word that they just go in and you know they, they buy it themselves.*

ACOTT: *Mm.*

POULTON: *So there's no, there's no vouchers.*

ACOTT: *Except that they will be too shit scared for it, to do that anyway.*

POULTON: *Oh they would yeah, yeah, yeah, yeah, yeah. Perhaps, perhaps not Midland. Perhaps it better be another*

ACOTT: *Mm.*

POULTON: *Another, another suburb.*

ACOTT: *Mm.*

POULTON: *But there's, there's, there's got to be a way of setting up another reward scheme.*

ACOTT: *Mm.*

POULTON: *Because I, I've done the gift vouchers and things for bloody years.²⁴*

[82] Whilst Mr Poulton was clearly aware of the inappropriateness of his provision of gifts to Landgate staff, he indicated no intention of ceasing the practice, seeking only to ensure that it was done in such a way that would not come to the attention of Landgate management. The Commission notes that the provision of vouchers is a behaviour that Mr Poulton said he had engaged in for a considerable period of time.

[83] Less than an hour after the call between Mr Poulton and Mr Acott Mr Cribb contacted Mr Acott, warning him of the unsuitability of the practice of gift voucher provision and advising him that the vouchers would be returned to him by Landgate.²⁵

[84] Shortly after Mr Poulton again spoke to his wife on the matter, providing further information about the time span of the provision of gifts and the involvement of Mr Teoh. The following is an excerpt from that call:

GORDON POULTON: *I told you the reason why I'd do it, because of previous*

VIVIAN POULTON: *Yeah I know.*

GORDON POULTON: *years I've given them to James, and I reckon James*

VIVIAN POULTON: *Has taken the credit.*

GORDON POULTON: *has taken the credit and I have appeared in the play.*

VIVIAN POULTON: *Mm. I get what you're saying.*

GORDON POULTON: *So what do I do I put a compliments slip in on the big ones and I get caught.²⁶*

[85] On 14 August 2007 the idea of continuing with the "rewards scheme" to Landgate staff was again raised between Mr Poulton and Mr Teoh:

POULTON: *Tell him, tell him, tell him I can, I can enrol him in our... in our rewards scheme.*

TEOH: *(laughs)*

POULTON: *(laughs)*

TEOH: *The, the quicker you work, the more you get. Is that what it is?*

POULTON: *That's right, yeah, yeah.²⁷*

[86] By this stage of the investigation Mr Croasdale was increasingly becoming a person of interest due to evidence of his dealings with Mr Teoh. On 20 August 2007 the following phone conversation occurred between Mr Teoh and Mr Poulton:

POULTON: *they missed out on uhm, well how much, I just forget how many thousand bucks,*

TEOH: *Thousand bucks, yeah*

POULTON: *thousand bucks.*

TEOH: *Yeah, so he said don't worry about it.*

POULTON: *It would have been another, and there would have been another five hundred with this one.*

TEOH: *Yeah. Easy.*

POULTON: *Easy. So ...*

TEOH: *Easy. So, anyway.*

POULTON: *It's a matter of, you know, tryin' a work out how you can re ...*

TEOH: *Later on, later on, later on we just give it to lan [Croasdale]. Don't give it to everybody else but lan.*

POULTON: *Mm.*

TEOH: *That's the only way you can do it.*

POULTON: *Yeah ...*

TEOH: *I still do it, I still do it ... give back to him. I just find out where he, and I know where he lives and I'll just drop it off and, uh, thanks very much.²⁸*

[87] At this time another Finbar development was moving through Landgate. Mr Poulton had applied for the issue of titles on behalf of Finbar, and telephone contact between he and Mr Teoh indicated that they were anxious to have the application move ahead quickly. A call on 24 August 2007 indicated that Mr Poulton was eager to have Mr Teoh pass on to Mr Croasdale that he would be able to continue with his “rewards program”:

POULTON: *Are you gonna speak to Ian?*

TEOH: *Yeah.*

POULTON: *Yeah okay.*

TEOH: *Alright mate.*

POULTON: *Uh, I, I can recommence my rewards program.*

TEOH: *(laughs) Just leave it okay.*

POULTON: *No, no, no, but I just sorta say to him that it's, I've gotta set something up outside the office.²⁹*

[88] In November 2007 another Finbar development was moving through Landgate. Lawful interception of telecommunications services indicated that Mr Teoh contacted Mr Poulton and reassured him that they had Mr Croasdale's assistance, as he had earlier agreed to meet Mr Croasdale at Landgate so he could “...drop something off for you and uh, the boys”.³⁰ The following is an excerpt of the call between Mr Teoh and Mr Poulton:

TEOH: *You won't have a problem with Ian mate.*

POULTON: *....*

TEOH: *I'm meeting him, uhm, next week.*

POULTON: *Are you. Ok. Fair enough.*

TEOH: *Somewhere in the middle.*

POULTON: *Right.³¹*

[89] This meeting did not occur as Mr Teoh had to attend a seminar at the Landgate offices in Midland on 26 November 2007. An intercepted telephone call the next day between Mr Teoh and Mr Poulton indicates that Mr Teoh met with Mr Croasdale just prior to the seminar:

TEOH: *But I caught up with Ian Croasdale before that.*

POULTON: *Yep.*

TEOH: *Gave him a Christmas present.*

POULTON: *Right. Okay.*

TEOH: *Uhm*

TEOH: *That's alright mate. It's no problem.*

POULTON: *I'll speak to you about that later.³²*

[90] There is no indication that after this meeting further "rewards" were given by either Mr Poulton or Mr Teoh to Mr Croasdale in relation to Finbar developments. It was evident, however, that Mr Teoh continued to provide additional gifts to other members of Landgate staff.

[91] One such incident involved Mr Haddow, a member of the Miscellaneous Audit Team being provided with \$200 cash in December 2007. This gift provision was reported to Landgate management.³³ Landgate management determined amongst themselves that the gift should be returned, as indicated in the following telephone call:

CRIBB: *James Teoh went visiting Don Haddow. With two hundred dollars in cash.*

HAWSER: *Yeah.*

CRIBB: *That two hundred dollars is now gunna be put in an envelope and it's gunna be returned to him.*

HAWSER: *Right.*

CRIBB: *It was designed to cover uhm, a team, a team, a team event for the lodging group.³⁴*

[92] The Commission notes with concern that, whilst Landgate staff determined that the gift should be returned to Mr Teoh, it was the responsibility of the recipient of the gift to return it.

[93] In a private hearing before the Commission Mr Haddow stated he had returned the money to Mr Teoh at a meeting between them at Mr Haddow's residence on 14 January 2008.³⁵

[94] The Commission notes that there is no way for Landgate management to prove that this return actually occurred. This issue, as it relates to Landgate's gift policy, is covered in detail later in this report.

3.4 Mr Croasdale: External Assistance to Mr Teoh

[95] Mr Teoh and Mr Croasdale met outside of Landgate, in relation to a surveying project that Mr Teoh had been awarded for the proposed Capital Square Development in Perth. The purpose was so that Mr Croasdale could provide direct and detailed assistance to Mr Teoh in the preparation of application documents in respect of that development. In return for that

assistance Mr Teoh gave him (at least) \$100 worth of gift vouchers for the purchase of alcohol.

3.4.1 Quality of Tuscom Strata Plans

- [96] As previously stated all strata plans that are lodged with Landgate are required to be lodged by a licensed surveyor. Surveyors in Western Australia are licensed under the provisions of the *Licensed Surveyors Act 1909* (“the Surveyors Act”), and must hold a practising certificate under the Surveyors Act.
- [97] The Surveyors Act provides for the constitution of a Land Surveyors Licensing Board, which oversees licensing, as well as having the ability to commence disciplinary proceedings before the State Administrative Tribunal.
- [98] All strata plans lodged with Landgate are lodged with a *Certificate of Licensed Surveyor* that is required to be signed by the surveyor. This form, known as a “Form 5”, certifies that in respect to a lodged strata plan, the lots, illustrated buildings and all other relevant information are correct, as required by the *Strata Titles Act 1985*.
- [99] Each page of the lodged plan bears the surveyor’s signature further certifying that the plan is accurate and correct, pursuant to the *Licensed Surveyors (Guidance of Surveyors) Regulations 1961*.
- [100] The Land Surveyors Licensing Board (LSLB) of Western Australia has set guidelines in relation to any errors that may be contained in the lodged plans, and the actions that may be taken. These range from minor changes being made by examining staff, through to a charge being brought against a surveyor by the Board.
- [101] These guidelines have been distributed to surveyors by the LSLB in “Notice to Surveyors 5/04”.³⁶
- [102] Mr Teoh was registered as a licensed surveyor in October 1982, prior to the establishment of his current business. In a private hearing before the Commission Mr Teoh stated he was the only licensed surveyor working at Tuscom up to three weeks before the hearing date.³⁷
- [103] Although a licensed surveyor, Landgate managerial staff informed Commission investigators that Mr Teoh appeared to be using Landgate staff as a method of “quality assurance” in an effort to correct any errors in work lodged by his company.
- [104] This need for assistance is illustrated in the following lawfully intercepted telephone call between Mr Teoh and Mr Croasdale, in which the Capital Square Development is discussed:

TEOH:

I need some ah, I need some help with the uhm, ah, just interpretation of titles and the easements around there. Do you think you will do it?

CROASDALE: *You need some help with what?*

TEOH: *Going through the titles and easements for that site.*

CROASDALE: *Yeah and on what?*

TEOH: *Just getting the titles and all the easements and interpret, interpreting them and, and then running through with me making sure I've got it right.*

CROASDALE: *Yeah, can't see why not.³⁸*

[105] And later in the same call:

TEOH: *I just want, I just want to get a good grasp of ah, what is on site.*

CROASDALE: *Right.*

TEOH: *So I just need some help you know.*

CROASDALE: *Huh.*

TEOH: *It'd be sort of, yeah you know, it be more of a cashy sort of thing later on.*

CROASDALE: *Oh righto yeah.*

TEOH: *Please I just need some help that's all.*

CROASDALE: *Yep. Yeah not a drama.³⁹*

[106] Later in the call Mr Teoh arranged to supply the relevant plans and documents to Mr Croasdale via "Peter". At a private examination before the Commission Mr Teoh stated that this was actually Mr Peter Braithwaite,⁴⁰ a Senior Project Officer at Landgate whose wife is a Tuscom employee.⁴¹

[107] In a private examination before the Commission Mr Braithwaite stated:

My wife has often - because we're located in Midland, she often has asked me to drop things off for someone in Landgate which I - whether it's an envelope or a plan or something addressed to someone then I don't mind doing that, that's fine.⁴²

[108] On 4 September 2007 Mr Teoh again contacted Mr Croasdale, to ascertain whether he had reviewed the documents, and to arrange a meeting:

CROASDALE: *Probably it's probably best to be able to sit down and chat about it isn't it?*

TEOH: *Yeah.*

CROASDALE: *Rather than bloody stick*

TEOH: *Yeah.*

CROASDALE: *stuff around over the phone.*

TEOH: *Is any other searches I need? You let me know.*

CROASDALE: *Uhm, well. Uh I dunno but that can be done.*

TEOH: *Yeah what you want me to you want me to have a quick look at it you want me to come up to Midland or you want me do it at your place?*

CROASDALE: *Uhm, well whereabouts are you?*

TEOH: *I'm in Ardross.*

CROASDALE: *Ardross.*

TEOH: *After hours is always good for me.*

CROASDALE: *Probably best yeah.⁴³*

3.4.2 Meeting at Tuscom

- [109] This meeting was organised to occur at the Tuscom premises at 4:30 p.m. on Thursday 6 September 2007.
- [110] Commission surveillance showed that Mr Croasdale attended Tuscom's premises on 6 September 2007, directly after leaving the Landgate offices. This meeting was monitored by Commission staff.
- [111] During the meeting Mr Croasdale provided detailed advice about the drawing of plans for the proposed Capital Square Development. Mr Croasdale also provided advice in relation to the interpretation of the plans and the location of easements.
- [112] Mr Croasdale advised Mr Teoh as to what would pass examination by Landgate staff, to the point of detailing what exactly should be written on the lodged documents.
- [113] This is of concern as that once the plans had been examined by the Strata Plan Audit section they would have passed through Mr Croasdale's section prior to the title being issued. He was compromised because he had placed himself in a position of conflict of interest.
- [114] Mr Croasdale must have been aware of the potential conflict of interest posed by providing Mr Teoh with this level of assistance. In a private examination before the Commission Mr Croasdale justified this by saying that Mr Teoh does not have "... a very good concept and his strata plans are very average."⁴⁴

3.4.3 Payment to Mr Croasdale

[115] Upon completion of the meeting Mr Teoh provided Mr Croasdale with some of the gift vouchers that had previously been returned to him by Mr Cribb:

TEOH: *That's the stuff that Barry Cribb gave me back.*

CROASDALE: *Oh well (laughs)*

TEOH: *And uh*

CROASDALE: *Your gift?*

TEOH: *Yeah.⁴⁵*

[116] At a private examination Mr Croasdale initially stated that he had been provided with only two gift vouchers,⁴⁶ but discussions between Mr Croasdale and his wife indicate it is more likely he was provided with four:

IAN CROASDALE: *There could be two hundred dollars on them, you know.*

SANDRA CROASDALE: *Well I think*

IAN CROASDALE: *Fifty dollars each.*

SANDRA CROASDALE: *... in there, we'll buy some wine and put it aside for Christmas or something.*

IAN CROASDALE: *Well whatever you want to do.*

SANDRA CROASDALE: *And that way we don't have to*

IAN CROASDALE: *You can go, go (audio cuts out) and I'd probably go to Liquorland, find out how much you got to spend and then spend it. As you say*

SANDRA CROASDALE: *...*

IAN CROASDALE: *buy a whole pile of stuff. Use it.⁴⁷*

[117] Mr Croasdale spent two of the vouchers the following week at the Liquorland store in Noranda, purchasing wine and beer for his own use. The transaction was recorded on store security cameras⁴⁸ and a transaction account confirms the purchase.⁴⁹ It was later confirmed that the vouchers used had come from the original batch purchased by Mr Teoh.⁵⁰

[118] Mr Croasdale admitted that he did not declare the receipt of the vouchers to anyone at Landgate and had not told anyone he had attended Tuscom and provided assistance to Mr Teoh.

[119] When questioned as to why he had accepted the vouchers, knowing that they had been returned by Landgate to Mr Teoh Mr Croasdale answered "... because I'd helped him out".⁵¹

3.5 Gifts Provided by Mr Borrello

[120] On the evening that Mr Croasdale was attending the Tuscom office Mr Croasdale's wife received a telephone call from Mr Borrello. The following is an excerpt from that call:

BORRELLO: *Hey listen, when he gets home*

SANDRA CROASDALE: *Yep.*

BORRELLO: *tell him he's gotta sling north of the river again*

SANDRA CROASDALE: *Yeah.*

BORRELLO: *and give me a ring please.*

SANDRA CROASDALE: *Yeah. Oh, this is payment for all that lovely wine is it?*

BORRELLO: *No, no. That's already been done.*⁵²

[121] Mr Borello contacted Mr Croasdale again later that evening:

BORRELLO: *I've got four matters that I've given you, I've asked you to, well, want you to have a look at, right?*

CROASDALE: *Yeah.*

BORRELLO: *Just if you can do whatever you do for me and don't worry, I'll look after you on it easy.*

CROASDALE: *Yeah well I've sent the message to Crispy on that one.*

BORRELLO: *Yeah please.*

CROASDALE: *And I've put the other one in the urgent pile, so that should be, it might've even been attacked tonight. I don't know.*

BORRELLO: *Which one?*

CROASDALE: *That uh, that, that lane one.*

BORRELLO: *Yeah. That, that, that is, I'm getting busted on that big time.*

CROASDALE: *Yeah.*

BORRELLO: Only because WAPC, I'll lose my thirteen hundred and eighty dollars application fee

CROASDALE: Yeah.

BORRELLO: if I don't fix it soon.

CROASDALE: Yep.

BORRELLO: And the only other one that was , I couldn't get to you 'cos I didn't want to tell you, as I said if you can look after these we'll look after you don't worry.

CROASDALE: Yep, not a drama.

BORRELLO: Uhm, big time, is the one that I had to get uhm, sorted out by you was uhm...

CROASDALE: That one you told me the number of was coming out.

BORRELLO: No, no, no, that, that's

CROASDALE: Oh.

BORRELLO: a two lot, mate that's a two second job that one.

CROASDALE: Yeah.

BORRELLO: Uhm, that's a two lot, little uhm, housing one and ah, that's not an issue. The one I wanted to talk to you about uhm, hang on a sec. I had the file here and someone's fucking grab, I'm still in the office mate. Just I was gunna give you one more to check up for me. Uhm, oh, oh, here it is, here it is. Uhm, I knew I had it somewhere. Uhm, it's, what's this section called, uhm, what's NTC 33 mean?

CROASDALE: That's my in, that's, it's in the cupboard. That's the work cupboard.

BORRELLO: Oh.

CROASDALE: I bundle up the work and I'll put it in there.

BORRELLO: No case, no this is a different one.

CROASDALE: *Well do you want to send us an email 'cos you got my email address, just say uh, just put a case number in there that's all.*

BORRELLO: *Uhm*

CROASDALE: *'Cos then when I get to work tomorrow morning I'll see it.⁵³*

[122] On 18 September 2007 Mr Croasdale called Mr Borrello and during the call Mr Borrello thanked him for his assistance:

BORRELLO: *Well, pull the pin and come work for me.*

CROASDALE: *Eh? (laughs) I'm too valuable where I am.*

BORRELLO: *Yeah, no. Ah, mate, you might get sick of it one day and ah, we'll talk then eh?*

CROASDALE: *Yeah, never know.*

BORRELLO: *Well, there's plenty of work around if you wanted it, you know, uhm*

CROASDALE: *Yeah, so they say.*

BORRELLO: *Yeah, no. Ah right. Hey listen when are ya gonna catch up with me?*

CROASDALE: *Trouble is you gotta work for it.*

BORRELLO: *When are you gonna catch up with me? I owe you a few favours.⁵⁴*

[123] On 13 November 2007 Mr Borrello had another application moving through Landgate. At this time he contacted Mr Croasdale seeking assistance again, while offering a reward in the form of money for Mr Croasdale and his colleagues:

BORRELLO: *I can put a cash towards it or I can*

CROASDALE: *Yeah, that's probably the best.*

BORRELLO: *give cash towards the dinner you guys*

CROASDALE: *Yeah, that's easy.*

BORRELLO: *are paying for.*

CROASDALE: *That way we can get what we need then.⁵⁵*

[124] And later in the same call:

BORRELLO: *Put me down for three*

CROASDALE: *Yeah.*

BORRELLO: *hundred and I'll give it to you.*

CROASDALE: *Yeah.*

BORRELLO: *For the guys. And then I'll work out with you, cause there's a couple of little one I owe you already. And I need these two tomorrow and nothing else I got going for a while actually.*

CROASDALE: *Yeah.⁵⁶*

[125] Each of the gifts provided by Mr Borrello to Mr Croasdale were accompanied by requests for assistance in relation to Complex Land Solutions applications. The next day, 14 November 2007, Mr Borrello again called Mr Croasdale with a further request, noting that one of his applications had not been dealt with, asking Mr Croasdale to check the status of it:

BORRELLO: *Still there.*

CROASDALE: *Mm.*

BORRELLO: *Since the sixth, gee that's slack.*

CROASDALE: *Mm.*

BORRELLO: *Oh, what can I do. Alright, so you'll*

CROASDALE: *I'll flick it out anyway.*

BORRELLO: *You organise that one for me.*

CROASDALE: *Yep.*

BORRELLO: *I need*

CROASDALE: *Yep.*

BORRELLO: *I need title numbers. Like I need 'em today.⁵⁷*

[126] A month later, on 13 December 2007, Mr Borrello again called Mr Croasdale and discussed providing money for Mr Croasdale's team at Landgate:

BORRELLO: *I I I said to ya I'd put in three hundred for the, towards the show okay.*

CROASDALE: *Yeah.*

BORRELLO: *Is that alright with that?*

CROASDALE: *Yeah. Well... I'll I'll I'll look after them.*

BORRELLO: *Mm.*

CROASDALE: *And we'll catch up later.*

BORRELLO: *You sure.*

CROASDALE: *Yeah yeah, not a drama.⁵⁸*

[127] And later in the same call:

BORRELLO: *You promise me you say it from me okay. And then, I'll tell you what I'll do. I'll fix a, and then I'll look I gotta I gotta sort you out too. Okay.*

CROASDALE: *Yep, not a drama.⁵⁹*

[128] Shortly after Mr Croasdale provided an amount of money to an officer at Landgate who was responsible for organising a Christmas function. The exact amount of this is in contention. When the staff member involved was interviewed by Commission investigators he claimed he had been provided \$300 by Mr Croasdale, being a combination of money from Mr Teoh and Mr Borrello.

[129] Mr Croasdale, on the other hand, at a private examination before the Commission, stated that he been provided \$500 by Mr Borrello, \$200 of which he provided to Landgate staff, and retained the remainder for a group "luncheon".⁶⁰

[130] It is possible that the \$500 to which Mr Croasdale referred to at the hearing was another separate payment from Mr Borrello.

[131] On 21 December 2007 Mr Borrello again contacted Mr Croasdale. The following is an excerpt from that call:

BORRELLO: *I've got a proposal for you.*

CROASDALE: *Mm.*

BORRELLO: *If you can do something for me.*

CROASDALE: *Yeah.*

BORRELLO: *Alright there's, there's, there's five hundred for ya. Sittin' there. Absolutely. Uhm, and it's a dealing that the titles issued like every other dealing I know. But it's in, it's, I already checked it out. It's NTC31.*

CROASDALE: *Yeah.*

BORRELLO: *And it's case number K448577.
(pause) You there?*

CROASDALE: *Yeah.*

BORRELLO: *Yeah, he's giving me. He said he, he's actually dropped it off already. He said, you know, if you get it, I got five hundred to give it, you know, whatever. I said look mate I can't make no promises but. Yeah well he dropped it off this morning to me and I said well I'll see what I can do. But we don't need the actual titles. If, well we need the title numbers today.⁶¹*

- [132] The strata plan referred to in this conversation related to a development at Vasse undertaken by Seaport Pty Ltd, a company directed by Mr Luke Saraceni. The development here was the Vasse Newtown project, a new self-contained community planned to accommodate over 5000 people.
- [133] During the private examination before the Commission Mr Croasdale stated that he did receive the \$500 offered by Mr Borrello and agreed that he had accepted the money from Mr Borrello on the basis that he would assist him.
- [134] A requisition notice was issued for this development on 21 December 2007, which indicated the strata plan had been looked at directly, but the titles were not issued until 27 December 2007. When questioned in regard to this during a private examination before the Commission Mr Croasdale stated that he had accepted the money offered due to the fact that he had looked at the plan as requested, regardless of the fact that it had been stopped as per the requisition notice.⁶²
- [135] Mr Croasdale maintained throughout a Commission interview⁶³ that he had only received one payment of \$500 from Mr Borrello prior to Christmas. After seeking legal advice Mr Borrello declined the opportunity to be formally interviewed by the Commission.
- [136] It was submitted on behalf of Mr Borrello⁶⁴ that his payments to Mr Croasdale were of a personal nature and did not relate to any work performed by any Landgate officer in relation to Mr Borrello's matters or any other. The Commission does not accept that submission. In the Commission's assessment the terms of the telephone conversations set out above clearly demonstrate payments (whether said to be for alcohol, or staff functions or otherwise) were made in exchange for the expediting of particular applications.

3.6 Cheque Payment by Another Developer

[137] Commission surveillance indicated that Mr Croasdale received a cheque on 7 September 2007 from an unknown person in exchange for the help he provided:

IAN CROASDALE: *Well you know that mob that sent me that bloody cheque last time?*

SANDRA CROASDALE: *Mm.*

IAN CROASDALE: *... fifty, well, they rang up and said oh Ian can you help me with that? And I said yeah no worries not a problem. You know you, you've, you've been really good. Well...*

SANDRA CROASDALE: *So they give you a cheque. That's really bad.*

IAN CROASDALE: *Yeah. That worries me.*

SANDRA CROASDALE: *Send it back and say*

IAN CROASDALE: *Where?*

SANDRA CROASDALE: *Maybe you shouldn't cash it.*

IAN CROASDALE: *Unless I go and cash it. You can walk into a bank and cash it ... know who's the St George Bank.*

SANDRA CROASDALE: *It's all above*

IAN CROASDALE: *That's the only, but that's the only way*

SANDRA CROASDALE: *That's like a test, isn't it? Not that you have to...*

IAN CROASDALE: *No.*

SANDRA CROASDALE: *It should be kept.*

IAN CROASDALE: *Because I cashed it, see? If you walk in to a bank and cash it they don't know who's cashed it. They know the cheque's gone through but they don't know who's the person who, they can come and point the finger at ya but they got no, no proof.⁶⁵*

[138] Mr Croasdale and his wife further discussed this cheque in the next few days. The following discussion took place on 8 September 2007:

SANDRA CROASDALE: *What are you going to do about that cheque?*

IAN CROASDALE: *I don't know yet.*

SANDRA CROASDALE: *It might be a test to see if you're gonna cash it. Then if you say no to them they'll say oh why did you cash it last time for?*

IAN CROASDALE: *Yeah.*

SANDRA CROASDALE: *You know what I mean? It's all...*

IAN CROASDALE: *...different mob though*

SANDRA CROASDALE: *Is it?*

IAN CROASDALE: *This is, this guy who gave us that last one, he went through them, this mob to do it, so then they've just asked me, me for a favour, you see?⁶⁶*

[139] Mr Croasdale provided more information on 10 September 2007:

IAN CROASDALE: *Went for a ride down... today.*

SANDRA CROASDALE: *...ring him up and tell them you can't accept it, what would they say?*

IAN CROASDALE: *It's not his cheque. It's not a cheque from him. I checked it out. It's from the actual owners of the property.⁶⁷*

[140] On 12 September 2007 Mr Croasdale, rather than return or declare the cheque, deposited it into his credit card account:

IAN CROASDALE: *So there you go. I'll leave it a little while and see if we get credited with it.*

SANDRA CROASDALE: *Are you allowed to do that?*

IAN CROASDALE: *Yeah. I went in and said can I put this on my credit card and they said oh yeah.*

SANDRA CROASDALE: *(laughs)*

IAN CROASDALE: *So it doesn't go through your bank accounts. That's pretty handy eh? I'm a smart little fart.⁶⁸*

[141] Contrary to Mr Croasdale's belief at the time, the deposit of that cheque was successfully traced. Commission officers obtained copies of Mr Croasdale's bank account statements under section 95 of the CCC Act,

and the relevant statement indicated the cheque deposit on 12 September 2007 for \$500. In addition, the deposit slip⁶⁹ and a copy of the cheque itself⁷⁰ were obtained by the Commission.

- [142] The cheque was shown to be from the account of another developer, dated 6 September 2007. At that time the developer had a strata subdivision being examined at Landgate for a development in Malaga. The same developer had also purchased another property in Malaga, upon both of which were constructed four tilt-panel factory units.
- [143] Landgate records show that strata plans for both properties were lodged within a few weeks of each other, with the title for the second above-mentioned property issued on 30 August 2007. Contracts for sale of all the units on the first property had been entered into and thus settlement was solely dependent on the strata plan examination and subsequent issue of titles. The sale contracts amounted to a value just under \$2 million.
- [144] Mr McKenna, acting as the developer's agent for the sale of the units, told the developer of an arrangement that he was aware of that involved making payments to a particular Landgate employee for the quick issuance of titles. Mr McKenna provided to the developer details of this Landgate employee, being Mr Croasdale, informing the developer that a "fee" of \$500 was payable, and to mail a cheque for that amount to Mr Croasdale's home address.
- [145] The developer posted a cheque to Mr Croasdale. Commission inquiries indicate that Mr Croasdale deposited this cheque into his account on 12 September 2007, the same day that the strata plan was deemed "in order for dealings" by the Strata Plan Examination section. The application for new titles (document K355334) was not lodged until 25 September 2007. Two days later Mr McKenna emailed Mr Croasdale with the following request:

From: Michael McKenna
Sent: Thursday, 27 September 2007 8:12 AM
To: "Ian Croasdale"
Subject: RE: K352176

Many Thanks Ian

Could you also assist with K355334

*Thanks.*⁷¹

- [146] No response was received to this email, so on 8 October 2007 Mr McKenna again emailed Mr Croasdale asking about the progress of the strata.⁷² Mr Croasdale had been on leave and did not reply until 9 October 2007, informing Mr McKenna that K 355334 [the developer's titles] had been "completed yesterday", 8 October 2007.⁷³

[147] The Commission subsequently charged this developer with one count of bribery of a public officer, contrary to section 82 of the *Criminal Code*.

3.7 Cheque Payments by Mr McKenna

[148] In a private hearing before the Commission Mr McKenna stated that he had first been informed of an arrangement with Mr Croasdale by another developer, Mr Clark of “Commonwealth Constructions”.⁷⁴ Mr Clark is a registered builder.

3.7.1 30 Biscayne Way, Jandakot

[149] On 26 February 2007 Mr McKenna signed an application for new titles for an industrial development he was undertaking at 30 Biscayne Way, Jandakot. This application was lodged with Landgate on the same day by Documentary Services, a settlement agency owned by Mr Trevor McKenna, Mr Michael McKenna’s cousin. The titles for this two-lot strata plan were issued on 28 February 2007.

[150] Mr McKenna wrote a cheque for the value of \$500 to “Ian Croasdsdale” [sic] on 14 March 2007, to be drawn from his personal industrial developments business cheque account. Commission inquiries indicate that on 16 March 2007 Mr Croasdale deposited Mr McKenna’s cheque into his personal bank account. The receipt of this cheque was not declared to Landgate.

[151] The Commission subsequently charged Mr Croasdale with receiving a bribe and Mr McKenna with bribing a public officer, contrary to section 82 of the *Criminal Code*, in relation to this payment. Further details of these charges are available later in this report.

3.7.2 26 Biscayne Way, Jandakot

[152] A Commission search warrant was executed on the premises of MLV Real Estate Pty Ltd, pursuant to section 100 of the CCC Act. As a result of this search Commission investigators were able to fully analyse email contact between Mr McKenna and Mr Croasdale. The earliest locatable email occurred on 16 August 2007, when Mr Croasdale emailed Mr McKenna from his personal email account, providing his residential address.⁷⁵

*From: Ian Croasdale
To: Michael McKenna
Subject: Address
Sent: 16/08/2007 1:00:49 PM +00:00*

Thanks Michael, my address is [address deleted], Ballajura 6066

Ian Croasdale

Crowie

Fisher extraordinaire
E: [deleted]@iprimus.com.au
Mb [deleted]

- [153] The next identifiable email chain between Mr McKenna and Mr Croasdale, utilising Mr Croasdale's work email account commenced on 22 August 2007. In these emails Mr Croasdale informed Mr McKenna that "nothing has yet been lodged" in relation to strata plan SP53367. This was the strata plan relating to the development referred to at [145] above. Mr McKenna replied that the applications had been lodged on 23 August 2007, and Mr Croasdale responded that the titles were issued on 30 August 2007.
- [154] On 21 September 2007 Mr McKenna signed an application for new titles for another development at 26 Biscayne Way, Jandakot, also lodged with Landgate on that day. In this instance the applicants were Mulligan Corporation Pty Ltd (with Mr McKenna and his partner, Ms Vivien Jones, as Directors) and two other individuals.
- [155] On 23 September 2007 Mr McKenna emailed Mr Croasdale in regard to the strata plan, requesting that "your assistance with the issue of titles would be appreciated".⁷⁶ Mr Croasdale replied on 26 September 2007 that there had been a problem that the solicitor had fixed, "so titles should be out this arvo".⁷⁷ This three-lot development had titles issued on that day, with Mr Croasdale informing Mr McKenna of this fact by email the following day.⁷⁸ Mr McKenna replied with his thanks, followed by the email correspondence in relation to the development referred to at [145], as detailed above.
- [156] In private hearing evidence, Mr McKenna stated that he posted a cheque for the value of \$500 to Mr Croasdale in order to expedite the issue of the titles relating to 26 Biscayne Way.⁷⁹ Mr McKenna's evidence was that this cheque was to be drawn on a Mulligan Corporation Pty Ltd bank account. Commission inquiries, including a thorough analysis of accounts, as well as Mr Croasdale's, have not shown any transactions in relation to such a cheque.
- [157] It is the Commission's opinion that Mr McKenna may have been mistaken in his evidence and provided no cheque for this development. Alternatively Mr McKenna may have provided another type of payment in this instance. In light of other material available to the Commission this matter was not pursued any further.

3.7.3 10 Baling Street, Cockburn Central

- [158] On 15 October 2007 Mr McKenna emailed Mr Croasdale requesting assistance with the examination of a strata plan that was with Landgate at the time. This strata plan related to an industrial development that Mulligan Corporation Pty Ltd was undertaking at 10 Baling Street, Cockburn Central. Mr McKenna also requested assistance with a strata

plan for the adjoining lot, though this was owned by separate unrelated owners. Mr Croasdale replied to this email, but only to advise Mr McKenna of the progress of examination of the plans.⁸⁰

[159] On 17 October 2007 Mr McKenna signed an application for new titles for Baling Street, though the application was not lodged with Landgate until 20 November 2007 as there had been a delay with examination. The application for titles for the adjoining lot was also lodged that day. On that date Mr McKenna then emailed Mr Croasdale providing the dealing numbers and asking if Mr Croasdale was “able to assist in the issue of titles”.⁸¹

[160] Mr Croasdale replied to Mr McKenna explaining the current turnaround time was six to seven days and then asking “do you require them any faster”.⁸² Mr McKenna then responded:⁸³

*From: Michael McKenna
To: Ian Croasdale <Ian.Croasdale@landgate.wa.gov.au>
Subject: RE: Dealings
Sent: 20/11/2007 4:09:00 AM +00:00*

Ian

I would like to get a faster turnaround and will follow the normal procedure.

Regards

Michael

[161] Mr McKenna then wrote a cheque dated that day to the value of \$500 payable to “Ian Croasdale”, to be drawn from the Mulligan bank account.⁸⁴ A further email exchange took place on the same day, with Mr McKenna asking Mr Croasdale if he could “accommodate my request”⁸⁵ to which Mr Croasdale replied in the affirmative.⁸⁶

[162] Titles for the two-lot development at Baling Street were issued on 21 November 2007. This was confirmed in an email exchange which took place between Mr Croasdale and Mr McKenna the next day.⁸⁷ Mr Croasdale deposited Mr McKenna’s cheque for \$500 into his personal bank account on 22 November 2007, but did not declare it to Landgate as a gift.⁸⁸

3.8 Criminal Charges

3.8.1 Mr Poulton

[163] Mr Gordon Poulton was charged on 19 June 2008 with two counts of bribery of a public officer (section 82 of the *Criminal Code*). It was alleged that on or about 24 May 2007 Mr Poulton caused two envelopes, each containing \$500 worth of gift vouchers, to be delivered to Landgate. One

envelope was addressed to Mr Hawser, the supervisor of Landgate's Strata Plan Audit Team, the other to Mr Croasdale, the supervisor of Landgate's New Title Creation Team.

- [164] It was alleged that the provision of the gift vouchers by Mr Poulton to Landgate staff was an incentive to have the application process for issuance of new titles for "Sol Apartments" and "Avena River Apartments" dealt with expeditiously.
- [165] Mr Poulton appeared in the Perth Magistrates Court on 3 July 2008 and entered a plea of not guilty to both charges. He was remanded to appear in the Perth Magistrates Court on 2 October 2008 for a Disclosure/Committal hearing which was adjourned to 9 November 2008. This matter was committed to the District Court, with Mr Poulton appearing there on 20 February 2009.
- [166] On 23 March 2009 Mr Poulton changed his plea to guilty to both charges and was convicted. He was sentenced in the District Court at Perth on 12 May 2009. The sentencing Judge rejected a defence submission that he should make a Spent Conviction Order, saying that Mr Poulton's efforts to "oil the wheel" by bribing public officers was "abhorrent to our system". He said a spent conviction was not appropriate due to the seriousness of the offences and because settlement agents performed what is essentially legal work, requiring high standards of ethics. The Judge imposed an aggregate fine of \$10 000.

3.8.2 Another Developer

- [167] A developer was charged on 29 May 2008 with one count of bribery of a public officer (section 82 of the *Criminal Code*) arising out of the payment of \$500 to Mr Croasdale by cheque dated 6 September 2007.

[168]



3.8.3 Mr Croasdale

- [169] On 19 June 2008 the Commission charged Mr Ian Croasdale with three counts of receiving bribes as a public officer (section 82 of the *Criminal Code*).
- [170] The first charge related to his dealings in relation to 30 Biscayne Way, Jandakot. It was alleged that Mr Croasdale deposited Mr McKenna's cheque for \$500 into his personal bank account. It was further alleged that the cheque obtained by Mr Croasdale from Mr McKenna was given to assure favour in relation to the processing of Mr McKenna's application for new titles.

- [171] The second charge related to another developer's subdivision of the factory units at Malaga. It was alleged that on 12 September 2007 Mr Croasdale deposited the developer's cheque for \$500 into his personal bank account. It was further alleged that the cheque was given to assure favour in relation to the processing of the developer's application for new titles.
- [172] The third charge related to the property Mr McKenna was subdividing at Cockburn Central. It was alleged that on 22 November 2007 Mr Croasdale deposited Mr McKenna's cheque into his personal bank account, and that the cheque was given to assure favour in relation to the processing of Mr McKenna's application for new titles.
- [173] On 3 July 2008 Mr Croasdale appeared in the Perth Magistrates Court, and entered a guilty plea to all charges.
- [174] Mr Croasdale was sentenced on 2 October 2008, receiving a \$10 000 fine for the first count, a \$15 000 fine for the second count and a term of imprisonment of 16 months, suspended for two years.

3.8.4 Mr McKenna

- [175] On 19 June 2008 the Commission charged Mr Michael McKenna with three counts of bribery of a public officer (section 82 of the *Criminal Code*).
- [176] The first charge related to his property subdivision at 30 Biscayne Way, Jandakot. It was alleged that on 14 March 2007 Mr McKenna completed and signed a cheque for Mr Croasdale, given to assure favour in relation to the processing of his application for new titles.
- [177] The second charge related to the property another developer was subdividing in Malaga. It was alleged that Mr McKenna provided that developer with the name and home address of Mr Croasdale, after informing the developer that he knew someone at Landgate who could expedite the title application. Mr McKenna told the developer that there was a fixed amount of \$500 to be paid for this assistance.
- [178] The third charge related to the property Mr McKenna was subdividing at Cockburn Central. It was alleged that on 20 November 2007 Mr McKenna completed and signed a cheque for the amount of \$500 to Mr Croasdale. It was further alleged that the cheque was provided by Mr McKenna to Mr Croasdale to assure favour in relation to the processing of his application for new titles.
- [179] Mr McKenna appeared in the Perth Magistrates Court on 3 July 2008 and was remanded to 24 July 2008. On that day he entered a guilty plea for all charges and was further remanded to appear in the Perth District Court for sentencing on 14 October 2008.
- [180] Mr McKenna was sentenced on 14 October 2008, when convictions were recorded, fines totalling \$20 000 were imposed and he received a community based order for 12 months including a requirement to perform 80 hours of unpaid community service work.

3.9 Cheque Payment by Mr Clark

- [181] Mr Clark is a registered builder who has a business association with Mr McKenna. Mr McKenna advised investigators and the Commission that it had been Mr Clark who had informed him of Mr Croasdale's position and previous dealings.
- [182] When interviewed Mr Clark stated that he had provided a cheque to Mr Croasdale in early 2007, to the value of \$750. This cheque was provided after titles had been issued for a client's development which had been experiencing delays and therefore delaying the building process.
- [183] The delay in question had occurred due to an increasing backlog of title applications, along with low employee numbers available at the time. Mr Clark told investigators that he was continually phoning the "New Title Production Group" in an attempt to get the application "moving", before finally speaking to Mr Croasdale, where he offered to "send the team out to lunch" if his client's titles were issued.
- [184] Upon issue of the titles, Mr Clark again phoned Mr Croasdale and obtained Mr Croasdale's name and home address details, indicating that he would be sending him the payment as he had promised. Mr Clark then arranged for a cheque for \$750 to be mailed to Mr Croasdale, a figure calculated by allowing \$50 per team member for a team of 14 (plus Mr Croasdale as supervisor).
- [185] Mr Clark admitted during the interview that he had mentioned Mr Croasdale to Mr McKenna at a time when Mr McKenna was also experiencing delays. This supports the evidence Mr McKenna had previously given in a Commission private hearing.
- [186] The original cheque had been destroyed, but a scanned copy of what probably was the cheque in question was obtained by the Commission by notice, pursuant to section 95 of the CCC Act, in addition to Mr Clark's personal and business bank account statements. These statements indicated that a cheque had been issued for the value of \$750, to be drawn upon the "Oserian Pty Ltd and Ikon Management Pty Ltd" business account. Commission inquiries indicated that Ikon Management Pty Ltd is a company of which Mr Clark is the sole Director, while Oserian Pty Ltd is directed by Mr Clark's business partner Mr Warren Crawford.
- [187] Commission inquiries indicated that this cheque, written on 22 June 2006, was issued as a cash cheque and cashed at the Midland branch of the Commonwealth Bank on 26 June 2006.
- [188] The Commission considered whether or not a charge of a criminal offence of bribery of a public officer should be laid but is of the opinion that there is insufficient evidence which would be admissible in a criminal trial to afford a reasonable prospect of conviction.

3.10 Misconduct Assessment: Mr Croasdale

- [189] Under section 4(b) of the CCC Act serious misconduct occurs if a public officer corruptly takes advantage of the public officer's office or employment as a public officer to obtain a benefit for himself or herself or for another person or to cause a detriment to any person.
- [190] The essential elements of misconduct under section 4(b) of the CCC Act are:
- (1) the person is a public officer;
 - (2) the person takes advantage of their office or employment as a public officer;
 - (3) corruptly; and
 - (4) to obtain a benefit for themselves or some other person, or to cause a detriment to any person.
- [191] Mr Croasdale was a public officer at all relevant times.
- [192] In his dealings with the aforementioned developers and their agents, including Mr Poulton, Mr McKenna, Mr Teoh and Mr Clark, Mr Croasdale was clearly acting in his position as a Landgate employee. The documents in respect of which his assistance was sought were documents with which he was required to deal in the course of his duty. The payments were made to him only because his employment put him in a position of being able to extend a benefit or preferential treatment in his dealings with the relevant applications. In that way, Mr Croasdale took advantage of his employment as a public officer.
- [193] The question which arises in respect of both section 4(a) and 4(b) of the CCC Act is whether Mr Croasdale's actions could be said to have been done "corruptly".
- [194] Corruption is a notoriously difficult concept to define. The word is not defined in the CCC Act. Although there are many cases which discuss the meaning of corruption, each is a product of the statutory provision (or common law concept) being considered and the circumstances then at hand.
- [195] The leading authority in Western Australia on the meaning of corruption is Willers v R (1995) 81 A Crim R 219. In that case Malcolm CJ said that section 83 of the *Criminal Code* ("the Code"), Western Australia, "is concerned with the use of power or authority for improper purposes". Malcolm CJ noted that in the context of the corporations law the term improper "has been held not to be a term of art, but simply to refer to conduct by an officer of a company which was inconsistent with the proper discharge of the duties, obligations and responsibilities of the officer concerned ...". Malcolm CJ went on to cite various definitions from the dictionary. Malcolm CJ said, for example, that the Oxford English Dictionary definition of "corrupt" included "perverted from uprightness and

fidelity in the discharge of duty; influenced by bribery or the like". In the same dictionary the verb "corrupt" meant "to destroy or pervert the integrity or fidelity of (a person) in his discharge of duty". Ultimately Malcolm CJ concluded that an exercise of lawful authority for an improper purpose can amount to corruption under section 83 of the Code. Malcolm CJ's *ratio decidendi* should not be taken as an exhaustive definition of the meaning of corruption. The facts in that case involved the abuse of an otherwise lawful power for an improper purpose and so Malcolm CJ's reasons must be understood in that context. The case does, however, provide a useful guide to what is corruption in those circumstances.

- [196] *Re Lane* (unreported, Supreme Court, Qld, Ryan J, 9 October 1992) concerned legislation pursuant to which a public officer could lose their superannuation entitlements if they committed an act of corruption. As to the meaning of corruption Ryan J said:

In my opinion, in this context it means conduct which is done deliberately and contrary to the duties incumbent upon the person by virtue of his public office, as a result of which the person has sought to gain an advantage for himself or another.

I consider that the word "corruptly" is not to be equated with "dishonestly", and that dishonesty does not necessarily connote corruption, but if a person who holds a public office dishonestly applies public moneys to his own use, then his conduct is properly describable as corruptly using a public office held by him.

I accept as correct the submission made on behalf of the respondent that it is necessary to find a conflict between duty and interest before one can find a corrupt performance or non-performance of public duties. But if a person uses a public office which he holds so as to dishonestly apply for his own benefit public funds, he has allowed his own private interest to override his public duty to apply the funds only for public purposes, and his conduct is corrupt.

(emphasis added)

- [197] Thus for Ryan J the essence of corruption was the dereliction of public duty. The judgment of Ryan J in *Re Lane* was cited with approval by Higgins J in DPP (Cth) v Hogarth (1995) 93 A Crim R 452.

- [198] Another decision that provides a useful insight into the meaning of the phrase "acts corruptly" is that of the Federal Court of Australia in Williams v R (1979) 23 ALR 369. That case involved an appeal from the ACT Supreme Court. At trial the appellant was convicted of conspiring to cause a police officer to act corruptly. His defence was that he had paid the police officer the money so as to encourage him to investigate the complaint (against the appellant) properly because he had been "framed". In deciding the case it was important to assess the meaning of the phrase "acts corruptly". Blackburn J (with whom St John J agreed) expressed this opinion about the meaning of the phrase, at 373:

The word has, in my opinion, a strong connotation of misconduct, ie dereliction of duty, whether by act or omission. To that extent, the scope

of the section resembles that of the common law offence of bribery, which implied the intention to procure a breach of duty on the part of the official bribed.

(emphasis added)

- [199] The trial judge's direction to the jury in that case left open the possibility that the jury might think that they could convict the appellant even if they concluded that he had bribed the police officer to conduct a thorough investigation. Blackburn J took the view that the appellant could not be convicted of conspiring to cause a police officer to act corruptly in circumstances where he was paid to do his duty. For that reason the conviction was quashed with an order for a retrial. The decision in this case is authority for the proposition that the phrase "acts corruptly" means to act contrary to one's public duty.
- [200] In the criminal law, the notion that a person may act corruptly does not of itself involve the gaining of a benefit or the causing of a detriment. For example, section 83 of the *Criminal Code* makes it an offence for a public officer, without lawful authority or a reasonable excuse, to act "corruptly" in the performance or discharge of the functions of his office or employment, so as to gain a benefit for, or cause a detriment to, any person. The meaning of "corruptly" in that section therefore cannot necessarily involve an intent (or purpose) to obtain a benefit or cause a detriment.
- [201] More importantly, the same distinction is made clear in section 4 of the CCC Act itself. The word "corruptly" appears in both section 4(a) and 4(b). The former contains no reference to the gaining of a benefit or the causing of a detriment. That section makes it misconduct for a public officer to "corruptly" act or fail to act in the performance of his or her office or employment. The latter does expressly refer to gaining an advantage or causing a detriment, by the public officer "corruptly" taking advantage of his or her office or employment. If the notion of "corruptly" already included an intent to gain an advantage or cause a detriment, those words would be otiose.
- [202] Ordinary dictionary definitions support the conclusion that in section 4 of the CCC Act, "corruptly" connotes dereliction or breach of duty, or acting contrary to one's duty; being perverted from fidelity or integrity. "Corruption" is the perversion of a person's integrity in the performance of official or public duty or work.⁸⁹ In ordinary language, something is "corrupted" if it "goes bad" or is not formed or does not act as it should.
- [203] Thus, "corruptly" is not to be equated with "dishonesty", although a person who acts dishonestly may act corruptly.⁹⁰ For the purposes of this report, the Commission takes the law to be that the word "corruptly" in section 4(a) and 4(b) of the CCC Act, is to be interpreted to mean conduct that is done deliberately and contrary to the fidelity and duties incumbent upon the person by virtue of his or her office (to adopt the language of Ryan J in *Re Lane*).

- [204] In the Commission's opinion what Mr Croasdale did was done deliberately and was contrary to the fidelity and duties incumbent upon him by virtue of his position. Combined with the fourth element, which this report addresses next, in the opinion of the Commission he "corruptly" took advantage of his employment as a public officer, within the meaning of section 4(b) of the CCC Act.
- [205] The fourth element under section 4(b), "to obtain a benefit ...", is purposive. It does not connote that a benefit must in fact be obtained (although of course it would include that situation). Rather it speaks of the purpose with which the public officer engages in the relevant conduct. Here the evidence establishes in the Commission's assessment that Mr Croasdale's purpose was to obtain a financial benefit. He was, accordingly, taking advantage of his employment to obtain a benefit for himself. In the Commission's opinion, this element is established.
- [206] The necessary four elements having been established on the balance of probabilities, it is the opinion of the Commission that Mr Croasdale's conduct constitutes serious misconduct under section 3 and section 4(b) of the CCC Act.
- [207] The Commission points out that an opinion by it that misconduct has occurred is not, and is not to be taken as, a finding or opinion that Mr Croasdale has committed a criminal or disciplinary offence.⁹¹
- [208] Mr Croasdale has been convicted of three offences arising out of these events, as detailed above. Each of these offences was one of obtaining a bribe as a public officer, contrary to section 82 of the *Criminal Code*. Each such offence carried a statutory maximum penalty of 7 years imprisonment. Mr Croasdale's conduct in each instance accordingly also constitutes serious misconduct under sections 3 and 4(c) of the CCC Act.
- [209] Shortly after his appearance at the Commission for a private hearing Mr Croasdale tendered his resignation to Landgate. As a result no disciplinary action was initiated by Landgate and so the department is not able to take disciplinary action.

3.11 A "Cultural" Explanation

- [210] It is a common experience of anti-corruption agencies to be presented by those who give or receive "gifts" or bribes in respect of the performance of public functions, with the explanation that it was done for "cultural" reasons. The giver may say that they come from a culture of giving gifts to those with whom they deal, and it is expected. The recipient may say that they only accepted the "gift" out of "cultural sensitivity" and a wish not to offend.
- [211] The proposition was advanced in this investigation. In private hearing on 11 March 2008, Mr Teoh's lawyer, Ms Chong, elicited the following evidence from him.

Mr Teoh, how long have you lived in Australia?---About 30 years.

Where did you come from originally?---I come from Malaysia.

What's your ethnicity?---I'm Chinese.

As a Chinese Australian, what can you tell us about the culture of giving gifts?---It's quite normal - normal - normal - normal thing that we do.

How long have you been giving gifts to people generally in appreciation of their acts of kindness or whatever?

---All the time. I mean, it's the normal thing that we do.

Right?---Yep.

Generally in the Chinese culture do you understand that it is culturally acceptable for businessmen to give gifts during festive seasons?---Yes.

And also outside the festive seasons to give gifts at times when work has been undertaken and the businessman is showing appreciation?---That's correct.

Thank you.⁹²

[212] The proposition was specifically advanced in the representations subsequently made on behalf of Mr Teoh,⁹³ in which it was put that –

... in general, Mr Teoh would like to say that the culture of gift-giving, particularly for festive seasons or as a thank you gesture, is a traditional and cultural Chinese trait of doing business and no adverse inference should be drawn against him.

[213] The Commission does not accept the proposition either generally or in relation to Mr Teoh's dealings with Landgate public officers.

[214] So far as the general proposition is concerned it is offensive because it is based on cultural stereotyping and it is wrong because in those societies in which the payment of bribes (or "gifts" for preferential official treatment) is the norm, it is recognised as wrong but necessary.

[215] The experience of the New South Wales Independent Commission Against Corruption (ICAC) in this area was adverted to recently by the ICAC Commissioner, the Hon Jerrold Cripps, QC, in the context of public sector codes of conduct.⁹⁴

Another area which I think could be better addressed in most codes of conduct are the rules or provisions relating to the acceptance of gifts and benefits in the context of the discharge of discretionary functions. Instead of absolutely outlawing the receipt of any gift or benefit in these circumstances a somewhat wishy washy approach is taken which prohibits the taking of money but permits people to accept some benefits if they feel refusal to do so might offend the cultural sensitivities of the giver. What has been revealed in ICAC investigations is that the first gift is not money but the subsequent gifts are, once the giver has realised that the

receipt of gifts is acceptable. The argument is then put to the Commission that people who have paid money are acting in accordance with their cultural norms and the people who receive them are doing so as not to offend the persons cultural background. On every occasion these arguments have been advanced they have been shown to be fabrications. The charade could be avoided by including in the code of conduct that gifts and benefits of any kind are absolutely forbidden in any case where the public servant is exercising a discretionary function which may favour (or which has favoured) or disfavour an applicant. To assume such a prohibition would be culturally offensive to a citizen of Chinese background is, I think, insulting in the extreme to the great majority who do not offer money by way of bribes to public officials.

This Commission agrees with the view there expressed and endorses it.

[216] Turning to the particular, the implication in the submission that there was not (or was not thought to be) anything improper in the payments made or gifts given by Mr Teoh to Landgate officers, cannot be accepted. In this regard the Commission notes in particular that:

- the payments or “gifts” were not just in appreciation for past good service, but were in fact in respect of particular applications still to be dealt with;
- they were not “gifts” but rather benefits for giving favourable or preferable treatment to Mr Teoh’s applications—they were payments for service;
- the way in which the transactions were conducted was concealed; and
- the telephone conversations between Mr Teoh and Mr Croasdale and Mr Teoh and Mr Acott show clearly they were conscious of the wrongfulness of the arrangement.

CHAPTER FOUR LANDGATE: SYSTEMIC ISSUES

4.1 Introduction

- [217] The Commission acknowledges that this investigation was initiated as the result of a notification to it by Landgate in accordance with section 28 of the CCC Act.⁹⁵
- [218] The Commission worked with Landgate in the course of the investigation and notes that Landgate responded positively and proactively to address issues as they were revealed during the course of it.
- [219] In its response to a section 86 notification by the Commission⁹⁶ the Acting Chief Executive wrote that:

Prior and subsequent to this investigation, Landgate has promoted good governance to prevent and identity corruption. A significant amount of work has been done to integrate the compliance aspects of our services with ethical people practices. This is supported by clear policy frameworks and targeted staff information and education programs and includes formal reminders to all staff about their ethical obligations in line with our Values and Code of Conduct. A strong ethics component is included in the Induction Program for all new employees.

I believe the strength of the ethics infrastructure and Landgate's firm commitment to prevent misconduct is evidenced by the actions taken by staff and managers (including the actions taken by Mr Grahame Searle, CEO at the time) in referring this matter to the Corruption and Crime Commission, in the first instance, for an independent investigation.

In saying this, the investigation has highlighted areas for improvement within Landgate and accordingly standards, internal controls and staff education programs have been further strengthened. This will enable our ethics management systems to be better monitored and verified on an ongoing basis. In addition, we are currently delivering "The Ethical and Accountable Decision Making Workshops" for all staff and will be looking at ways to ensure that ongoing improvements are made in our procedures and work practices to maintain the highest standard of ethical conduct in the future.

Landgate's action or response to particular issues is referred to below.

4.2 Landgate's Gift Policy

- [220] Landgate has a policy relating to the receipt of gifts, titled *Offer and Acceptance of Gifts, Benefits and Hospitality*.⁹⁷ This policy outlines the

procedures and guidelines in relation to “gifts, benefits and hospitality which compromise or may be perceived to compromise Landgate’s decision-making processes”.⁹⁸

[221] A copy of the policy obtained by investigators in 2007 formed part of the Landgate Code of Conduct section, within the *Landgate HR* (Human Resources) *Policies Manual*. A proposed review date of April 2005 was still evident on the policy which was of concern, as it suggested that the policy was overdue for review.

[222] The policy itself is detailed: defining gifts and hospitality, emphasising a need for accountability and situations which may arise, as well as outlining the requirement for entries to be made into a register. The most relevant section is in relation to gifts:

Landgate employees should record all gifts and offers of gifts with a value of \$30 or more, whether refused or accepted in the Gifts and Hospitality Register.

[223] What was not covered in the policy is what was to occur once a declaration was made. Details entered on forms in handwriting were entered onto a spreadsheet maintained by an executive assistant at a later stage. Copies of this spreadsheet dating back to the start of 2006 were obtained by investigators⁹⁹ and show that of the 251 declarations made in the 2006-2007 period, 52% were for gifts that were refused. It is noted that whilst these figures may indicate that the policy is effective, this relates only to gifts (and offers of gifts) that were actually declared.

[224] Also of concern was the recency of the computer version of the register. Commission investigators requested that a copy be supplied via notice on 27 February 2008. In addition to the printouts from the spreadsheet, hard copies of the register forms were also obtained. Hand-written notations on these original forms showed that declarations purported to be signed months previously had only been entered onto the spreadsheet the day before investigators attended Landgate offices.¹⁰⁰

[225] Knowledge of the gift registry differed among employees at Landgate, from where it was kept, what form it was in and what minimum value gift had to be declared. At the private hearing it was evident that Mr Hawser was unaware of some matters relating to the register and believed that gifts above \$20 had to be declared.¹⁰¹ Mr Croasdale said he believed the value was \$30 or \$50.¹⁰² Interviews with numerous other staff at Landgate also confirmed this lack of detailed knowledge of its content, use and location.

[226] Another issue in relation to the registry that arose was the explanation that gifts above the minimum value did not have to be declared if the average value per relevant work team member was below \$30. Mr Croasdale, when questioned as to why gifts in the past had not been declared, stated “if it’s a \$50 gift voucher and it’s split amongst the group, it averages out to about \$5 each, so I considered it unimportant to put on the gift register”.¹⁰³ This reasoning does not absolve staff from their obligations and is not a reasonable argument for not properly using the register.

[227] The giving of a gift can be used to show thanks for work performed, though this can also bring with it an expectation that further gifts are forthcoming for similar service in the future. While the existence of a policy shows Landgate's acceptance of gift giving, it does raise the question why Landgate employees should be able to accept gifts for simply performing their public duties. The community rightly expects that public officers will always act in the public interest, uninfluenced by any sense of obligation to those with private interests.

[228] That point was made by Mr Michael Strong, Director, Police Integrity, in the context of his examination of the acceptance by the then Chief Commissioner of the Victoria Police of free return air travel to the United States, and other benefits in connection with that trip.¹⁰⁴ He wrote:¹⁰⁵

We expect police, like all public sector employees, always to put their public duty above their private interests. We expect them to refuse gifts or benefits that may compromise or be perceived to compromise their impartiality. We expect them to reject offers from those who would curry favour with them, or who attempt to influence the way they discharge their duties.

That statement is apposite not just to police, but to all public officers.

[229] In the same report, Mr Strong referred to the underpinning ethical principles.¹⁰⁶

The ethical principles that underpin policy in the area of gifts and benefits are eloquently encapsulated by Mr Gary Crooke, QC, the Queensland Integrity Commissioner, in a paper presented in October 2007.

A decision to devote one's career to the service of the public bespeaks selflessness. It embodies the acknowledgement that actions will be governed by the public interest and not self-interest.

It is a component of ethical behaviour to feel obliged to reciprocate when a kindness or gift is provided.

In the all important field of public perception, it is this perceived obligation to reciprocate that gives rise to the unacceptable conflict, heightened greatly when the relationship is one of actual or potential decision-maker and actual or potential candidate for a beneficial decision.

The test as to whether an unacceptable conflict of interest exists is the view of a reasonable member of the public, properly informed.

This is an objective test and means that self-righteousness in the mind of the person having the potential conflict is not to the point. Perception is reality.

The person involved in the potential conflict is not in the best position to judge what action should be taken to manage or avoid it. This is because of the obvious interest which he or she has in the matter.

The circumstances where public officials can accept gifts should be quite rare, either because acceptance could lead to the public perception of placing the decision-maker under an obligation or, alternatively, from the standpoint that it is never the individual that comes to own the gift but always the department or government which acquires the gift on the basis that it is obliged to use it in the public, and not a private, personal interest.

[230] The situation which existed with the gifts given to Landgate officers was not merely one of a possible public perception that they might reasonably be seen to have given individual developers and others preferential treatment out of a sense of obligation to reciprocate gifts. It is apparent that from a very early stage, the gifts were given to achieve precisely that outcome.

[231] The Commission investigation indicated that the practice of receiving gifts at Landgate was an established “tradition”, mainly through the giving of alcohol or gift vouchers by clients to various departments. As described by Mr Haddow in his evidence at hearing, the practice had been in place for his 40-year period of Landgate employment, where gifts received during the year would “pile up by the end of the year to be then partaken of at Christmas time”.¹⁰⁷

[232] Mr Acott, during a telephone conversation with a client, outlined such a history of gift-giving to Landgate employees and the evolution of the practice:

JANSSEN: *It's mainly Terry Hawser. If Leo gets it into*

ACOTT: *Yeah.*

JANSSEN: *Landgate we've gotta, I've gotta somehow, uhm, try to get it pushed*

ACOTT: *Mm.*

JANSSEN: *through to the WAPC.*

ACOTT: *To the top of the pile.*

JANSSEN: *I know. Some sort of magic. What does he drink?*

ACOTT: *Uh*

JANSSEN: *Does he like scotch or (laughs)*

ACOTT: *Well, that used to be the way but that's stopped now (laughs).¹⁰⁸*

[233] And later in the same call:

ACOTT: *Well, that's the way it used to work up there, and then they said oh anything under a hundred dollars had to be declared. And then there was petty jealousies with someone coming in with a carton of grog to give to someone so they, they stopped it all so the*

JANSSEN: *Yeah.*

ACOTT: *way around it was to buy the vouchers and send them the vouchers*

JANSSEN: *Yeah.*

ACOTT: *to their home address.*

JANSSEN: *Oh righteo, so it doesn't have to go through the thing.*

ACOTT: *Doesn't go through the thing.¹⁰⁹*

[234] Not declaring gifts, or the offer of such, negates the purpose of the prevailing policy. While in the cases seen throughout the investigation the gifts were often of relatively low value, the inherent problem lies in what the gifts were relative to. In these instances the benefit obtained by developers and the associated businesses (such as Tuscom and Paramount) was of a much greater proportion. This was evidenced in one call involving Mr Poulton:

GORDON POULTON: *Yeah the interest on, the interest on Altair is running at about \$9 500 a day.*

VIVIAN POULTON: *Ooh ah*

GORDON POULTON: *A day.*

VIVIAN POULTON: *Ooh ah. But it's not your fucking fault.*

GORDON POULTON: *It's not my fault but it just means now that*

VIVIAN POULTON: *Pressure will be on.¹¹⁰*

[235] With a developer incurring costs of that magnitude, a gift such as \$500 worth of vouchers certainly provides a high return if it results in even a few days being saved in the examination and title issuing process. Not declaring these gifts also prevents Landgate management from knowing

who may be approaching the department's staff and prevents any further monitoring of such advances.

- [236] Copies of the gift registers obtained by the Commission also showed that there was no evidence of gift vouchers being declared prior to the receipt of the vouchers that came to the notice of the Commission.¹¹¹ This is significant, given the evidence obtained from witnesses that gift vouchers had been given to Landgate staff as a matter of course for some years prior to this occasion.

4.3 External Secondary Employment

- [237] As previously mentioned, Landgate's policy in relation to external employment is titled *Private Employment and Commercial Business Undertakings*. This policy outlines the procedures and guidelines in relation to "any form of private employment".

- [238] The copy of the draft policy obtained by investigators in 2007 formed part of the *DLI HR Policies Manual* (DLI referring to the previous name of the Department of Land Information), within the DLI Code of Business Conduct section. Of concern is that the policy was still in draft form, with some sections incomplete, as well as having a proposed review date of April 2005. It would be prudent of Landgate to finalise and endorse this policy.

- [239] The policy as drafted requires more detail in its content. The basis of the policy is that:

Employees who accept or engage in paid employment which is not connected to their official duties require written permission from the Chief Executive or a delegated officer.

- [240] As mentioned previously, a situation such as the one in which Mr Croasdale was involved, by meeting and assisting Mr Teoh, could be viewed as not being one of undertaking employment, even though Mr Croasdale did receive payment. Such situations carry a high potential for conflict of interest and should be considered when finalising the policy.

4.4 Potential for Corruption

- [241] A common theme identified within the Land Boundary Services section of Landgate was the extended length of service by employees. Mr Hawser had been in Landgate's employ for 40 years,¹¹² Mr Croasdale for 31 years¹¹³ and Mr Haddow for 40 years;¹¹⁴ this longevity of employment was evident throughout many interviews with staff.

- [242] In 2007 the Land Boundary Services section of Landgate was composed of 15 separate teams of between 5 and 11 people. In addition the New Titles Creation section comprised three teams. After a restructure in 2008 the New Titles Creation section became part of Land Boundary Services, which now consists of nine teams. Having smaller and more numerous

teams requires a higher number of management positions, from team leaders through to section managers. This arrangement allows situations such as was seen with Mr Croasdale, where individuals are able to exercise control of their team's work practices with a high level of autonomy and a lack of transparency and accountability.

- [243] This autonomy provided to Mr Croasdale ultimately created a corruption risk to Landgate. While the impact of his decisions benefited the developers he was assisting (for which he was obtaining a personal financial benefit), other Landgate clients suffered a detriment due to their applications being delayed. This isolation with no oversight should be addressed with a view to increasing transparency of the decision making process—something which was employed in the Strata Plan Audit section, as will be described later in this report.
- [244] At the relevant time Mr Croasdale's position as team leader was at a Level 5 pay scale and he had been in that position for almost four years. The team he led, which was responsible for issuing titles for freehold land covering the State, was made up of ten Level 4 employees. As stated previously, the length of employ of these team members was also extensive and as Mr Croasdale stated, the staff within the team had "been there on average 15 years or more".¹¹⁵
- [245] As a result of the length of employ, the experience and knowledge held by a relative few is high. In his evidence during a Commission private hearing, Mr Croasdale expressed his belief that his staff were undervalued for the work they performed, which arguably raised a valid point in relation to staff management. Mr Croasdale said that there was a disparity between experienced and non-experienced staff being on the same pay level. According to Mr Croasdale, Landgate had tried to address this by implementing a "business realignment" with the creation of senior positions. In his view, due to the lack of experience in applying for positions the experienced staff did not move up into these positions. Whether there is substance in that assertion may be something which requires further examination by Landgate.

4.4.1 Conflict of Interest

- [246] A conflict of interest is when a situation arises from a conflict between the performance of public duty and private or personal interest. This means a situation where the private interests of a public officer could affect (or appear to affect) how they carry out their official duties.
- [247] The external assistance provided by Mr Croasdale to Mr Teoh on the drawing of plans on the proposed Capital Square Development, knowing that the plans would eventually be submitted to Landgate, and ultimately Mr Croasdale's own section, constituted such a conflict of interest.
- [248] Irrespective of the "gift" received for the assistance provided by Mr Croasdale, by not declaring his involvement in the Capital Square Development and removing himself from the Landgate decision making process Mr Croasdale clearly breached Landgate's draft *DLI Financial and*

Private Interests Policy (Conflict of Interest). This policy clearly outlines the principles and policy that employees should:

avoid placing themselves in situations where their personal interests actually or potentially conflict with the interests of DLI.

In addition:

Employees are not to use their positions for direct (personal) or indirect profit, gain or loss, financial or otherwise.

Indirect profit, gain or loss, financial or otherwise includes but is not limited to, interests of spouse, legally recognised “defacto” relationships, dependants, companies or trusts, or other sources of potential conflict of interest.¹¹⁶

[249] There is significant staff movement out of Landgate and into private enterprise associated with Landgate. There are also staff at Landgate who have close relationships with such private enterprises. These factors also pose obvious misconduct risks.

4.5 Assistance to External Clients

[250] Landgate is composed of numerous administrative levels. An example is the new subdivision and title dealings teams being part of the larger Land Boundary Services section, which is one of the sections comprising the Information Services Division, ultimately answerable to the Office of the Chief Executive.¹¹⁷ While some of the areas of Landgate have a direct contact role with members of the public, information received is that teams such as the Strata Plan Audit Team and New Titles Creation Team do not have a high public contact level.

[251] Due to the requirement for strata plans to be lodged by a licensed surveyor, the Strata Plan Audit Team in particular deals with the lodging surveyor or their staff should queries or requisitions arise. To facilitate queries from other parties such as home owners, lawyers and developers a position of Survey Advice Officer was created, separate to the team. This, in theory, allows examiners to concentrate on processing applications without the interruptions associated with continual queries from inexperienced or unqualified customers.

[252] As has been mentioned earlier in this report, lodged plans may contain errors, ranging in severity as outlined in guidelines set by the Land Surveyors Licensing Board. The result of these errors being identified by examining staff at Landgate could, in severe cases, result in the surveyor facing charges by the Board. Most commonly errors result in a requisition notice being issued, which may be accompanied by a charge to cover the cost of re-examining the plan once it has been amended.

[253] Staff at Tuscom regularly dealt with Landgate staff, primarily the examiners within the Strata Plan Audit section, but also within the New Title Creation and Miscellaneous Audit sections. During the course of the

investigation, the Commission intercepted numerous calls where Tuscom staff called examiners directly, circumventing the Survey Advice Officer. Though this in itself does not present a problem, the length and manner of these phone conversations is of concern.

[254] Monitoring of intercepted telephone conversations showed that at times Landgate examiners spent what appeared to be excessive amounts of time assisting Tuscom staff with their lodged plans (in one example this was up to 48 minutes for one call¹¹⁸). The issue of Mr Teoh using Landgate staff as a version of “quality assurance” was raised as a concern by Landgate management to investigators and appeared to be correct in some instances, including that already discussed in relation to the Capital Square Development.

[255] Some calls regarding plan amendments between Landgate and Tuscom staff resulted in the examiner making the required amendments themselves. While this has been explained to investigators as an acceptable practice for minor errors, the frustration being experienced by Landgate examiners was evident:

KITIN: *Just send it in. I can probably do it in, in fifteen minutes or something.*

BOODHOO: *Okay.*

KITIN: *Then uhm, check er, check the plan.*

BOODHOO: *Yep. When it's editable it's, the text are all in italics right? Oh, arial? Yeah, that's it...*

KITIN: *Yeah, no all, I just I can't, I can't uhm, I can't select anything, I can't change anything.*

BOODHOO: *Yep.*

KITIN: *I just need, to be, so that I can uhm, yeah so I can, so I can make the amendments.*

BOODHOO: *Okay.*

KITIN: *It'll be alright, it's just,*

BOODHOO: *I know it's just small, maybe things that you don't want to go back and forth just, you change it*

KITIN: *Nah.*

BOODHOO: *yourself.*

KITIN: *Yeah like, y'know all the angles and distances I mean basically we have to check everything again, uhm, on replacement plans. I mean that that's hence that's the char, that's why, that's why the department puts that charge of, for replacement plans because everything's re-checked.*

BOODHOO: *Okay.*

KITIN: *It's just easier.*

BOODHOO: *Yeah.*

KITIN: *Sometimes it's easier to do 'em yourself.¹¹⁹*

- [256] This assistance could be viewed as a form of “noble cause” corruption, where Landgate staff provide assistance to external clients, driven by the belief that they are aiding to achieve an outcome that would be arrived at in the course of the plan’s progression. While this may be true, it excludes the issue of Landgate recouping fees for that assistance where applicable, as well as holding the lodging surveyor accountable for their errors. The latter point compounds upon itself, as external clients, knowing that Landgate staff will correct their errors, continue to submit plans that require amendments, increasing the workload of Landgate staff.
- [257] This situation could also be viewed as a result of continual poor practice, allowed to flourish due to a lack of managerial responsibility. Were Landgate staff enforcing the relevant guidelines applicable to lodged plans, then surveyors would be made aware of their own obligations instead of passing them on to the examiners. This enforcement needs to be driven from a managerial level to ensure consistency throughout the department, whilst staff need to make management aware of the problems occurring. A stricter approach to amendments may also encourage a higher quality of survey, leading to more efficient examination times.
- [258] When interviewed by investigators, Landgate staff in the above sections volunteered that plans lodged by Tuscom were the main “offenders” in relation to errors. Other monitored calls showed that Landgate staff were aware that if Mr Teoh failed to check the quality of lodged plans, it could result in problems affecting his surveyor’s licence.¹²⁰
- [259] One such example related to Del Mar, a Finbar development where the lodged plan had 16 breaches, requiring further examination by the Survey Inspection section to assess the severity of the errors.¹²¹ This occurred at a time when Mr Teoh was overseas and his staff had lodged the plan without it being thoroughly checked, leading to them worrying about Mr Teoh possibly losing his licence.¹²² This issue was resolved between Landgate and Tuscom staff, with no input from Mr Teoh himself—it is not

known whether Mr Teoh was even aware of the problem that had occurred.

4.6 “Urgent” Requests

[260] During the investigation, the issue of urgent requests arose in relation to both lodged plans and applications for new titles. Urgent requests are made by owners, developers and other applicants with one purpose—to have Landgate staff expedite the movement of their plans or application. The need for urgency in some circumstances has been recognised by Landgate management who have put into place general guidelines and criteria for what constitutes a legitimate urgent request. These criteria include, but are not limited to the following:

- Financial hardship
- Personal issues
- Ministerial request
- Pending settlement
- Condition on Offer and Acceptance.¹²³

[261] These guidelines dictate that requests should be made in writing, or if a verbal request is made then a notation must be made on the relevant documents. If a plan or application is deemed to be urgent, it will be placed ahead of other plans in an order of merit and dealt with before all non-urgent plans.

[262] As mentioned previously, the ability to expedite an examination or application through Landgate can result in a large financial benefit to the developer in the area of interest payments such as the \$9 500 per day for the Altair Development as described by Mr Poulton. While there is an argument that this also benefits the purchasers of the new properties, it is naïve to believe that this was the motive behind the actions of Mr Poulton, Mr Teoh and others.

[263] The reverse of that argument is that by prioritising the larger developments, the smaller developers who may be subdividing their sole property, suffer delays in the issue of their titles. In these cases the delays could cause a financial detriment that, when viewed in perspective to the developer’s outlay, outweighs the potential financial benefit gained by a purchaser of a residential unit in a large development.

[264] The existence of an “urgent list” has become widely known within the industry (along with the criteria used to assess such a request) and appears to be used constantly by businesses such as Tuscom and Paramount. Discussion occurred regularly between industry members and also with their clients, during which the intention of submitting such a request was made clear.

[265] One such example was a telephone call involving Mr Acott, where he outlined to a client exactly how to ensure his application was treated urgently, through the creation of false supporting documents:

ACOTT: *Well, what I've often done is, just get your uhm, offer and acceptance, the front sheet.*

THURSTON: *Yeah.*

ACOTT: *And change the settlement, duff out the settlement date and put in the, a you know, uhm, a fictitious settlement date.*

THURSTON: *Oh okay.*

ACOTT: *And*

THURSTON: *(laughs) I hadn't thought of that.*

ACOTT: *Well, see all they want is something to protect their backside in case someone says why is this one jumped ahead of the queue.*

THURSTON: *Yes, okay.*

ACOTT: *Uhm,*

THURSTON: *Okay so you just cross it out and put*

ACOTT: *Yeah.*

THURSTON: *something new. And ah, initial it and ah, just stick it in with it.*

ACOTT: *Well I wouldn't even cross it out. I I I'd photocopy it*

THURSTON: *Yeah.*

ACOTT: *get some white out and then just put in a fictitious date.*

THURSTON: *And then photocopy it again.*

ACOTT: *And then photocopy it again and then just with a fax uhm, you know you can go directly*

THURSTON: *Mm.*

ACOTT: *to the people, uhm.*

THURSTON: *When you say the people, you mean*

ACOTT:

*The examiners.*¹²⁴

- [266] It was submitted on behalf of Mr Acott¹²⁵ that his understanding was that the “urgent list” had been developed as an attempt to cope with increasing demand by developers who wished to obtain titles to their developments so as to enable settlements to occur with waiting buyers of units and other properties. It was put to the Commission that:

*The term “urgent list” was satirical. Being on the urgent list at least meant there was a prospect of having titles issued in a reasonable commercial period. Not being on the list meant there was little hope of anything occurring. The backlog had been created because of the lack of staffing at the titles office which became increasingly exacerbated as a consequence of the economic boom experienced in Perth and Western Australia generally from 2002 onwards. A series of practices then developed throughout the industry in a desperate attempt to get titles issued within a reasonable period of time. Mr Acott was describing to Mr Thurston one such practice.*¹²⁶

Also, that this was:

... just one of the practices that the industry developed to try and overcome the uneconomic delays that were being caused because of the lack of staffing at the titles office.

- [267] Mr Acott was not a public officer at any relevant time and the Commission expresses no opinion about his conduct.
- [268] Mr Teoh was aware of this method of expediting applications, evidenced in discussion with clients where Tuscom had sent urgent requests to Landgate. The conversation below outlines the effect that submitting such a request had on the relevant application:

TEOH: *I did send you, I I did send you urgent ah, letter from ah that, that dodgy one.*

MALE: *You have yeah. (laughs) The dodgy urgent letter. Yeah. That’s good. (laughs)*

TEOH: *I sent it through, you know, ...a hundred and fifty files there, so we went from from ah, hundred and fifty to number two.*

MALE: *Wo.*

TEOH: *Yeah.*

MALE: *That’s terrific.*

TEOH: *So... it's ah, I really rang up ah, the guys ...wanted this next one to be done otherwise*

MALE: *Yep.*

TEOH: *we'd be waiting a long time.*¹²⁷

[269] When questioned at a Commission private hearing about this instance, Mr Teoh admitted that he was aware that the contents of the offer and acceptance provided to Landgate as the basis for an urgent request were false.¹²⁸ Mr Teoh claimed that while he informs the client of Landgate's policy, the choice of whether they falsify supporting documents remains with the client and if such a document is supplied to him "I have to put it in".¹²⁹

[270] Mr Poulton also had knowledge of the guidelines required for urgency and the methods to ensure applications were treated as such. In one conversation with Mr Teoh, Mr Poulton mentions that "all I gotta do is doctor a bloody contract up".¹³⁰ This conversation was in relation to the "Infinity" apartments, another large Finbar residential development in which both Tuscom and Paramount were involved. This was another example of the use of falsified supporting documents. The initial sales "off the plan" commenced in 2005, with construction continuing through to late 2007 at which time titles were to be issued and subsequently settlements finalised.

[271] On 16 October 2007 Ms Angela Nardi, an employee of Paramount, contacted Mr Darren Pateman, the Chief Executive Officer and Company Secretary of Finbar. Mr Pateman is also the Co-Director of Pateman Equity Pty Ltd, a company which purchased one residential unit in the Infinity Development, entering into a contract for sale on 13 October 2005. The vendor for this development was Wembley Lakes Estate Pty Ltd, a joint venture partner with Finbar.

[272] The conversation between Ms Nardi and Mr Pateman covered the following:

NARDI: *Darren, your Infinity purchase.*

PATEMAN: *Yeah.*

NARDI: *We're gunna use ah, your one as one of the, you know, like not. We're not redoing the contract, we're doing variations to contracts. For DOLA.*

PATEMAN: *Yeah.*

NARDI: *Uhm, to try and get the strata plan through quicker.*

PATEMAN: *Oh okay.*

NARDI: *Alright. So we're just. We're varying the settlement date, basically.*

PATEMAN: *Right.*

NARDI: *Instead of being fourteen days*

PATEMAN: *Yeah.*

NARDI: *we're backdating it.*

PATEMAN: *I see.*

NARDI: *And doing, uhm, end of August.*

PATEMAN: *Right okay.*

NARDI: *So, we'll be able to put the pressure on DOLA and say well they're overdue can you speed it up.¹³¹*

- [273] Following this conversation, Ms Nardi, as stated during an interview with the Commission, under direction from Mr Poulton forwarded a prepared contract variation to Mr Pateman. The variation was backdated to have a date of 19 October 2005 and stated that the settlement date of Mr Pateman's unit was to be changed from "as per condition 7.2" (this was the standard clause of being 14 days after the issue of titles) to "on or before 31 August 2007".¹³² The document was signed by Mr Pateman and also by Mr John Chan, the Managing Director of Finbar.
- [274] The original variation document was then kept on the settlement file by Paramount, while a copy was sent to Tuscom for inclusion as part of an urgent request to Landgate. This was provided by Paramount via courier on 23 October 2007,¹³³ the same day that the strata plan was lodged with Landgate by Tuscom. The urgent request was assessed by the Strata Plan Audit Team on 24 October 2007, with the cover sheet noting that the reason for the plan meeting the standard for urgency was because of the settlement date being "on or before 31 August 2007".¹³⁴
- [275] While a contract variation between parties is usually of no concern, the manner in which this particular variation occurred showed that this document was prepared for the sole purpose of deceiving Landgate employees. The only plausible explanation for this deceit was to support a request for urgency. Further examination of the particulars of the unit in question revealed that the unit had already been on-sold in November 2006 to another purchaser not associated with Finbar, its subsidiaries, associates or employees.
- [276] When interviewed by investigators Ms Nardi admitted that the variation was only prepared to be provided to Landgate to assist with the urgency request. It was never intended to replace, or form any part of, the original contract. Likewise, a copy of the variation was never provided to the new buyer or their agent, neither were they made aware of its existence. When

the contract variation was put to Mr Poulton at a Commission private hearing, he admitted that it was an example of a fictitious settlement date being provided to Landgate in order to expedite the process.¹³⁵

- [277] Mr Pateman was interviewed by investigators and was questioned about the contract variation. Mr Pateman claimed that due to the amount of paperwork that he signs each day, the fact that the document had an incorrect date was merely overlooked at the time that he signed it. In the Commission's assessment that claim is not credible when coupled with the earlier telephone conversation outlining its purpose, notwithstanding the circumstances of Mr Pateman's dealings with Ms Nardi.¹³⁶ In any event, he had no difficulty in accepting the proposition when it was put to him by Ms Nardi.
- [278] When Mr Chan was interviewed by investigators he claimed that he had no recollection of the contract variation, of signing it or of the incorrect date. Mr Chan also claimed that he had not been made aware of gift vouchers being provided to Landgate by Paramount, although they were mentioned in emails from Mr Poulton to Mr Chan reporting progress on Finbar developments.
- [279] In addition to the methods employed by Landgate clients, there is cause for concern in the processes employed by Landgate in dealing with urgent requests. During the investigation it was revealed that there was a marked difference between the handling of such requests by the Strata Plan Audit and New Title Creation sections.
- [280] The Strata Plan Audit section had implemented a process where one officer maintained a file of such requests. Upon receipt, a pro-forma checklist was completed to determine whether the request did meet the predetermined guidelines and criteria. While subjective in some areas, this method did allow each request to be handled in a transparent, auditable fashion. The checklist was then attached to the request which was then placed within the file, the file itself being maintained under the standard document handling procedures of the organisation.
- [281] In contrast, the New Title Creation section had no such method of request handling and record keeping. Mr Croasdale admitted during a private hearing that any supporting documentation gets destroyed and as such an audit of the files would not be possible.¹³⁷ In addition Mr Croasdale referred to the guidelines that were used to judge urgent requests, commenting that there were circumstances where a verbal request would suffice. When questioned further about verbal requests, Mr Croasdale admitted that in such circumstances he made no notes of the details of the request as was required.¹³⁸
- [282] Investigators became aware of this lack of record keeping when a request was made for the supporting documentation for various files known to have been treated urgently. Upon their own discovery of this situation in the course of the Commission's investigation, Landgate management took steps to rectify the urgent request handling procedure.

CHAPTER FIVE OPINION AND RECOMMENDATIONS

5.1 Commission Opinion: Mr Croasdale

[283] For the reasons given at [189]-[209] above, it is the opinion of the Commission that Mr Croasdale's conduct constitutes serious misconduct under sections 3, 4(b) and 4(c) of the CCC Act.

5.2 Recommendations

5.2.1 Gift Policy

[284] Landgate's gift policy is discussed at paragraphs [220]-[236] of this report.

Recommendation 1

It is recommended that the *Offer and Acceptance of Gifts, Benefits and Hospitality* policy is reviewed by Landgate. As part of this review, issues requiring elaboration within the policy include: whether an officer should be able to receive a gift; the process of declaring a gift (or offer); the location and handling of the registry; and the clarification of the declarable amount.

[285] Landgate advises¹³⁹ that the policy has been reviewed and was formally endorsed by Landgate's Corporate Executive on 28 March 2008. The revised policy, now called the *Gifts and Hospitality Policy*, elaborates on key areas including: whether an officer should accept gifts; the process for declaring a gift; the location of the registry; and the declarable amount (which is specified).

Recommendation 2

It is further recommended that after review and finalisation of the policy all staff should be subjected to an education program to communicate the new policy. Regular reviews should be undertaken not only of the policy to ensure currency but also of the register itself to allow management to monitor approaches by external parties to Landgate staff.

[286] In its section 86 representations Landgate has informed the Commission that this recommendation has been implemented. It is said that the release of a revised *Gifts and Hospitality Policy* was communicated to Landgate staff via a series of information sessions and briefings held during July and October 2008. It was also featured in an article on the intranet posted 30 June 2008.

The Landgate Induction Workshop includes a case study on the *Gifts and Hospitality Policy* to communicate the policy requirements to new staff.

The policy is to be reviewed on an annual basis.

5.2.2 Policy on External Secondary Employment

[287] Landgate's policy on external secondary employment is discussed at paragraphs [237]-[240] of this report.

Recommendation 3

The Commission recommends that the *Private Employment and Commercial Business Undertakings* policy be reviewed and completed from its current draft state. The issue about the definition of "employment" needs to be covered, possibly by broadening the term as it applies to Landgate staff performing work for reward that is in line with their duties.

Recommendation 4

The Commission further recommends that after review and finalisation, all staff should be subject to an education program to communicate the new policy. Regular reviews should be undertaken not only of the policy to ensure currency but also of Landgate staff to ensure that the policy is not being circumvented.

[288] As at 1 May 2009, Landgate has advised the Commission that it agrees with Recommendations 3 and 4 and that its external secondary employment policy will be updated as recommended and communicated to all staff.

5.2.3 Conflicts of Interest

[289] Landgate's "draft" *Financial and Private Interests* policy (conflicts of interest) is discussed at paragraphs [246]-[249] of this report.

Recommendation 5

The Commission recommends that Landgate instigates some form of identification of associations so that they can ensure that matters are processed by staff with no perceived conflict of interest. This identification requirement should be included in Landgate's conflict of interest policy.

Recommendation 6

The *DLI Financial and Private Interests Policy (Conflict of Interest)* is currently in a draft state with the next review date showing as July 2005. In order to successfully endorse this policy it is recommended that Landgate should review, amend, finalise and disseminate the policy to all staff as a priority.

- [290] Landgate has advised the Commission that implementation of Recommendations 5 and 6 is underway.¹⁴⁰ Landgate recently participated in the pilot of an audit program prepared by the Office of the Public Sector Standards Commissioner to test requirements of managing interests. As a result of this audit a range of ways to further improve the management of conflicts of interest within Landgate has been identified and policy, procedures and controls are being updated in this regard.
- [291] The review of the existing conflicts of interest policy will be undertaken in light of the Commission's recommendations and the recent audit findings. A comprehensive education program will also be implemented for all staff.
- [292] As an interim measure, new employees are now asked to sign a *Conflict of Interest Declaration* when they commence with Landgate.
- [293] A corporate register for conflicts of interest is being developed and all Landgate staff will be advised of reporting requirements.

5.2.4 Salary Levels

- [294] As has been described in detail earlier in this report in section 4.4, there are several areas within the Landgate departmental structure which can be susceptible to corrupt practices. One such area is that of pay levels of experienced staff, commensurate to do the work that they perform. While some may argue that an administrative role does not equate to a higher level salary, the work performed by examiners requires a high level of knowledge and experience. One suggestion was that this requirement could result in the Examiners' positions being classed as equivalent to a "specified callings" salary level. However, the particular classification of positions or salary levels in the public sector is not a matter for the Commission and in this regard the Commission accepts the submissions of Landgate¹⁴¹ to the effect that ethical decision making within Landgate is a requirement in all positions regardless of level, with lower level staff (Level 2 to Level 5) across the organisation also being responsible for assessing requests for urgent services from clients. This is seen as an issue to be dealt with across Landgate and while there are a number of long serving staff in the teams previously known as Land Boundary Services, the ability of staff to undertake the duties of the Level 5 positions are determined by their competencies, skills and ability to acquire new knowledge rather than experience alone.
- [295] Landgate states that in this regard a review of current salary levels, using the BIPERS¹⁴² classification tool, will be undertaken as part of a current

restructuring process being undertaken across the Registration Services Branch, which includes the Land Boundary Services teams.

- [296] Landgate says that the issue of specified callings status may be revisited once the Public Sector Commission guidelines for adding new professional and technical callings are released.

Recommendation 7

A review of salary levels within the Land Boundary Services section, and possibly the positions themselves in terms of updating job descriptions is recommended. This may result in decreasing the potential for corruption as staff receive a pay level commensurate with the importance of the decisions that they make, and the commercial value of the developments that are impacted.

The Commission further recommends that if no such increase is found warranted after independent review, staff be fully apprised of the rationale for the current salary level structure.

5.2.5 Urgent Request Handling Procedure

- [297] While there may be valid circumstances to accommodate requests for urgent examination of plans and issue of titles, the procedure as a whole lends itself to potential abuse. Guidelines and assessments can be subjective, while as shown earlier in this report, the requests themselves may not be legitimate in their details.

- [298] The process of handling such requests for urgency within the Land Boundary Services section needs to be reviewed. Whether this is possible to achieve with a satisfactory outcome, or whether the process should cease altogether requires consideration. Where a benefit is obtainable by a developer (along with the subsequent detriment to others through their delays), the potential abuse by external parties fraudulently manipulating the “requests for urgency” process, needs to be highlighted.

Recommendation 8

The Commission recommends that Landgate: reviews its procedures for accommodating requests for urgent or expedited examination of plans and the issue of titles; establishes clear guidelines or criteria on which such requests may be approved; and implements a requirement for dealing with such requests to be properly documented and appropriately audited.

- [299] According to Landgate¹⁴³ the implementation of Commission Recommendation 8 is virtually complete. Landgate advises that a review of procedures for handling urgent requests for the expedited examination

of plans and the issue of titles has been completed. Formal procedures and guidelines for receiving, granting and approving requests (including appropriate documentation practices) have been developed and implemented. Relevant staff have been informed of these procedures and the need to comply. A formal review and audit process will be developed and undertaken as per the recommendation.

5.3 Commission Review of Response to Recommendations

[300] Section 91 of the CCC Act requires the Commission to provide an annual report to Parliament on its activities. One matter upon which the Commission intends to report regularly is the extent to which its recommendations have been implemented. The Commission will accordingly review and report upon the implementation of the recommendations made in this report in due course.

APPENDIX

Notifications of Adverse Matters Under Section 86 of the *Corruption and Crime Commission Act 2003*

Notifications of Adverse Matters

No.	Recipient of Section 86 Notification	Date of Notification	Date of Representations	From
1.	Mr Ronald Arthur Acott	9 April 2009	22 April 2009	Mony de Kerloy
2.	Mr Franklyn John Borrello	9 April 2009	13 May 2009	Hammond Legal
3.	Mr Wan Kah (John) Chan	9 April 2009	1 May 2009	Patti Chong Lawyer
4.	Mr Peter Gordon Clark	9 April 2009	No Response	-
5.	Mr Ian David Croasdale	9 April 2009	No Response	-
6.	Mr Michael Edwin McKenna	9 April 2009	No Response	-
7.	Mr Darren John Pateman	9 April 2009	30 April 2009	Patti Chong Lawyer
8.	Mr Gordon Andrew Poulton	9 April 2009	8 May 2009	Gordon Poulton
9.	[A Developer]	9 April 2009	30 April 2009	Hylton Quail
10.	Mr Hoot Khoon (James) Teoh	9 April 2009	2 June 2009	Patti Chong Lawyer
11.	A/Chief Executive, Landgate	21 April 2009	1 May 2009	Landgate

ENDNOTES

All references to telephone intercepts are references to lawfully intercepted telephone intercepts.

¹ *Corruption and Crime Commission Act 2003*, p.114.

² *Ibid.*

³ *Ibid.*, p.116.

⁴ *Ibid.*

⁵ *Ibid.*, p.117.

⁶ State legislation (the *Telecommunications (Interception) Western Australia Act 1996* (“the Western Australia Act”) gives the Corruption and Crime Commission (“the Commission”) its status as an intercepting agency. The Western Australia Act is an Act to enable the Commission to be declared an agency for the purposes of the *Telecommunications (Interception and Access) Act 1979* of the Commonwealth and for related purposes.

⁷ *Telecommunications (Interception and Access) Act 1979* (Commonwealth), p.17.

⁸ Butterworths Concise Australian Legal Dictionary (Third Edition), Lexis Nexis Butterworths, Australia 2004, p.42.

⁹ *Briginshaw v Briginshaw* (1938) 60 CLR 336 per Dixon J at 361-363; *Rejfeek v McElroy* (1965) 112 CLR 517; *Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd* (1992) 110 ALR 449.

¹⁰ Statement of Mr Nick Pallotta to the Corruption and Crime Commission on 14 December 2007 [CCC 0490].

¹¹ *Ibid.*, paragraph 60.

¹² In his section 86 representations dated 8 May 2009 Mr Poulton claimed he did not receive any of the gift vouchers back.

¹³ Landgate Website at <http://www.landgate.wa.gov.au/corporate.nsf/web/About+Us>, viewed 2 December 2008.

¹⁴ Landgate Website at <http://www.landgate.wa.gov.au/corporate.nsf/web/Survey+Plan+or+Strata+Plan+-+FAQs>, viewed 3 December 2008.

¹⁵ Transcript of Proceedings, Private Examination of Mr Gordon Andrew Poulton on 10 March 2008, pp.272-273.

¹⁶ Telecommunications Intercept, T 1466, 2 July 2007.

¹⁷ Telecommunications Intercept, T 1494, 4 July 2007.

¹⁸ Telecommunications Intercept, T 1496, 4 July 2007.

¹⁹ Telecommunications Intercept, T 1498, 5 July 2007.

²⁰ Telecommunications Intercept, T 1504, 5 July 2007.

²¹ Telecommunications Intercept, T 1505, 5 July 2007.

²² Telecommunications Intercept, T 1510, 6 July 2007.

²³ Telecommunications Intercept, T 1511, 6 July 2007.

²⁴ *Ibid.*

²⁵ Telecommunications Intercept, T 1513, 6 July 2007.

²⁶ Telecommunications Intercept, T 1519, 6 July 2007.

²⁷ Telecommunications Intercept, T 1485, 14 August 2007.

²⁸ Telecommunications Intercept, T 1533, 20 August 2007.

²⁹ Telecommunications Intercept, T 1531, 24 August 2007.

³⁰ Telecommunications Intercept, T 1657, 20 November 2007.

³¹ Telecommunications Intercept, T 1659, 22 November 2007.

³² Telecommunications Intercept. T 1667, 27 November 2007.

³³ Entry in *Register of Gifts Received by Landgate Staff Members*, in the name of D W Haddow, 15 December 2007, valued at \$200 [CCC 0584].

³⁴ Telecommunications Intercept, T 1677, 18 December 2007

³⁵ Transcript of Proceedings, Private Examination of Mr Donald William Haddow on 7 March 2008, p.190.

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- ³⁶ The Land Surveyors Licensing Board (LSLB) of Western Australia Website at http://www.lslb.wa.gov.au/notice_5_04.html, viewed on 22 May 2009.
- ³⁷ Transcript of Proceedings, Private Examination of Mr Hoot Khoon (James) Teoh on 10 March 2008, pp.393-395.
- ³⁸ Telecommunications Intercept, T 1537, 29 August 2007.
- ³⁹ *Ibid.*
- ⁴⁰ Transcript of Proceedings, Private Examination of Mr Hoot Khoon (James) Teoh on 11 March 2008, p.446.
- ⁴¹ Transcript of Proceedings, Private Examination of Mr Peter Arthur Braithwaite on 7 March 2008, p.210.
- ⁴² *Ibid*, p.213.
- ⁴³ Telecommunications Intercept, T 1571, 4 September 2007.
- ⁴⁴ Transcript of Proceedings, Private Examination of Mr Ian David Croasdale on 6 March 2008, p.131.
- ⁴⁵ Transcript of meeting held on 6 September 2007 between Mr Hoot Khoon (James) Teoh and Mr Ian Croasdale at Ardross WA [T 1618].
- ⁴⁶ Transcript of Proceedings, Private Examination of Mr Ian David Croasdale on 6 March 2008, *op cit*, p.133.
- ⁴⁷ Transcript of conversation on 6 September 2007 between Mr Ian Croasdale and Mrs Sandra Croasdale at Ballajura, WA [T 1620].
- ⁴⁸ Security Camera Footage, Liquorland, Noranda, 14 September 2007, 9:23 p.m. [CCC 0821].
- ⁴⁹ Transaction Journal, Liquorland, Noranda, 14 September 2007, 9:32 p.m. [CCC 0219].
- ⁵⁰ Email to CCC Investigator of 17 September 2007, 8:08 a.m., from Retail Decisions Pty Ltd [CCC 1063].
- ⁵¹ Transcript of Proceedings, Private Examination of Mr Ian David Croasdale on 6 March 2008, *op cit*, p.136.
- ⁵² Telecommunications Intercept, T 1581, 6 September 2007.
- ⁵³ Telecommunications Intercept, T 1583, 6 September 2007.
- ⁵⁴ Telecommunications Intercept, T 1590, 18 September 2007.
- ⁵⁵ Telecommunications Intercept, T 1648, 13 November 2007.
- ⁵⁶ *Ibid.*
- ⁵⁷ Telecommunications Intercept, T 1650, 14 November 2007.
- ⁵⁸ Telecommunications Intercept, T 1674, 13 December 2007.
- ⁵⁹ *Ibid.*
- ⁶⁰ Transcript of Proceedings, Private Examination of Mr Ian David Croasdale on 6 March 2008, *op cit*, p.152.
- ⁶¹ Telecommunications Intercept, T 1681, 21 December 2007.
- ⁶² Transcript of Proceedings, Private Examination of Mr Ian David Croasdale on 6 March 2008, *op cit*, pp.150-151.
- ⁶³ Interview with Mr Ian Croasdale on 6 March 2008 [CCC 0673].
- ⁶⁴ Section 86 representations: letter from Hammond Legal dated 13 May 2009.
- ⁶⁵ Transcript of conversation on 7 September 2007 between Mr Ian Croasdale and Mrs Sandra Croasdale at Ballajura, WA [T 1621].
- ⁶⁶ Transcript of conversation on 8 September 2007 between Mr Ian Croasdale and Mrs Sandra Croasdale at Ballajura, WA [T 1622].
- ⁶⁷ Transcript of conversation on 10 September 2007 between Mr Ian Croasdale and Mrs Sandra Croasdale at Ballajura, WA [T 1623].
- ⁶⁸ Transcript of conversation on 12 September 2007 between Mr Ian Croasdale and Mrs Sandra Croasdale at Ballajura, WA [T 1624].
- ⁶⁹ National Australia Bank Limited Deposit Credit for \$500, Ian Croasdale Account, dated 12 September 2007 [CCC 0338].
- ⁷⁰ Cheque, St George Bank Limited, for \$500 to Ian Croasdale dated 6 September 2007 [CCC 0337].
- ⁷¹ Email to Mr Ian Croasdale of 27 September 2007, 8:12 a.m., from Mr Michael McKenna [CCC 0830].
- ⁷² Email to Mr Ian Croasdale of 8 October 2007, 4:00 p.m., from Mr Michael McKenna [CCC 0830].
- ⁷³ Email to Mr Michael McKenna of 9 October 2007, 7:45 a.m., from Mr Ian Croasdale [CCC 0830].
- ⁷⁴ Transcript of Proceedings, Private Examination of Michael Edwin McKenna on 11 March 2008, pp.545-546.
- ⁷⁵ Email to Mr Michael McKenna of 16 August 2007, 1:00 p.m., from Mr Ian Croasdale [CCC 1033].

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- ⁷⁶ Email to Mr Ian Croasdale of 23 September 2007 from Mr Michael McKenna [CCC 1040].
- ⁷⁷ Email to Mr Michael McKenna of 26 September 2007 from Mr Ian Croasdale [CCC 1041].
- ⁷⁸ Email to Mr Michael McKenna of 27 September 2007 from Mr Ian Croasdale [CCC 1042].
- ⁷⁹ Transcript of Proceedings, Private Examination of Michael Edwin McKenna on 11 March 2008, *op cit*, pp.549-552.
- ⁸⁰ Email to Mr Michael McKenna of 15 October 2007 from Mr Ian Croasdale [CCC 1049].
- ⁸¹ Email to Mr Ian Croasdale of 20 November 2007, No. 1, 12:57 p.m., from Mr Michael McKenna [CCC 1054].
- ⁸² Email to Mr Michael McKenna of 20 November 2007, No. 2, 1:00 p.m., from Mr Ian Croasdale [CCC 1054].
- ⁸³ Email to Mr Ian Croasdale of 20 November 2007, No. 3, 1:09 p.m., from Mr Michael McKenna [CCC 1054].
- ⁸⁴ Mulligan Corporation Pty Ltd Cheque, National Australia Bank Limited, for \$500 to Ian Croasdale dated 20 November 2007 [CCC 0747].
- ⁸⁵ Email to Mr Ian Croasdale of 20 November 2007, No. 4, 1:20 p.m., from Mr Michael McKenna [CCC 1055].
- ⁸⁶ Email to Mr Michael McKenna of 20 November 2007, No. 5, 1:22 p.m., from Mr Ian Croasdale [CCC 1056].
- ⁸⁷ Email Exchange between Mr Michael McKenna and Mr Ian Croasdale on 22 November 2007 [CCC 1062].
- ⁸⁸ National Australia Bank Limited Deposit Credit for \$500, I Croasdale Account, dated 22 November 2007 [CCC 0747].
- ⁸⁹ Shorter Oxford English Dictionary (Sixth Edition), p.529, and Macquarie Dictionary (Second Revised Edition), p.417.
- ⁹⁰ See *Investigating Corruption and Misconduct in Public Office: Commissions of Inquiry – Powers and Procedures*, Peter M Hall QC, Thomson Lawbook Co, Sydney, 2004 at [2.195].
- ⁹¹ Section 23(2) of the *Corruption and Crime Commission Act 2003*.
- ⁹² Transcript of Proceedings, Private Examination of Mr Hoot Khoon (James) Teoh on 11 March 2008, *op cit*, pp. 479-480.
- ⁹³ Teoh section 86 representations: letter from Patti Chong Lawyer dated 2 June 2009, attachment p.2.
- ⁹⁴ “Keynote Opening Address: Is your Code of Conduct Meaningless?”, by the Hon Jerrold Cripps, QC, Commissioner, Independent Commission Against Corruption (NSW), 16th Annual Public Sector Fraud & Corruption Conference 2009, Canberra, 11 May 2009.
- ⁹⁵ Section 28 of the CCC Act requires public sector departments and agencies to notify the Commission in writing of any matter that they suspect on reasonable grounds concerns or may concern misconduct, as defined in section 4 of the CCC Act.
- ⁹⁶ Landgate section 86 representations dated 1 May 2009.
- ⁹⁷ Landgate Corporate Manuals, *Offer and Acceptance of Gifts, Benefits and Hospitality* Policy, April 2005 [CCC 0302].
- ⁹⁸ *Ibid*.
- ⁹⁹ Landgate *Gifts and Hospitality Register*, Lotus Notes [CCC 0581 and CCC 0582].
- ¹⁰⁰ Entries in *Register of Gifts Received by Landgate Staff Members*, in the name of: D W Haddow, 15 December 2007, valued at \$200 [CCC 0584], *op cit*; R Bielec and I Croasdale, 31 May 2007, valued at \$500 [CCC 0586]; N Pallotta, 31 May 2007, valued at \$500 [CCC 0587]; and N Pallotta, May 2007, valued at \$60 [CCC 0588].
- ¹⁰¹ Transcript of Proceedings, Private Examination of Mr Terrance Robert Hawser on 6 March 2008, p.33.
- ¹⁰² Transcript of Proceedings, Private Examination of Mr Ian David Croasdale on 6 March 2008, *op cit*, p.103.
- ¹⁰³ *Ibid*, p.116.
- ¹⁰⁴ Office of Police Integrity Victoria Report: “Offers of Gifts and Benefits to Victoria Police Employees”, June 2009.
- ¹⁰⁵ *Ibid*, p.5.
- ¹⁰⁶ *Ibid*, p.13.
- ¹⁰⁷ Transcript of Proceedings, Private Examination of Mr Donald William Haddow on 7 March 2008, *op cit*, p.191.

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- ¹⁰⁸ Telecommunications Intercept, T 1700, 6 February 2008.
- ¹⁰⁹ *Ibid.*
- ¹¹⁰ Telecommunications Intercept, T 1527, 17 July 2007.
- ¹¹¹ Landgate *Gifts and Hospitality Register*, Lotus Notes [CCC 0581 and CCC 0582], *op cit.*
- ¹¹² Transcript of Proceedings, Private Examination of Mr Terrance Robert Hawser on 6 March 2008, *op cit.*, p.4.
- ¹¹³ Transcript of Proceedings, Private Examination of Mr Ian David Croasdale on 6 March 2008, *op cit.*, p.79.
- ¹¹⁴ Transcript of Proceedings, Private Examination of Mr Donald William Haddow on 7 March 2008, *op cit.*, p.175.
- ¹¹⁵ Transcript of Proceedings, Private Examination of Mr Ian David Croasdale on 6 March 2008, *op cit.*, p.90.
- ¹¹⁶ *DLI Financial and Private Interests Policy (Conflict of Interest)* [CCC 0361].
- ¹¹⁷ Refer [http://www.landgate.wa.gov.au/docvault.nsf/web/INF_People_at_Landgate200801/\\$FILE/INF_People_at_Landgate200801.pdf](http://www.landgate.wa.gov.au/docvault.nsf/web/INF_People_at_Landgate200801/$FILE/INF_People_at_Landgate200801.pdf) and [http://www.landgate.wa.gov.au/docvault.nsf/web/REP_LG_Annual_Report_2007-2008/\\$FILE/REP_LG_Annual_Report_2007-2008.pdf](http://www.landgate.wa.gov.au/docvault.nsf/web/REP_LG_Annual_Report_2007-2008/$FILE/REP_LG_Annual_Report_2007-2008.pdf), viewed 26 May 2009.
- ¹¹⁸ Telecommunications Intercept, 7 September 2007, 12:31 p.m.
- ¹¹⁹ Telecommunications Intercept, T 1561, 2 August 2007.
- ¹²⁰ Telecommunications Intercept, 7 September 2007, 12:31 p.m., *op cit.*
- ¹²¹ Telecommunications Intercept, 8 January 2008, 9:51 a.m.
- ¹²² Telecommunications Intercept, 10 January 2008, 1:15 p.m.
- ¹²³ Landgate: Information Sheet on Expedited Application Procedures [CCC 0365].
- ¹²⁴ Telecommunications Intercept, T 1646, 31 October 2007.
- ¹²⁵ Section 86 representations: letter from Mony de Kerloy, Barristers and Solicitors, dated 22 April 2009.
- ¹²⁶ *Ibid.*
- ¹²⁷ Telecommunications Intercept, T 1672, 12 December 2007.
- ¹²⁸ Transcript of Proceedings, Private Examination of Mr Hoot Khoon (James) Teoh on 11 March 2008, *op cit.*, p.434.
- ¹²⁹ *Ibid.*, p.435.
- ¹³⁰ Telecommunications Intercept, T 1533, 20 August 2007.
- ¹³¹ Telecommunications Intercept, T 1642, 16 October 2007.
- ¹³² Contract Variation: Proposed Apartment Number 13 “Infinity”, East Perth WA [CCC 0634].
- ¹³³ Letter to Tuscom Subdivision Consultants Pty Ltd of 23 October 2007 from Mr Gordon A Poulton [CCC 0969].
- ¹³⁴ Urgent Facsimile Cover Sheet: Strata Plan 53971 [CCC 0631].
- ¹³⁵ Transcript of Proceedings, Private Examination of Mr Gordon Andrew Poulton of 10 March 2008, *op cit.*, p.369.
- ¹³⁶ As reiterated in his section 86 representations: see letter from Patti Chong Lawyer dated 30 April 2009.
- ¹³⁷ Transcript of Proceedings, Private Examination of Mr Ian David Croasdale on 16 March 2008, *op cit.*, pp.99-100.
- ¹³⁸ *Ibid.*, p.95.
- ¹³⁹ Landgate section 86 representations dated 1 May 2009, *op cit.*
- ¹⁴⁰ *Ibid.*
- ¹⁴¹ *Ibid.*
- ¹⁴² BIPERS is a system that is used for the classification of public sector positions. It is a numerical rating system based on factors such as “influence on results” and “personnel supervised”. The BIPERS license in Australia is held by Mercer Human Resource Consulting.
- ¹⁴³ Landgate section 86 representations dated 1 May 2009, *op cit.*