

Report on corruption in Information Technology at Horizon Power

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TABLE OF CONTENTS

INTRODUCTION	1
CHAPTER ONE.....	5
Who is who.....	5
Horizon Power	5
Mr Paul Thomas.....	5
Mr Anthony Raspa.....	6
Trusted Solutions IT.....	6
Mr Peter Noone.....	7
Adamo Accounting	8
The relationship between CXC Consulting Pty Ltd and Horizon Power	8
Agency margin fees	9
CHAPTER TWO	11
A corrupt scheme begins.....	11
The corruption continues	14
For what purpose was Trusted Solutions IT paid the agency margin fees?	16
Why did Mr Thomas engage Mr Esmail?	18
The extent of the corruption	19
CHAPTER THREE.....	21
The conflicts of interest: Did anyone else know?	21
Horizon Power's Code of Conduct and conflict of interest policies	21
Was a conflict of interest disclosed by Mr Thomas?.....	23
Efforts to conceal Mr Thomas' directorship and ownership of Trusted Solutions IT.....	27
Opinion as to whether Mr Thomas declared a conflict of interest	30
Did Mr Raspa declare a conflict of interest?	31
Opinion as to whether Mr Raspa declared a conflict of interest	31
Opinion on serious misconduct.....	31
CHAPTER FOUR.....	33
The common use arrangement for information and technology services.....	33
Trusted Solutions IT falsely claims to have completed a project at Horizon Power	33
Opinion on serious misconduct.....	35

CHAPTER FIVE.....	37
Mr Thomas engages his wife as a contractor.....	37
Mr Thomas approves his wife's invoices.....	41
CHAPTER SIX.....	45
The play for Horizon Power's business.....	45
The solar business	46
The 'app' development business: "Total dodge"	47
The shell or shelf company: "not very legal but there you go"	48
Cheating Horizon Power.....	50
VPoint Technologies Pty Ltd.....	52
Vizstone Pty Ltd.....	55
The purchase becomes an idea to merge	60
CHAPTER SEVEN.....	65
Opinions of serious misconduct and recommendations.....	65
Mr Paul Thomas.....	65
Mr Anthony Raspa.....	67
Mr Paul Hesford	68
Recommendations	68

INTRODUCTION

- [1] When a government agency employs a public officer to occupy a senior management role, a degree of trust is necessarily placed in that individual. When that public officer breaches that trust and corruptly uses their public position for private gain, the effect is devastating.
- [2] Horizon Power trusted Manager of Technology, Mr Paul Thomas, to run Horizon Power's Knowledge and Technology department (KT). While Mr Thomas may have done some good in that role, by 2017, any positive contribution Mr Thomas made was eclipsed by greed and corruption.
- [3] He engaged contractors for private purposes and without any regard to procurement processes. He corruptly and secretly committed Horizon Power to paying ongoing fees to Trusted Solutions IT (TSIT), a company which Mr Thomas owned and directed. He corruptly caused his wife to be engaged as a contractor to perform a role so that he could pay down credit card debt.
- [4] Mr Thomas used his position to claim falsely that TSIT carried out work for Horizon Power. Without disclosing his ownership of the company, in his capacity as Manager of Technology, he then provided TSIT with a positive reference for the work he lied about carrying out.
- [5] One of the contractors Mr Thomas engaged to work at Horizon Power was his TSIT business partner, Mr Anthony Raspa.
- [6] For a number of years, Mr Thomas and Mr Raspa conspired to purchase or otherwise gain control of a business entity that would then obtain work from Horizon Power. TSIT's accountant, Mr Paul Hesford, formed part of that conspiracy. Mr Hesford agreed to be the nominated Director and shareholder of that entity for the purpose of concealing Mr Thomas and Mr Raspa's ownership from Horizon Power. Mr Thomas intended to use his office at Horizon Power to position the entity to secure business from the utility.
- [7] In early 2016, the Commission received allegations against Mr Thomas and Mr Raspa. The Commission's investigation into possible serious misconduct was wide ranging. Over the course of the investigation, the Commission utilised many of its powers, including examining witnesses and obtaining telephone intercept warrants and documentary materials from many sources. In 2017, the Commission entered into a cooperative investigation with the WA Police Force.¹

¹ *Corruption, Crime and Misconduct Act 2003* s 33(1)(b).

- [8] Over two weeks in April and May 2018, that investigation culminated in the Commission conducting a number of examinations. Those examinations were conducted both in private and in public.
- [9] What follows is the story, as revealed by the Commission's investigation, of how the trust placed in Mr Thomas was abused.
- [10] Conduct such as that engaged in by Mr Thomas, is not confined to this single incident or work place, but may be widespread throughout the community.
- [11] This story is not unique. On 3 June 2018, Mr Justin Drew Magatelli, a Marketing Manager for gas supplier Kleenheat, was sentenced in the Perth District Court to over three years' jail for defrauding the utility. Mr Magatelli and his co-offender, Mr Robert William Lindsay Prestney, set up a privately owned marketing company, J&R Media Marketing (J&R). Mr Magatelli, who ran Kleenheat's national marketing campaigns, used his authority to approve his privately owned business as a supplier. Over the next four years, J&R sent Kleenheat invoices totalling \$465,000 for radio advertisements that never went to air.²
- [12] Judge Philip McCann said the invoices were submitted and paid because Mr Magatelli could approve invoices up to \$10,000:
- In effect, he was able to get J&R approved as a supplier and get J&R paid on a no questions asked basis because of his authority and because of Kleenheat's accounting systems ... The money was there for the taking provided that the fraud was well executed and secrecy was maintained, which was the case.*³
- [13] Mr Thomas resigned from Horizon Power. In his capacity as a public officer, the Commission has formed opinions of serious misconduct.
- [14] Mr Raspa's contract with Horizon Power was terminated. The Commission has not formed an opinion of serious misconduct about his actions. The Commission has no jurisdiction to form an opinion of minor misconduct.
- [15] Mr Hesford was not a public officer and the Commission therefore has no jurisdiction to form an opinion of serious misconduct. His actions are however, included in this report because they are intertwined with those of Mr Thomas and Mr Raspa.

²Shannon Hampton, *Perth Businessmen jailed over bogus Kleenheat Gas radio commercials* (5 June 2018) The West Australian <<https://thewest.com.au/news/crime/perth-businessmen-jailed-over-bogus-kleenheat-gas-radio-commercials-ng-b88855431z>>.

³ Australian Associated Press, *WA pair jailed over gas company fraud* (3 June 2018) Yahoo7 News <<https://www.perthnow.com.au/news/crime/perth-businessmen-jailed-over-bogus-kleenheat-gas-radio-commercials-ng-b88856590z>>.

- [16] The Commission recommends that a relevant authority give consideration to the prosecution of Mr Thomas for corruption in a public office contrary to the *Criminal Code* s 83.
- [17] The Commission recommends that a relevant authority give consideration to the prosecution of Mr Thomas, Mr Raspa and Mr Hesford for conspiracy to commit the indictable offence of fraud pursuant to the *Criminal Code* s 558, or any other offence that may be disclosed.
- [18] Before finalising this report, the Commission invited submissions from persons who may be adversely affected. Those submissions have been taken into account in finalising this report.
- [19] Mr Thomas responded that he does not agree with the findings that relate to him. He proffered no other facts.

CHAPTER ONE

Who is who

Horizon Power

- [20] Horizon Power is the trading name of the Regional Power Corporation. The Regional Power Corporation was established under the *Electricity Corporations Act 2005*. It is led by a Board of Directors.
- [21] Horizon Power is a State Government-owned energy utility that provides power to about 100,000 residents and 10,000 businesses across Western Australia.
- [22] In the 2016/2017 financial year, Horizon Power had \$1.8b in assets and revenue of \$493m.
- [23] Horizon Power has a remit to ensure long-term sustainability by exploring new business opportunities and developing new energy solutions.

Mr Paul Thomas

- [24] Mr Thomas commenced as Service Delivery Manager within Horizon Power's KT department in March 2010. On 23 April 2010, Mr Thomas was promoted to the position of Manager of KT. In that role, he became part of the senior management of the KT department.
- [25] Until December 2013, Mr Thomas reported to the General Manager, Mr James Deacon, who held the position of General Manager of KT from October 2009 until he left Horizon Power in September 2013. After Mr Deacon left, Mr David Tovey briefly acted in that role and Mr Thomas reported to him.
- [26] Following a restructure in December 2013, the KT department was renamed the Technology Team (commonly referred to as the IT Team) and Mr Thomas was appointed to the role of Manager of Technology. Mr Thomas' position of Manager of Technology became the primary technology role within Horizon Power. As head of the IT Team from December 2013, Mr Thomas reported to the Corporate Services General Manager.
- [27] Mr Thomas decided how the IT Team would be run and managed on a daily basis. His role involved developing and implementing systems to manage and maintain Horizon Power's IT and telecommunications architecture. He developed frameworks and systems to determine and manage business requirements and solutions to business problems. As

part of his role, Mr Thomas was exposed to Horizon Power's new business opportunities and energy solutions, such as the proposal to develop stand-alone solar power systems.

Mr Anthony Raspa

- [28] Mr Raspa was engaged by Mr Thomas in July 2013 to work at Horizon Power as a Contract Consultant. He was engaged through his private business, Raspa Contracting Pty Ltd. He and Mr Thomas had worked together on and off since 2005. Mr Raspa remained at Horizon Power until October 2017.
- [29] An exemption from Horizon Power's procurement processes was approved by Mr Thomas to engage Mr Raspa outside of an open market tender.
- [30] Mr Raspa was engaged as a Project Manager for the KT department's asset management plan projects. Those projects included the core network refresh project and the Cisco unified communications project. The core network project involved the replacement of Horizon Power's network infrastructure. The Cisco project involved working with systems relating to internal telecommunications within Horizon Power.
- [31] In June 2014, Mr Raspa was appointed to the position of Program Manager. While project managers administer specific projects, program managers are responsible for a whole program of works around particular projects. On 16 January 2015, Mr Raspa signed a delegated financial authority (DFA) that gave him the authority to sign contracts, including those used to engage contractors, up to a value of \$50,000.
- [32] Mr Raspa reported to Mr Thomas. Mr Thomas approved extensions of Mr Raspa's contract without seeking further exemptions in 2015, 2016 and 2017.
- [33] From December 2013, Mr Raspa occupied what was an employee role. Mr Tovey gave evidence that it was unusual to have long term contractors embedded in employee roles at Horizon Power.

Trusted Solutions IT

- [34] On 23 February 2010, about one week before Mr Thomas' first day at Horizon Power, Thomaspa Pty Ltd was registered as an Australian Proprietary Company. Thomaspa Pty Ltd traded as 'TSIT'. Mr Thomas and Mr Raspa were TSIT's sole Directors and shareholders. In evidence to the Commission, Mr Thomas said it would be fair to say that he and Mr Raspa jointly started TSIT.

- [35] TSIT provided managed IT services, IT project services and the recruitment of contract staff.
- [36] Mr Thomas was TSIT's Sales Director and Mr Raspa held the position of Service Director.
- [37] Mr Thomas accepted that as Sales Director for TSIT, winning new work or business for TSIT was part of his role.
- [38] For the 2010/2011 financial year, providing contract staff was the largest part of TSIT's business, generating gross fees of over \$130,000. Providing managed IT services was the second largest portion of the business, with gross fees of \$47,000.
- [39] CXC Consulting Pty Ltd (CXC) (now known as CXC Corporate Services, part of CXC Global Contractor Management Solutions) is a labour hire company that provides contract workers and payroll services to clients.
- [40] Until May 2012, one of the three largest contracts undertaken by TSIT was with CXC. That relationship resulted in the payment of over \$70,000 in fees to TSIT.
- [41] Mr Thomas accepted in evidence the vast majority of the contractors provided by CXC that generated fees for TSIT were placed at Horizon Power.

Mr Peter Noone

- [42] On 17 May 2013, Mr Peter Noone became a one third shareholder with Mr Thomas and Mr Raspa in TSIT. Mr Noone had held the position of TSIT's Commercial Director since at least May 2012. Mr Noone's role involved maintaining the accounts for the company.
- [43] Mr Noone did not purchase or provide anything in exchange for his share in TSIT. The understanding being:
- ... that between the three of us we had the skill set to -to - develop a business and, you know, what we - what we would reap out of the business we would - we would share in equally, so I suppose that was the theory.⁴*
- [44] Mr Thomas' evidence was that Mr Noone became involved in TSIT before the company was registered. Mr Thomas said Mr Noone was equally involved in the business as Mr Thomas and Mr Raspa from TSIT's inception.

⁴ P A Noone transcript, private examination, 30 October 2017, p 6.

- [45] Mr Noone denied this. While Mr Noone accepted he was performing commercial activities such as monthly financial reporting prior to becoming TSIT's Commercial Director, TSIT already had contractors in place before he joined the organisation. Mr Noone's evidence was that TSIT was started by Mr Thomas and Mr Raspa and he became involved at a later stage.
- [46] Consistent with Mr Thomas' acceptance that it would be fair to say he and Mr Raspa jointly started TSIT, the weight of the evidence suggests that Mr Noone was not involved in establishing the company. However, based on their evidence alone, the Commission cannot determine when Mr Noone became TSIT's Commercial Director. Nonetheless, as Mr Noone accepted, he held the role since at least May 2012.

Adamo Accounting

- [47] Mr Hesford practices as an Accountant trading as Adamo Accounting. Mr Hesford established Adamo Accounting in 1997. He provides tax advisory services as well as business services, superannuation advice and advice on 'company set ups'.
- [48] Mr Raspa and TSIT were longstanding clients. Mr Thomas also ultimately became a client of Mr Hesford.

The relationship between CXC Consulting Pty Ltd and Horizon Power

- [49] It is the role of a recruitment company such as TSIT to source and identify contractors for clients like Horizon Power.
- [50] TSIT was not included in Horizon Power's panel of approved recruitment agencies.
- [51] Generally speaking, in the event that a non-panel recruitment agency such as TSIT identified a contractor to work at Horizon Power, it would negotiate the total rate to be paid with respect to that contractor directly with Horizon Power.
- [52] The contractor and the recruitment agency then agree the rate to be paid to the contractor.
- [53] Next, Horizon Power would inform the contractor's choice of payroll company, such as CXC, the agreed rate. TSIT would provide CXC with the breakdown of that rate and specify what amount is to be paid to the contractor; what percentage is CXC's fee; and the amount of the agency margin fee to be paid to the recruitment agency. CXC would then register

the contractor with CXC. On 14 May 2010, two weeks after Mr Thomas took on the role of Manager of KT, Mr Thomas arranged for CXC to be registered with Horizon Power as a supplier of labour hire services.

- [54] CXC is not a recruitment agency. CXC only deals with workers who have been pre-identified.
- [55] As was the practice around 2010, CXC would enter into a three way contract with the contractor and Horizon Power. The contract specified the total amount of money Horizon Power had agreed to be invoiced with respect to that contractor.

Agency margin fees

- [56] An agency margin fee is a fee paid to a recruitment agency for the work involved in sourcing a worker for an employer. Agency margin fees can be paid as a one-off sum or on an ongoing basis.
- [57] An agency fee is agreed between the employer and the recruitment agent.
- [58] The only role CXC played in the agency margin fee process was to facilitate the payment to the recruitment agency, TSIT, by invoicing Horizon Power, for an amount that included the agency margin fee. CXC then paid the agency fee to TSIT.
- [59] In order to give effect to an agreement about an agency margin fee, CXC requires communication in writing from the employer that allows CXC to invoice the employer in accordance with the agreed arrangement.
- [60] Often neither the employer, in this case Horizon Power, nor the contractor, is aware of the breakdown of the total rate between the contractor and the recruitment agency. As Mr Christopher Thuell, Director of Risk and Compliance at CXC, noted in his evidence to the Commission, "sometimes that transparency is not there".⁵
- [61] However, Mr Thuell considered it best practice to at least identify in the contract between the contractor, CXC and the employer that an agency margin fee is to be paid.
- [62] After commencing work at Horizon Power, a contractor completed a timesheet. CXC invoiced Horizon Power for an amount that included the amount to be paid to the contractor, superannuation, payroll tax, CXC's margin and an agency margin fee to be paid to TSIT.

⁵ C R Thuell transcript, private examination, 2 May 2018, p 6.

CHAPTER TWO

A corrupt scheme begins

[63] When Mr Thomas registered CXC as a supplier of labour hire services to Horizon Power, he did so for the purpose of engaging a contractor, Mr Paul Crockford, to work in the KT department. In his evidence to the Commission, Mr Crockford said Mr Thomas contacted him and asked if he would be interested in working at Horizon Power.

[64] On 19 May 2010, Mr Thomas emailed Mr Jeffrey Malin at CXC to confirm CXC had been set up as a supplier in the Horizon Power system and that Mr Crockford would arrange to see Mr Malin shortly. Mr Thomas corresponded with Mr Malin using his Horizon Power email address.

[65] The following day, on 20 May 2010, Mr Thomas again emailed Mr Malin about Mr Crockford:

Jeff,

Hopefully Paul Crockford has been in touch with you; we have agreed a day rate to him of \$600.00 per day. The cost build up for Horizon Power will be:

\$600 per day to Paul

6% for payroll

4% management fee

Total \$660 per day + TSIT margin of \$100 per day Total billable to Horizon Power is \$760 per day

Please confirm that you are OK with this and I will get our bank details over to you.

All the best⁶

[66] Mr Thomas sent this email to Mr Malin from his TSIT email address. Mr Thomas' evidence was that he sent this email to Mr Malin in his capacity as a Director of TSIT. Mr Thomas accepted in evidence that he was also the person at Horizon Power who agreed Horizon Power would pay TSIT a margin of \$100 per day for Mr Crockford's time.

[67] The very next day on 21 May 2010, Mr Thomas reverted to his Horizon Power email address to email Mr Malin. In that email, Mr Thomas provided Mr Malin with Mr Crockford's telephone number.

[68] Mr Thomas corresponded with Mr Malin using his Horizon Power email address on 19 and 21 May 2010. Neither of those emails referred to TSIT.

⁶ Email from P M Thomas to J H Malin, 20 May 2010.

Mr Thomas emailed Mr Malin on 20 May 2010 using his TSIT email address. In that email, Mr Thomas committed Horizon Power to pay \$100 per day to TSIT.

- [69] Despite the fact that Mr Thomas' email to him of 20 May 2010 was sent from the TSIT email address, Mr Malin's evidence was that he took Mr Thomas' email to be an instruction from Mr Thomas in his capacity as Horizon Power's Manager of KT. Mr Malin actioned the email and set up the arrangement in the CXC system.
- [70] Mr Thomas' evidence was that, in his capacity as Manager of KT at Horizon Power, he agreed that TSIT, the company he owned and directed, would be paid an agency margin fee for Mr Crockford's time. Mr Thomas admitted that he, as Manager of KT, agreed the amount of the payment to TSIT and the duration of the payment by deciding the length of Mr Crockford's contract.
- [71] A more glaring example of a conflict of interest could scarcely be imagined. But it was more than that.
- [72] Mr Thomas conceded that his email to Mr Malin of 20 May 2010 'probably' should have been sent from his Horizon Power email address. Mr Thomas' explanation as to why he corresponded with Mr Malin using his Horizon Power email address on 19 and 21 May 2010, and using his TSIT email address on 20 May 2010, is difficult to accept. Mr Thomas' evidence was that he was "using a single phone with all my email accounts on there, so it was quite possibly that I just used the wrong account".⁷
- [73] There is an obvious explanation why Mr Thomas used his TSIT email address to commit Horizon Power to paying TSIT's agency margin fee, and his Horizon Power email address to discuss details unrelated to TSIT. He did not want Horizon Power to discover that he had used his position as Manager of KT to agree to pay TSIT, his private business, an agency margin fee.
- [74] On 2 June 2010, Mr Malin emailed Mr Thomas at his Horizon Power email address attaching a three way contract between Horizon Power, Mr Crockford and CXC. Mr Malin added to that email 'For TSIT could you please supply address, ABN number and banking details as we will hopefully need to pay in the near future'.⁸
- [75] The contract attached to Mr Malin's email specified the rate to be paid by Horizon Power in relation to Mr Crockford was a net figure of '\$600

⁷ P M Thomas transcript, public examination, 8 May 2018, p 21.

⁸ Email from J H Malin to P M Thomas, 2 June 2010.

per Day plus PRT [payroll tax] and CXCs Fee as agreed'.⁹ The \$100 per day agency margin fee to be paid to TSIT was not specified anywhere in the contract.

[76] Mr Thomas conceded in evidence that he signed the three way contract on behalf of Horizon Power in the knowledge that the rate included an ongoing payment to be made by Horizon Power to the company he owned.

[77] Mr Malin acknowledged the three way contract did not specify the agency margin fee to be paid to TSIT. Mr Malin's evidence was that the agency margin fee is always included "in the net figure because they don't want the contractor to know the margins. That's still the case today".¹⁰

"We need to put in an invoice and then we get paid on that."

- Anthony Raspa

[78] On 9 August 2010, Mr Raspa received an email from Mr Malin. In that email, Mr Malin suggested Mr Raspa send an invoice to CXC for Mr Crockford's time at Horizon Power from 14 June to 25 July 2010. The amount payable to TSIT was \$100 per day plus GST. Mr Malin suggested that in future, at the end of each month, Mr Raspa send him a list of TSIT's contractors. Mr Malin would then send Mr Raspa timesheets showing the hours each contractor had worked at Horizon Power. TSIT could then issue an invoice to CXC on the basis of the timesheets.

[79] Mr Thomas' evidence to the Commission was that he was unaware as to whether TSIT would issue an invoice to CXC to be paid the agency margin fees. Mr Thomas said that he "never got involved in the dollars per se and how the invoicing worked".¹¹

[80] However, on 10 August 2010, Mr Raspa forwarded Mr Malin's email of 9 August 2010 to Mr Thomas. Mr Raspa explained, 'we need to put in an invoice and then we paid on that'.¹² Mr Thomas conceded in evidence that the result of that arrangement was the longer that Mr Crockford worked at Horizon Power, the more TSIT got paid.

[81] TSIT submitted invoices to CXC for \$100 for each day Mr Crockford worked at Horizon Power during that period. CXC in turn invoiced Horizon Power for those amounts, including TSIT's agency margin fee. CXC then paid TSIT the agency margin fees.

⁹ Agreement between Horizon Power, CXC and P J Crockford, p 5.

¹⁰ J M Malin transcript, private examination, 30 April 2018, p 32.

¹¹ P M Thomas transcript, public examination, 8 May 2018, p 29.

¹² Email from A D Raspa to P M Thomas, 10 August 2010.

- [82] Six days later on 16 August 2010, Mr Raspa emailed Mr Thomas to confirm that 'the money for Crockford is in our bank account finally'.¹³
- [83] The scheme was complete. Mr Thomas had used his position at Horizon Power to engage Mr Crockford as a contractor within the KT department. He had used his position to agree that Horizon Power would pay TSIT \$100 a day for each day Mr Crockford worked there. CXC had invoiced Horizon Power for amounts that included TSIT's agency margin fee, without disclosing in those invoices that an agency margin fee was to be paid. TSIT had invoiced CXC for those agency margin fees. Those fees were ultimately paid into TSIT's bank account. Mr Thomas' role in orchestrating and carrying out the scheme remained undetected. In the Commission's opinion, the scheme was corrupt.

The corruption continues

- [84] About seven weeks after the first agency margin fees relating to Mr Crockford were paid into TSIT's bank account, Mr Thomas again emailed Mr Malin using his TSIT email address:

Jeff,

I am putting in a new start in at Horizon Power by the name Ian Saunders; I have forwarded your details to him to come and register. I am looking for him to start on Tuesday next week; his salary details are as follow's:

Hourly Rate \$100 plus super based on a 7.6 hour day

CXC 4% margin and 6% pay tax = \$836 plus Trusted margin of \$64 per day

Total cost to Horizon \$900 per day

Can you please confirm you are happy with this

*All the best*¹⁴

- [85] Again, Mr Thomas accepted that he, in his role as Manager of KT at Horizon Power, both 'signed off' on engaging Mr Ian Saunders as a contractor and agreed that Horizon Power would pay TSIT \$64 per day for his time.
- [86] Mr Thomas provided the same explanation for why he used his TSIT email address to commit Horizon Power to paying \$900 per day in relation to Mr Saunders. His evidence was that "I don't know. Um, I played in and out of email accounts all the time".¹⁵

¹³ Email from A D Raspa to P M Thomas, 14 August 2010.

¹⁴ Email from P M Thomas to J H Malin, 6 October 2010.

¹⁵ P M Thomas transcript, public examination, 8 May 2018, p 23.

Again, the obvious explanation why Mr Thomas used his TSIT email address to commit Horizon Power to paying TSIT's agency margin fee was because he did not want Horizon Power to discover he had agreed to pay it. When asked whether that explanation was the correct one, Mr Thomas' evidence was that "it was so long ago, I don't know".¹⁶

[87] Mr Malin told the Commission he took Mr Thomas' email to be an instruction from Horizon Power that he put in place. When asked about whether the fact that the email was sent from Mr Thomas' TSIT email address rather than from his Horizon Power email address was something he considered, Mr Malin's evidence was that "I just followed instructions. Now that I know more, it's interesting, but I just followed instructions and did what I was meant to do."¹⁷

[88] The following year, in May 2011, Mr Thomas authorised engaging Mr Nicholas Friday as a contractor at Horizon Power. Using his TSIT email address, Mr Thomas emailed Mr Malin:

Jeff,

Nick Friday will make contact with you in the next couple of days as we have placed him at Horizon Power for a 3 month contract. His start date if possible will be Wednesday next week

His hourly rate will be \$60 per hour to him

Trusted margin 20%, so \$15 per hour plus CXC's margin cost to Horizon

\$83 per hour if my sums are correct

*All the best*¹⁸

[89] Mr Thomas accepted that he, in his role as Manager of KT at Horizon Power, both authorised engaging Mr Friday as a contractor and agreed that Horizon Power would pay TSIT \$15 per hour for his time.

[90] Mr Malin understood Mr Thomas' email to be instructions from Horizon Power to 'set' the arrangement up.

[91] About two months later, in July 2011, Mr Thomas again emailed Mr Malin, but this time using his Horizon Power email address:

Jeff,

We are going to take David T on at Horizon for a 3 month contract he will be in contact with you over the next couple of days, can you please set him up the same as Ian Saunders

*Thanks*¹⁹

¹⁶ Ibid 23.

¹⁷ J M Malin transcript, private examination, 30 April 2018, p 33.

¹⁸ Email from P M Thomas to J H Malin, 20 May 2011.

¹⁹ Email from P M Thomas to J H Malin, 25 July 2011.

- [92] Mr Thomas' evidence was that he meant Mr Malin to set Mr David Thavasuthan up as a contractor under the same 'commercial arrangement' as Mr Saunders. He agreed the commercial arrangement included TSIT's margin of \$64 per day.
- [93] Mr Thomas denied that in this case, he emailed Mr Malin from his Horizon Power email address because he did not have to expressly refer to TSIT's involvement or agency margin fee. Mr Thomas' explanation was that "there was never a conscious effort to jump between - it was just the email I had at that time".²⁰
- [94] There are serious difficulties in accepting that Mr Thomas, Manager of KT, interchangeably used his Horizon Power corporate email address and his privately owned company email address for the purpose of conducting Horizon Power business.
- [95] It is possible that from time to time, Mr Thomas accidentally used his TSIT email address to send an email in his capacity as Manager of KT at Horizon Power. However, Mr Thomas' suggestion that he repeatedly accidentally used his TSIT email address to email Mr Malin, but only in instances where he agreed Horizon Power would pay TSIT's agency margin fee, is implausible to the point of unbelief.
- [96] Finally, in June 2013, Mr Thomas authorised engaging Mr Medi Esmail as a contractor at Horizon Power. Mr Thomas agreed Horizon Power would pay TSIT an agency margin fee for his time. Mr Esmail was an employee of TSIT when he started at Horizon Power.
- [97] Mr Thomas frequently approved the timesheets recording the working hours of all five contractors. The contractor's timesheets were the basis upon which TSIT was paid.

For what purpose was Trusted Solutions IT paid the agency margin fees?

- [98] Mr Thomas' evidence was that TSIT was paid agency margin fees by Horizon Power in relation to those five contractors because they were "sourced through TSIT".²¹
- [99] Mr Thomas said he was 'probably' the person from TSIT who sourced those contractors because it would 'make sense' if it was him.²²

²⁰ P M Thomas transcript, public examination, 8 May 2018, p 25.

²¹ Ibid 12.

²² Ibid 12.

- [100] As to whether he sourced those five contractors 'through TSIT', Mr Thomas said:

When you were introduced those five contractors to Horizon Power, Mr Thomas, did you do so on behalf of TSIT?---I'm not too sure I ever made it clear that it was on behalf of TSIT. I don't know.

And why do you say you're not sure if you made it clear?---Well, I say, I say - I don't know. I never, I never kept any secret about my involvement in TSIT in any of the time I was at Horizon.

What about those five contractors. Did you tell them that you were introducing them to Horizon Power on behalf of TSIT?---I would say yes, but I - because that's what I would expect myself to do, but I can't remember.²³

- [101] Mr Malin gave evidence that in his more than 10 years' experience at CXC, he never came across the situation where a contractor was placed by a recruitment agency at an employer, and the contractor was unaware of the involvement of the recruitment agency.
- [102] Mr Crockford gave evidence to the Commission his engagement at Horizon Power had nothing to do with TSIT. Mr Crockford's evidence was that from his perspective, TSIT played no role in his recruitment.
- [103] Mr Thavasuthan provided a statement in which he said he has never had any involvement with TSIT and has never knowingly obtained employment through the company.
- [104] Mr Saunders informed the Commission that he is not aware of any reason why TSIT would receive a fee for his placement at Horizon Power.
- [105] Mr Friday provided information to the Commission that apart from CXC, he is not aware of any reason why payments would be made to another company as a result of his contract with Horizon Power.
- [106] Despite not being able to remember, Mr Thomas disagreed that Mr Crockford, Mr Thavasuthan and Mr Saunders were unaware of TSIT's involvement in their engagement at Horizon Power. In relation to Mr Friday, Mr Thomas' evidence was that he couldn't say.
- [107] The recollections of Mr Crockford, Mr Thavasuthan, Mr Saunders and Mr Friday are consistent with Mr Thomas' evidence that he is 'not too sure' that he 'ever made it clear' he had sourced those contractors 'on behalf of TSIT'.

²³ Ibid 13-14.

- [108] In the Commission's opinion, Mr Thomas directly or indirectly used his position at Horizon Power to benefit TSIT, a company in which he held a direct pecuniary interest.

Why did Mr Thomas engage Mr Esmail?

- [109] On 11 April 2013, Mr Thomas, using his Horizon Power email address, emailed Mr Malin to let him know Mr Friday and Mr Thavasuthan 'will be moving directly to Horizon Power over the coming weeks'.²⁴ In his reply, Mr Malin stated he hoped Mr Thomas was well, and queried what Mr Thomas meant by 'directly' to Horizon Power. Mr Thomas replied 'Not really but it is what it is'.²⁵ Mr Thomas explained in his reply that he meant Mr Friday was likely to secure an internal role and Mr Thavasuthan had started his own consultancy business and had registered himself directly with Horizon Power. Mr Thomas said he had asked Mr Friday and Mr Thavasuthan to give Mr Malin four weeks' notice.
- [110] In his evidence to the Commission, Mr Thomas said he told Mr Malin that he was 'not really' well because of the 'loss of money' in agency margin fees to TSIT.
- [111] When asked if the reason he requested that Mr Friday and Mr Thavasuthan provide Mr Malin with four weeks' notice, was so TSIT could receive four more weeks of agency margin fees, Mr Thomas' evidence was "Maybe. I don't know what was on my mind at that point".²⁶
- [112] Almost four weeks to the day after Mr Thomas emailed Mr Malin, on 9 May 2013, Mr Thomas emailed Mr Noone and Mr Raspa. Mr Thomas said 'I think I have a full time role at Horizon for Medi [Mr Esmail] for the next 8 weeks which will help with shortfall'.²⁷
- [113] Mr Thomas denied in evidence that he was referring to the shortfall in TSIT's income as a result of the loss of the agency margin fees for Mr Friday and Mr Thavasuthan.
- [114] Mr Thomas' evidence was he was referring to a shortfall in time. He said he meant that Mr Esmail had capacity to work at Horizon Power.

²⁴ Email from P M Thomas to J H Malin, 11 April 2013.

²⁵ Ibid.

²⁶ P M Thomas transcript, public examination, 8 May 2018, p 64.

²⁷ Email from P M Thomas to A D Raspa and P A Noone, 9 May 2013.

- [115] Mr Thomas acknowledged that the inference to be drawn from his emails of 11 April 2013 and 9 May 2013, is that he decided to engage Mr Esmail as a contractor at Horizon Power so TSIT could make money to make up for the loss of income relating to Mr Friday and Mr Thavasuthan. However, Mr Thomas said he did not believe that was the case.
- [116] Mr Thomas' explanation that he was referring to a shortfall in time is implausible. Mr Thomas accepted he 'maybe' requested that the contractors provide four weeks' notice so TSIT could receive four more weeks agency margin fees. It is clear that Mr Thomas was referring to a shortfall in TSIT's income. The only reasonable inference to be drawn from Mr Thomas' selection of Mr Esmail as a contractor is that Mr Thomas engaged him for the purpose of benefiting TSIT.
- [117] Mr Thomas' denial that this was the case was unconvincing. When asked whether his engagement of Mr Esmail had anything to do with his desire for TSIT to receive the fees, Mr Thomas' evidence was "I don't think that was a conscious effort at that time".²⁸

The extent of the corruption

- [118] Records in the possession of the Commission indicate that between August 2010 and September 2013, Horizon Power paid TSIT a total of \$206,739.56 in agency margin fees for Mr Crockford, Mr Saunders, Mr Friday and Mr Thavasuthan's time. Mr Thomas' evidence was that while he "never watched the bank account", that figure "sounds about right".²⁹
- [119] Records in the possession of the Commission indicate that Horizon Power paid TSIT a total of \$122,787.50 between July 2013 and June 2014 for Mr Esmail's time. However, because Mr Esmail was a TSIT employee, out of that amount, TSIT paid Mr Esmail's daily rate. The Commission is not in a position to determine the amount of profit TSIT made as a result of fees that it was paid in respect of Mr Esmail.
- [120] CXC paid TSIT's agency margin fees into TSIT's ANZ bank account.
- [121] The TSIT bank account was linked to the Thomas Family Trust and the Raspa Family Trust.

²⁸ P M Thomas transcript, public examination, 8 May 2018, p 25.

²⁹ Ibid 31.

- [122] Mr Noone's evidence was that as TSIT's Commercial Director, about once every six months he paid Mr Thomas, Mr Raspa and himself in equal shares, what they referred to as Directors' fees. Mr Noone told the Commission those fees "represent a payment from the company that we think at the time the company has funds available to give some money back to the people who have been working in it".³⁰
- [123] Mr Thomas accepted that between August 2010 and June 2014 he received electronic payments of directors' fees from the TSIT bank account into his private bank account.

³⁰ P A Noone transcript, private examination, 30 October 2017, p 12.

CHAPTER THREE

The conflicts of interest: Did anyone else know?

Horizon Power's Code of Conduct and conflict of interest policies

- [124] Horizon Power has a Code of Conduct that deals with conflicts of interest. That Code of Conduct is supported by a conflict of interest policy. Since 2010, Horizon Power's Code of Conduct expressly applied to all of Horizon Power's employees, contractors and consultants. The Code of Conduct is reviewed and updated from time to time.
- [125] The Code of Conduct in force when Mr Thomas started at Horizon Power stated that Horizon Power does 'not allow any actual or perceived conflict of interest to affect Horizon Power operations'.³¹
- [126] The Code of Conduct is brought to the attention of new Horizon Power employees by sending them a copy with their employment pack before commencing, and by way of forming part of the online induction process. In 2010, the Code of Conduct formed part of the induction that formal leaders provided to new employees.
- [127] On 28 June 2010, Mr Thomas signed a 'Code of Conduct acknowledgment advice' as confirmation that he had 'received and read the Horizon Power Code of Conduct'.
- [128] The conflict of interest policy came into effect in 2006. Revised versions were released in 2011 and 2013. The policy specifies that all Horizon Power personnel must declare any actual, perceived or potential conflicts of interest to their immediate supervisor.³² All personal or familiar relationships where one person exercises some form of control of responsibility over the other must be disclosed to a General Manager.³³ If the Supervisor or General Manager determines that the matter involves a potential or actual conflict of interest, the matter must be reported to the Company Secretary for recording in the Horizon Power conflicts of interest register.³⁴
- [129] The conflict of interest policy is supported by a flow chart created in August 2011. The flow chart sets out the obligations of the parties involved in declaring a conflict of interest. The flow chart confirms it is the officer or employee's duty to identify the potential or actual conflict of interest and raise it with their formal leader.

³¹ Horizon Power Code of Conduct, February 2010, p 6.

³² Horizon Power Conflict of Interest, December 2006, p 4.

³³ Ibid.

³⁴ Ibid.

- [130] As part of his induction process, on 27 April 2010, Mr Thomas signed an induction checklist that acknowledged he understood and agreed to adhere to Horizon Power's policies and procedures.
- [131] As Company Secretary, Mr Tovey is the custodian of Horizon Power's conflicts of interest register. Mr Tovey's evidence was that the register has been in use since the inception of Horizon Power in 2006, and captures both employees and contractors.
- [132] Mr Tovey informed the Commission that the Horizon Power conflicts of interest register does not include any declarations of actual or perceived conflicts of interest for Mr Thomas.
- [133] While Mr Thomas accepted that he signed "a little piece of paper" acknowledging he had read Horizon Power's Code of Conduct, his evidence to the Commission was that he does not think he ever read it.³⁵ Despite the fact that he was a senior manager, Mr Thomas was not aware of the conflict of interest guidelines. As to why not, Mr Thomas' evidence was that it was an incredibly busy time, and he didn't afford himself "the time to go and look".³⁶
- [134] Despite having not read either the Code of Conduct or conflict of interest policy, Mr Thomas accepted Mr Tovey's evidence that his ownership of TSIT was a declarable conflict of interest.
- [135] Mr Thomas also accepted that TSIT receiving payments from Horizon Power in the form of ongoing agency margin fees was a declarable conflict of interest.
- [136] When Mr Raspa was engaged as a contractor at Horizon Power, the 2013 version of the Code of Conduct was in force. The 2013 version, which also expressly applied to contractors, was the same as the 2010 version as it related to conflicts of interest.
- [137] The consultant agreement between Mr Raspa and Horizon Power specified that Mr Raspa, as the consultant, shall inform himself fully with the latest editions of Horizon Power's policies and guidelines, including the Code of Conduct.
- [138] In that agreement, Mr Raspa warranted that he had no conflicts of interest with Horizon Power and that none would arise by the formation of the contract. He agreed that he would ensure that no conflict of interest with Horizon Power arises during the contract.

³⁵ P M Thomas transcript, public examination, 8 May 2018, p 33.

³⁶ Ibid 33.

- [139] Mr Tovey confirmed that Horizon Power's conflict of interest register does not include any declarations of actual or perceived conflicts of interest for Mr Raspa.
- [140] While Mr Raspa accepted in evidence that he signed the consultant agreement, he was unaware the agreement warranted that he had no conflict of interest with Horizon Power and that none would arise by the formation of the contract. His evidence was that he didn't read it.
- [141] Mr Raspa did not acquaint himself with Horizon Power's policies. He cannot recall reading the Code of Conduct. He was unaware that the Code of Conduct applied to contractors. He was unaware of the requirements of the Code of Conduct and conflict of interest policy in relation to declaring a conflict of interest.

Was a conflict of interest disclosed by Mr Thomas?

- [142] Mr Thomas gave evidence to the Commission that when he was interviewed by Mr Simon Duggan and Mr Sam Osborne for his position as a Service Delivery Manager at Horizon Power, he told them "of my involvement in TSIT"³⁷ Mr Thomas said that he was interviewed in January 2010, before TSIT was registered. Mr Thomas said he was "just making sure that they was aware that I had this ... involvement".³⁸ The 'involvement', Mr Thomas said was "at the time we was, we was putting together a solution to build a new company".³⁹
- [143] Mr Duggan provided the Commission with a statement in which he said that outside business interests were not covered in Mr Thomas' interview for his position at Horizon Power. Mr Duggan's recollection was that Mr Thomas did not disclose any outside business interests or disclose any conflicts of interest with the role. Mr Duggan said he would recall if 'an outside business interest or conflict of interest was disclosed as I don't know of any interviews I have been involved with where this was discussed. This sort of thing would stick in my mind, as it is not normal.'⁴⁰
- [144] Mr Thomas also said that he had 'many conversations' with his immediate supervisor, Mr Deacon, "around the company and what we was doing".⁴¹ Mr Thomas said the first time he mentioned TSIT to Mr Deacon was within the first four weeks of joining Horizon Power, when he voluntarily raised

³⁷ Ibid 15.

³⁸ Ibid 16.

³⁹ Ibid 16.

⁴⁰ Statement of S P J Dugan, 27 February 2018, p 2.

⁴¹ P M Thomas transcript, public examination, 8 May 2018, p 17.

the subject. Mr Thomas said he told Mr Deacon "about the company" and "an approach to getting things done".⁴²

[145] As to what he told Mr Deacon about the company, Mr Thomas said that he named TSIT and said he was an owner of the company. Mr Thomas said he could not recall what he told Mr Deacon about what he was proposing to get 'things done'. Mr Thomas could not recall what Mr Deacon said in response, but he did not tell Mr Thomas to do anything as a result.

[146] As to the detail of what Mr Thomas declared to Mr Deacon:

Did you declare to Mr Deacon during that conversation that you were a Director of TSIT?---I think I probably said an owner.

Did you declare to Mr Deacon that TSIT was providing or intending to provide contractors to Horizon Power and that you would both be involved in introducing those contractors and then having some responsibility over them?---Um, I would - I don't know that I went to that level of detail.

You say you mentioned the name of the company to Mr Deacon?---Yeah.

Did you declare to Mr Deacon that you had agreed, or you intended to agree, that Horizon Power would pay TSIT an agency margin fee for the time of those contractors?---Again, I don't know if I went into specific details.

That's a pretty important detail though, isn't it, Mr Thomas?---Yes.

...

There's a difference between saying, "I'm a Director of an IT company" and saying, "And by the way, I'm approving that that IT company get margin payments every time that it employs a person, and I also employ the people for the job". Can you see the difference?---I can now. Hindsight is lovely, at that time I was working 14, 15-hour days - - -

Maybe, but you're an experienced manager. Do you say it never crossed your mind that people above you might need to know that you were paying out Horizon Power money, via CXC for yourself?---Probably, now I'm looking at it.⁴³

[147] Mr Deacon gave evidence to the Commission that while he was aware Mr Thomas had a number of investments and business partnerships, he cannot recall ever having a conversation with Mr Thomas about a conflict of interest.

[148] Mr Deacon denied that Mr Thomas had any discussions with him about any potential conflict of interest between his role at Horizon Power and any business interests of his. In fact, Mr Deacon could not recall ever having any discussions with Mr Thomas about TSIT. Prior to the

⁴² Ibid 17.

⁴³ Ibid 37-39.

Commission's investigation, Mr Deacon cannot recall having ever heard the name.

- [149] Mr Thomas disagreed with Mr Deacon's evidence. He said that "we had many conversations about what I was doing. Um, so I can only say I disagree".⁴⁴

And again, when you say what you were doing, what did you actually articulate that you were doing?---So, er - er, the people that I was using and how I was using them.

*Except nothing about TSIT receiving an agency margin fee for those people?---I - I can't remember whether I - I - I don't think I spoke about dollars, but I'm pretty sure I spoke about TSIT.*⁴⁵

- [150] While Mr Thomas accepted that no conflicts of interest relating to him were recorded in the Horizon Power conflicts of interest register, he denied that, at the time, he was aware that his conflict regarding TSIT was not recorded. Telephone conversations involving Mr Thomas intercepted by the Commission are instructive.

"Seek forgiveness rather than approval"

- Paul Thomas

- [151] In an intercepted telephone call between Mr Thomas and Mr Noone on 25 January 2017, Mr Thomas raised a proposal to create a new solar energy company that will "probably be going after some work at Horizon Power".⁴⁶ Mr Thomas and Mr Noone discussed whether or not Mr Thomas would declare his involvement in that business to the utility. Mr Thomas said "after it's all happened" he will "do one of my seek forgiveness rather than approval positions":

THOMAS: very similar to what I did with the Trusted business right

NOONE: Yep, yep.

*THOMAS: Uhm, but that's not on the books that's a different thing.*⁴⁷

- [152] Mr Thomas' evidence was that he could not recall what he did with TSIT that was similar to seeking forgiveness rather than approval. Mr Thomas said he didn't think he "did anything with the Trusted business that was similar to that"⁴⁸ and he does not know why he said it. Despite the telephone call taking place only 15 months earlier, Mr Thomas' evidence

⁴⁴ Ibid 39.

⁴⁵ Ibid 40.

⁴⁶ Ibid 41.

⁴⁷ Ibid 44.

⁴⁸ Ibid 46.

was "I don't know what I'm talking about there ... With TSIT, I - I believed I spoke very openly about it. Um, this one doesn't sound like that".⁴⁹

[153] Mr Thomas said that he does not think he has ever sought forgiveness rather than approval at Horizon Power. He denied knowing why he said those words.

[154] In an intercepted telephone conversation between Mr Thomas and Mr Raspa on the same day, Mr Thomas recounted his discussion with Mr Noone:

RASPA: What'd he sound like?

THOMAS: he, he, he went through all of the normal well Thommo you've exposed yourself and blah blah blah. I said look and I know that. I said but in, in a essence I'll, there won't be a nominated Director and the shareholder's will be anonymous through Paul Hesford's business.

RASPA: Yeah.

THOMAS: I said uhm, I said but there will be a point if, if we win anything that uhm I would then say, I'd seek forgiveness rather than approval.

RASPA: Yep, done.

THOMAS: Right, I would go to the business and say oh fuck, there's a problem here, I'm a shareholder and then look at it and just say what the fuck. I'll say yeah but that's just you know, that, that's back end of that is my family trust as a shareholder. I said I've got no, I'll, you know I'll make all the bull, normal bullshit up but this is what I did when I, when TSIT was caught.⁵⁰

[155] Mr Thomas' evidence was that he does not know what he meant when he said "when TSIT was caught". Mr Thomas said he does not "know what it - what I've done or I'm talking about there".⁵¹ Mr Thomas said he doesn't know what 'normal bullshit' he made up. Mr Thomas assumed it related to a 'piece of work' TSIT "bid on, and, ah, an existing supplier to Horizon Power, ah, made claims against our bid".⁵²

[156] Later in his conversation with Mr Raspa, Mr Thomas said:

... and, and more importantly you know, if we get removed some of the old, I'm not saying old people but you know newer blood they'd have no fucking concept as to what we've been up to for many years anyway.⁵³

⁴⁹ Ibid 46.

⁵⁰ Ibid 54.

⁵¹ Ibid 59.

⁵² Ibid 47.

⁵³ Ibid 59.

- [157] When asked what he had been up to for many years, Mr Thomas' evidence was that he was referring to the "activity that's been happening within Horizon Power during that period".⁵⁴ Mr Thomas conceded in evidence that "for the period those contractors was on board", that 'activity' was his use of the authority Horizon Power gave him to engage contractors which resulted in TSIT being paid agency margin fees.⁵⁵
- [158] In light of Mr Thomas' inability to explain what he was talking about, the only inference to be drawn from those telephone calls is that Mr Thomas wanted to conceal from Horizon Power any association that might put him in a position of conflict, including TSIT.

Efforts to conceal Mr Thomas' directorship and ownership of Trusted Solutions IT

- [159] In mid-2013, TSIT tendered to win a contract for managed IT services at the Harry Perkins Institute of Medical Research (Harry Perkins).⁵⁶ On 16 October 2013, the IT Manager at Harry Perkins, Mr Andy Crowhurst, emailed Mr Thomas and Mr Raspa a list of concerns he had received 'that would indicate that TSIT are potentially not eligible to contract for the IT Managed Services at the Perkins Institute'.⁵⁷
- [160] Those concerns included that 'TSIT is a privately owned company and run by employees of a Government Agency (Horizon Power)'.⁵⁸ Mr Thomas told the Commission he assumed the information that grounded the concerns raised by Mr Crowhurst was provided to him by R1i, a competitor of TSIT.
- [161] On 16 October 2013, Mr Thomas was involved in drafting TSIT's reply to Mr Crowhurst. On 17 October 2013, Mr Raspa replied to Mr Crowhurst on behalf of TSIT. That reply included the response that 'TSIT director is Paul Thomas, his role is non-executive, he has no day to day management, he is simply an investor'.⁵⁹ In his evidence to the Commission, Mr Thomas accepted the only part of that statement that was true was that Mr Thomas was a TSIT Director. The rest of that statement was a lie.
- [162] That same day, Mr Raspa emailed Mr Noone to say 'Based on events we are doing a direct swap of Paul's [Hesford] Company position and my

⁵⁴ Ibid 61.

⁵⁵ Ibid 62.

⁵⁶ Formerly Western Australian Institute for Medical Research (WAIMR).

⁵⁷ Email from A Crowhurst to P M Thomas and A D Raspa, 16 October 2013.

⁵⁸ Ibid.

⁵⁹ Email from A D Raspa to P A Noone, 17 October 2013.

hidden position. I'll call you soon. Its in effect by COB today.¹⁶⁰ The subject of the email was 'Directorship'.

[163] Mr Thomas accepted the 'events' that Mr Raspa was referring to was Mr Crowhurst questioning TSIT's connection to Horizon Power.

[164] Australian Securities and Investments Commission (ASIC) records show that on that same day, 17 October 2013, Mr Thomas ceased to be a Director of TSIT. That same day, Mr Thomas transferred his one third share in the company to TSIT's accountant, Mr Paul Hesford.

[165] Mr Hesford practices as an accountant trading as Adamo Accounting. Mr Raspa and TSIT were long-standing clients.

[166] Mr Thomas gave a confusing explanation as to why the changes to the company's directorship and shareholdings were made:

The ASIC records held by the Commission show that you ceased to be reflected as a Director of TS Recruitment, trading as TSIT, on 17 November (sic) 2013, does that sound right?---That's about right.

And why was that change made?---Um, there was - there was a point during Horizon Power where we had James Deacon, Geoff White and myself, all senior IT leaders and Horizon Power, at the end of transformations and all that type of stuff, wouldn't support three senior people. Um, during that period of later 2013, it was becoming apparent, because I think - I think it was at the time, that Geoff White had moved into a different role. He - and - and I'd invested so much of my life into Horizon Power to make sure it was really successful, that I - I - I - I wanted to be there for - I could see myself being there forever.

So how does that relate to making a change about your directorship over TSIT?---Cos I didn't want any - any sort of reason for things - well, cos - cos I've - I've - I'd - I think I'd made a decision in my head that I - I didn't - I wasn't going to pursue TSIT per se, I was going to try and find my career within Horizon Power.

...

And why did you transfer your one share to Mr Hesford on that same day?---Oh, I didn't actually make that change. Um, he - oh, they did. And - and I'm - I wasn't really clear as to that share arrangement moving.

Who's "They"?---As in Paul Hesford's team.

They made that change without your consent?---Oh, I've - I've obviously consented somewhere, cos I've - I've probably signed something, but I wasn't clear, at that point, what that actually meant.

Well, you would've been clear that you were giving up your one third share on - - - ?---Oh, yes - - -

- - - the ASIC register?---Yes - yeah - yeah.

⁶⁰ Email from A D Raspa to P A Noone, 17 October 2013.

Okay. So why did that happen?---Er, I think I said - I thought I'd answered that? Cos I wanted to focus on Horizon Power.

*All right. But I thought you were saying you don't understand or don't know why your share was transferred to Mr Hesford?---Well, it - particularly Mr Hesford, um, I assume - oh, look, I don't - yeah.*⁶¹

- [167] Mr Noone's evidence to the Commission was that the changes to the company structure were made to create 'some kind of distance' from TSIT or 'anonymity'.⁶²
- [168] Mr Hesford gave evidence that he agreed to hold Mr Thomas' share as a non-beneficial owner. Mr Hesford held the share on trust for its beneficial owner, the Thomas Family Trust. Mr Hesford said that holding shares is something he does for clients if they ask him to, but he would not be the owner of the share.
- [169] Mr Thomas denied the changes were made in order for him to conceal his involvement in TSIT. He denied that his share was transferred to Mr Hesford to make the true owner of that share anonymous. He maintained that the purpose of the changes was to 'remove' himself from TSIT.
- [170] While Mr Thomas accepted that you 'could draw' the conclusion he concealed his involvement in the company because questions had started to be raised about the position of conflict he was in, working both for Horizon Power and TSIT, he denied that was the case. He said that "I saw me doing that more - one, I've wanted to stay with Horizon Power and we was going to market for a whole bunch of tenders during that period".⁶³
- [171] On 17 October 2013, Mr Thomas ceased to be reflected on TSIT's ASIC record as a Director and shareholder. Mr Thomas accepted he continued to receive payments from TSIT after that point.
- [172] Mr Thomas agreed with Mr Noone's evidence that from a payment of dividends point of view, Mr Thomas' status in the company did not change after October 2013.
- [173] Mr Noone gave evidence that he could not determine any difference in Mr Thomas' involvement in TSIT after he resigned as a Director. While Mr Thomas disagreed with Mr Noone's assessment, he accepted that following his resignation as a Director, he maintained the position title of Sales Director. He accepted that in 2016 he held himself out as being

⁶¹ P M Thomas transcript, public examination, 8 May 2018, pp 68-69.

⁶² P A Noone transcript, private examination, 30 October 2017, p 15.

⁶³ P M Thomas transcript, public examination, 8 May 2018, p 77.

TSIT's Sales Director in a tender for TSIT to win work. He said that after 17 October 2013, he "continued to help and support" TSIT.⁶⁴

- [174] The evidence overwhelmingly establishes that Mr Thomas ceased to be a Director of TSIT and transferred his one third share to Mr Hesford for the purpose of concealing his involvement in the company. There is no doubt that Mr Thomas effectively retained his one third share in TSIT which was held on trust for him by Mr Hesford and was effectively a shadow Director.

Opinion as to whether Mr Thomas declared a conflict of interest

- [175] There are grave difficulties accepting Mr Thomas' evidence that he disclosed any meaningful information to Mr Deacon about the extent of his involvement with TSIT. Mr Thomas' evidence is difficult to accept because it is inconsistent with his telephone calls with Mr Noone and Mr Raspa. As Mr Thomas acknowledged in evidence, the call with Mr Noone does not 'make it sound' like he 'spoke very openly about TSIT'.⁶⁵
- [176] The only inference to be drawn from those telephone calls is that something about TSIT became known by someone in or connected to Horizon Power. In response, Mr Thomas dishonestly pretended he was nothing more than a mere investor in the company. The only reasonable explanation as to why Mr Thomas would have done so is because he wanted to conceal his true involvement in TSIT.
- [177] Mr Thomas' evidence is also inconsistent with his efforts to conceal his involvement in TSIT. The only reasonable inference to be drawn from Mr Thomas' attempts to cease to be associated with TSIT on any publicly available records is because his true involvement in TSIT had not been disclosed to Horizon Power.
- [178] By his own admission, Mr Thomas did not think he spoke to Mr Deacon about 'dollars' and does not recall if he went into the 'specific details'. Mr Thomas did not disclose to Mr Deacon he had agreed that Horizon Power would pay agency margin fees to a company that he owned.
- [179] On that basis, even if Mr Deacon's recollection is incorrect and Mr Thomas did disclose to him that he was the owner of TSIT, that declaration was misleading and incomplete. Any such declaration would have been designed to conceal the true arrangement Mr Thomas had set

⁶⁴ Ibid 81.

⁶⁵ Ibid 46.

up between Horizon Power and TSIT. Moreover, the obvious conflict was never documented.

Did Mr Raspa declare a conflict of interest?

- [180] In his evidence to the Commission, Mr Raspa accepted that TSIT continued to receive agency margin fees for contractors after he started at Horizon Power. Mr Raspa acknowledged this was a conflict of interest.
- [181] Mr Raspa's evidence was that he did declare the conflict of interest when he started at Horizon Power. He said he verbally declared it to the person who 'on-boarded' him, Mr Thavasuthan. Mr Raspa told the Commission that Mr Thavasuthan told him to speak to his line manager, Mr Thomas. Mr Raspa was unable to recall what conversation he had with Mr Thomas.
- [182] Through TSIT, Mr Raspa had been receiving agency margin fees for Mr Thavasuthan's work at Horizon Power. Mr Thomas was his business partner. It strains credulity for Mr Raspa to suggest that reporting a conflict of interest relating to TSIT to TSIT's co-owner, was a genuine attempt to declare the conflict to Horizon Power.
- [183] Mr Raspa denied that as a result of Mr Crowhurst's email of 16 October 2013, he had been made aware of the potential conflict between TSIT and Horizon Power. Mr Raspa's evidence was he did not think that was a conflict for him as a contractor.

Opinion as to whether Mr Raspa declared a conflict of interest

- [184] Mr Raspa's evidence that he declared a conflict in relation to TSIT when he was 'on-boarded' is at odds with his evidence that he was unaware his agreement warranted he had no conflict of interest with Horizon Power. It is at odds with his evidence that he did not think a conflict of interest between TSIT and Horizon Power would apply to him as a contractor.
- [185] Even if Mr Raspa did speak with Mr Thomas about his conflict involving TSIT, verbally declaring a conflict of interest to a person with whom you share that conflict is not a legitimate or frank declaration. It cannot absolve its maker.

Opinion on serious misconduct

- [186] A conflict of interest is not, of itself, serious misconduct. Conflicts often arise and must be managed appropriately.

- [187] Failure to declare a conflict of interest is not, of itself, serious misconduct. It may however, as in this case, be evidence of serious misconduct along with other evidence including the clandestine nature of the arrangements.
- [188] Serious misconduct occurs when a public officer corruptly takes advantage of their office or employment to obtain a benefit for himself or herself or for another person.
- [189] The Commission forms an opinion of serious misconduct by Mr Thomas in corruptly using his position to ensure TSIT would receive a margin payment for people who were responsible for employment at Horizon Power. Mr Thomas shared in the profits of that payment.

CHAPTER FOUR

The common use arrangement for information and technology services

- [190] A common use arrangement (CUA) is an aggregated supply arrangement that enables public authorities to buy goods or services.
- [191] In 2015 the Department of Finance (DoF) sought applications from suppliers to be included as approved suppliers for the CUA for Information and Communication Technology (ICT) Services.
- [192] The CUA is mandatory. Western Australian government agencies were required to purchase from approved suppliers if they purchased ICT services valued at over \$50,000.
- [193] On or about 18 June 2015, TSIT submitted an application to DoF to be included as a supplier in the CUA. TSIT's application was the result of collaboration between Mr Thomas, Mr Raspa, Mr Noone and TSIT's office administrator, Ms Claire Morris. Ms Morris allocated Mr Thomas the task of reviewing the tables showing examples of services provided by TSIT, including an example relating to a 'digital strategy' project.
- [194] Mr Noone's evidence was TSIT's application for inclusion in the CUA was "a big thing, it was probably considered an important thing for the company".⁶⁶ It was important because it "allows you to sell into the West Australian Government, so, you know, to be able to get it, even from a tender point of view, more tenders would flow your way. You get [to] bid on more work".⁶⁷
- [195] Mr Thomas agreed that "it's important to any small company to be part of a government buy panel", because "you can actually do work within the government".⁶⁸

Trusted Solutions IT falsely claims to have completed a project at Horizon Power

- [196] DoF assessed potential suppliers for the CUA based on organisational capacity and experience. Applicants were required to set out their relevant experience.

⁶⁶ P A Noone transcript, private examination, 30 October 2017, p 27.

⁶⁷ Ibid.

⁶⁸ P M Thomas transcript, public examination 8 May 2018, pp 82-83.

- [197] As its second example, TSIT's application included a 'digital strategy' project for Horizon Power that was completed by Mr Greg Davidson in 2014. The application stated the contract value was \$330,000.
- [198] TSIT's application stated that Mr Davidson had taken on a 'consulting role' for TSIT. The application represented that Mr Davidson's work was an example of work TSIT had performed at Horizon Power. That was a lie.
- [199] While Mr Davidson had undertaken the digital strategy project at Horizon Power, Mr Thomas admitted in evidence that Mr Davidson had done so as "an independent consultant working for his own company".⁶⁹ Mr Thomas accepted that it was because of his position as Manager of Technology at Horizon Power that he was aware that Mr Davidson had been contracted to carry out the digital strategy project. Mr Thomas conceded that Mr Davidson's work at Horizon Power had nothing to do with TSIT.

"Man, this company just got a good wrap"

- Paul Thomas

- [200] TSIT's application named Mr Thomas, in his position as Manager of Technology at Horizon Power, as a referee for the work TSIT falsely claimed Mr Davidson completed for TSIT at Horizon Power.
- [201] DoF did not know that Mr Thomas was involved in TSIT. There was no indication in TSIT's application that Mr Thomas was part of TSIT or that he had been instrumental in drafting the application.
- [202] On 8 July 2015, Ms Jessie Yeow, Senior Procurement Manager at DoF emailed Mr Thomas advising him that TSIT had nominated him to be a referee for the work it had completed at Horizon Power. She asked him to complete a referee report.
- [203] Mr Thomas provided a positive reference for TSIT. He forwarded Ms Yeow's email to Mr Raspa stating, 'Man this company just got a good wrap 😊'.⁷⁰
- [204] Mr Thomas conceded that he provided TSIT with a positive reference without DoF being aware of his involvement with TSIT.
- [205] On 4 December 2015, Ms Yeow emailed Mr Raspa to advise him that DoF had accepted TSIT's application for the CUA. TSIT was approved to provide ICT Services for the whole of government for two years from 1 February 2016 to 31 January 2018.

⁶⁹ Ibid 85.

⁷⁰ Email from P M Thomas to A D Raspa, 8 July 2015.

- [206] Ms Yeow gave evidence to the Commission that, had she known Mr Thomas was connected with TSIT, she would not have accepted his reference. Ms Yeow said the reference "wouldn't be independent, that would definitely be a conflict of interest".⁷¹
- [207] If DoF had not accepted Mr Thomas' reference, it is very unlikely TSIT would have been included as a supplier for the CUA.
- [208] Mr Thomas admitted that it 'might be the case' that he used his position as Manager of Technology at Horizon Power to obtain the benefit of inclusion in the CUA for TSIT.⁷²

Opinion on serious misconduct

- [209] Mr Thomas' reference was a corrupt misuse of his position with Horizon Power. Its purpose was to deceive DoF as to TSIT's ability to provide services to government. It supported the lie about Mr Davidson. It was done to benefit TSIT so it would obtain government work.
- [210] The Commission has formed an opinion of serious misconduct by Mr Thomas.

⁷¹ S H Yeow transcript, private examination, 30 April 2010, p 33.

⁷² P M Thomas transcript, public examination, 8 May 2018, p 88.

CHAPTER FIVE

Mr Thomas engages his wife as a contractor

- [211] On 28 April 2017, Horizon Power Technology Training Officer Mr Alladean Chidukwani received an email from Mr Thomas. Mr Thomas rarely emailed Mr Chidukwani. Mr Chidukwani's formal leader reported to Mr Thomas, so information from Mr Thomas would often be communicated to Mr Chidukwani via his formal leader.
- [212] Mr Chidukwani was surprised to receive Mr Thomas' email for two reasons. First, Mr Thomas was on holiday in Bali. Second, Mr Thomas was asking about a project to migrate the content from Horizon Power's learning guide to the learning management system platform. That was surprising to Mr Chidukwani because 'not long before that', Mr Thomas had "refused to fund that migration".⁷³
- [213] Mr Thomas disagreed he had previously refused Mr Chidukwani's application to fund the project to migrate the content (the content migration project).
- [214] When Mr Thomas returned from Bali, he told Mr Chidukwani he had decided to fund the content migration project. Mr Thomas' evidence was that it was towards the end of the financial year and he had funding available to finance the project. Contractors would have to be engaged to work on the project because the IT department did not have capacity.
- [215] Given that the content migration project was not being undertaken as a formal project, there was no allocated project manager. Mr Chidukwani assumed that role. In that capacity, his evidence was that he expected to select the contractors that would work on the project. In selecting those contractors, Mr Chidukwani would have looked for someone with at least three years' experience in e-learning development and an advanced diploma or degree in multimedia design. His expectation was that the contractors would work full-time.
- [216] Mr Thomas agreed that he asked Mr Chidukwani to select the contractors to work on the project, of which there were to be two.
- [217] Mr Chidukwani's evidence was that when Mr Thomas returned from Bali, he approached Mr Chidukwani and indicated "he was looking at getting his wife back to work". Mr Thomas 'highlighted' that Mrs Carolynne Thomas had some experience in developing e-learning material while working at schools. Mr Chidukwani stated he responded

⁷³ A Chidukwani transcript, private examination 1 May 2018, p 28.

to Mr Thomas by saying that if he believed Mrs Thomas had the requisite skills, "can you get her to send me a CV and then I can have a look?".⁷⁴ Mr Thomas agreed with Mr Chidukwani's recollection. Mr Thomas told the Commission that Mrs Thomas had experience in e-learning or content development "developing programs for kids", but "not in - in the sort of commercial world".⁷⁵

[218] Mr Chidukwani informed the Commission that he never received Mrs Thomas' CV. Mr Thomas accepted Mr Chidukwani's evidence. He said that he thought he had provided Mrs Thomas' CV, "but maybe I didn't".⁷⁶

[219] On 5 May 2017, Mr Thomas sent Mr Chidukwani an email:

As discussed here's Carolynne's email address and her phone number is [redacted] have explained that we have seating issues so will most probably need to work from home most of the time. My wife has a long history in education from teaching kids in a class room to writing curriculum and building training for programs to rollout new teaching practices like First Steps.

I have asked her to be ready for Monday to start and initially think the recutting of the static content from Learning Guide to the new system is the place to begin.

We will also need to think about how we produce and rollout training for Field Reach, One Drive (and the removal of all other shared drives), etc etc.

I have used Lyn's day rate as a budget figure and will get Carolynne to register with CXC.

*Let me know if you have any questions, but as normal we have a lot to do in a very short period of time.*⁷⁷

[220] Mr Chidukwani's evidence was that he was surprised to learn Mr Thomas had asked Mrs Thomas to be ready for a Monday start. He does not recall having any other discussion with Mr Thomas about Mrs Thomas between asking for her CV and receiving that email. Mr Chidukwani had not agreed to engage Mrs Thomas as a contractor.

[221] Mr Chidukwani did not understand Mr Thomas' reference to 'seating issues'. There were free desks available in the IT department. Mr Chidukwani's view was that there was no need for the contractor to work from home, and he in fact insisted he wanted the "developers to work in the office".⁷⁸

⁷⁴ Ibid 34.

⁷⁵ P M Thomas transcript, public examination 8 May 2018, p 99.

⁷⁶ Ibid 96.

⁷⁷ Email from P M Thomas to A Chidukwani, 5 May 2017.

⁷⁸ A Chidukwani transcript, private examination 1 May 2018, p 35.

[222] The 'Lyn' referred to in Mr Thomas' email, was Ms Lyn Gibney. Ms Gibney was a contractor Horizon Power had previously engaged to create content for Horizon Power's performance support tool. Mr Chidukwani's view was that it was not appropriate for Mr Thomas to have used 'Lyn's day rate as a budget figure'. The appropriate day rate is set by going 'to market, find out what's being charged ... during that time and then that's - we'd go with that'.⁷⁹ Mr Chidukwani's understanding was that the day rate referred to by Mr Thomas was set in 2012 "when there was high demand for skills, um, and we're paying a premium for - for contractors, but things had since changed".⁸⁰

[223] Mr Thomas accepted that he made the decision to engage his wife as a contractor:

But you made the decision, Mr Thomas, didn't you, to engage Ms Thomas as a contractor?---I - I did, yeah.

So it was not Mr Chidukwani's call, it - - -?---If - if - - -

- - - was a decision you made?--- - - Mr - if Alladean had said, "She's not the right person" then she wouldn't have got engaged.⁸¹

[224] Mr Thomas accepted that he did not declare to his general manager that he had engaged his wife to work at Horizon Power.

[225] Ms Gibney was engaged as the second contractor. Mr Chidukwani cannot recall who set Ms Gibney's day rate, but gave evidence that "at that time, um, \$650 was the maximum I was prepared - prepared to pay".⁸²

[226] Mr Chidukwani's evidence was that there was no difference in the job Mrs Thomas and Ms Gibney were engaged to do. Mr Thomas' evidence was that while in his mind there were some differences between the roles, with Ms Gibney's being about the 'building' and Mrs Thomas' about the 'delivery', he accepted that ultimately, 'if you saw the outcome' there was no difference between the work Mrs Thomas and Ms Gibney performed.⁸³

[227] Mrs Thomas was engaged through CXC. On 5 May 2017, Mr Thomas emailed CXC a request for the services of Mrs Thomas. That request for services form stated Mrs Thomas would be engaged at a rate of \$700 per day including superannuation, plus payroll tax and CXC's fee. The total cost to Horizon Power was \$770 per day. The form listed Mr Chidukwani as Horizon Power's representative and was signed by him on 5 July 2017.

⁷⁹ Ibid 36.

⁸⁰ Ibid.

⁸¹ P M Thomas transcript, public examination 8 May 2018, p 97.

⁸² A Chidukwani transcript, private examination 1 May 2018, p 38.

⁸³ P M Thomas transcript, public examination 8 May 2018, p 99.

However, Mr Thomas accepted that he was the person who filled out the form.

- [228] Having filled out that form, Mr Thomas was aware that Horizon Power was paying a total day rate of \$770 per day for Mrs Thomas.
- [229] On 12 May 2017, Mr Thomas was emailed a request to approve a purchase order for the labour hire of Ms Gibney. The purchase order specified that Ms Gibney's day rate was \$650 per day excluding GST. Mr Thomas approved it.
- [230] Mr Thomas conceded that he approved Horizon Power paying \$120 more per day for his wife than for Ms Gibney. Mr Thomas' evidence was that he "didn't know there was that much difference" because he "didn't specifically look at the rate", but he now acknowledged it.⁸⁴

"I'm like oh yeah, I'll do it for Thommo"

- Anthony Raspa

- [231] While the request to approve the purchase order relating to Ms Gibney was sent to Mr Thomas, the request to approve the purchase order relating to Mrs Thomas was sent to Mr Raspa.
- [232] Mr Thomas' evidence was that "it would normally go to the manager accountable for that area. So it was normally Jeff [Mr Jeff Campbell]".⁸⁵ Mr Thomas accepted that the content migration project had nothing to do with Mr Raspa's work or remit. Mr Thomas was unable to say why the request was sent to him. Mr Chidukwani had 'no idea why' the request was sent to Mr Raspa.
- [233] In evidence, Mr Thomas denied being aware that the request was sent to Mr Raspa for approval. In an intercepted telephone call that took place on 22 May 2017 between Mr Thomas and Mr Raspa, Mr Raspa told Mr Thomas:

RASPA: *I'm just about to approve Carolynne's uh labour hire [laughs] that Shane*

THOMAS: *Oh right.*

RASPA: *that Shane wouldn't approve so*

THOMAS: *Right.*

RASPA: *and you can't approve. So, it's come to me and I'm like oh yeah. I'll do it for Thommo, no worries at all ah*

THOMAS: *No problem.*⁸⁶

⁸⁴ Ibid 104.

⁸⁵ Ibid 102.

⁸⁶ Ibid 102.

- [234] Mr Thomas told the Commission that the 'Shane' referred to was Mr Shane Vondeling. Mr Thomas did not know why Mr Vondeling would not approve the request. He stated that he could not approve it because he was not in the office, although he acknowledged "there may be a conflict of interest there".⁸⁷
- [235] The Commission draws an inference from all the evidence that Mr Raspa was asked to approve the purchase order because Mr Thomas knew he would. Others may not have approved.

Mr Thomas approves his wife's invoices

- [236] As Project Manager, Mr Chidukwani approved Mrs Thomas and Ms Gibney's timesheets. He expected to have sight of and sign their invoices. While Mr Chidukwani sighted the invoices relating to Ms Gibney, he 'did not see a single invoice' for Mrs Thomas.⁸⁸
- [237] Mr Chidukwani is unaware why he did not receive the invoices relating to Mrs Thomas. He was of the view that it would be very unusual for those invoices to go to Mr Thomas. Mr Thomas' evidence was that Mr Chidukwani 'probably' approved the invoices relating to Mrs Thomas, but he 'maybe' approved some of them.⁸⁹
- [238] Records in the possession of the Commission indicate that of the seven invoices issued to Horizon Power relating to Mrs Thomas, Mr Thomas approved four of them, and Mr Raspa approved two. Mr Thomas denied that he diverted Mrs Thomas' invoices to be sent to him for approval.
- [239] Mr Thomas accepted that in his capacity as Manager of Technology for Horizon Power, he authorised Horizon Power to pay his wife. He accepted that it was a conflict of interest for him to have done so.
- [240] In response to the proposition that an inference 'that might be drawn is that you didn't declare to anyone at Horizon Power that you had employed your wife and were approving her invoices because it's a conflict of interest that you knew just would never be approved' Mr Thomas replied, "I acknowledge that completely".⁹⁰

"I just gotta fucken change my financial position"

- Paul Thomas

⁸⁷ Ibid 103.

⁸⁸ A Chidukwani transcript, private examination 8 May 2017, p 43.

⁸⁹ P M Thomas transcript, public examination 8 May 2018, p 104.

⁹⁰ Ibid 108-109.

[241] Mr Thomas told the Commission that he engaged his wife as a contractor at Horizon Power for the purpose of looking 'at a better way of delivering e-learning' to staff. He denied the reason was because he wanted to improve his family's financial position. Two intercepted telephone calls on 4 and 5 May 2017 are revealing. During a conversation with Mr Raspa on 4 May 2017, Mr Thomas said:

THOMAS: I'm even, I'm even bringing Carolynne in to, to Horizon Power to work.

RASPA: Are really?

THOMAS: Yeah (laughs)

RASPA: Get out of here, what's she doing?

THOMAS: Doing some of the training work for us.

RASPA: (Laughs) Gold.

THOMAS: I've just gotta fucken change my financial position.

RASPA: Yeah, yeah, yeah.

THOMAS: You know.⁹¹

[242] The following day, on 5 May 2017, in a telephone call with Mrs Thomas when discussing her day rate, Mr Thomas said:

THOMAS P: And I reckon it's gonna be about seven hundred and ninety a day.

THOMAS C: Okay.

THOMAS P: Which will go, will bang out those credit cards really quickly.

THOMAS C: Yeah okay, you just deal with that side all I'm concerned is I do a good job, doing what I'm asked to do. Okay the money side doesn't worry me as much, I, I need to be able to do this and do it well.

THOMAS P: Oh I'm, I'm thinking Bali Christmas, we'll have a great time.

THOMAS C: I know what, I know what you're thinking and you can do that.⁹²

[243] Mr Thomas' evidence was that arranging to have Horizon Power pay Mrs Thomas \$700 per day for the purpose of his family receiving that income, 'was not the sole purpose' for which he engaged his wife as a contractor. Mr Thomas said "the purpose was to make sure we got a really good outcome on this occasion because we'd failed so many times before".⁹³

⁹¹ Ibid 105-106.

⁹² Ibid 108.

⁹³ Ibid.

- [244] While Mr Thomas may not have engaged Mrs Thomas for the 'sole purpose' of his family receiving the income, implicit in his evidence is his acceptance that it was a principal purpose.
- [245] The evidence establishes that Mr Thomas used his position to engage his wife as a contractor to gain a financial benefit for his family. When invited to respond to the Commission considering such a finding, Mr Thomas' response was "okay".⁹⁴
- [246] The Commission forms an opinion of serious misconduct in respect of Mr Thomas. He corruptly took advantage of his employment to obtain a benefit for both his wife and himself.⁹⁵
- [247] The Commission does not suggest that Mrs Thomas acted corruptly in any way.

⁹⁴ Ibid 109.

⁹⁵ CCM Act s 4(b).

CHAPTER SIX

The play for Horizon Power's business

"Don't let your fears stand in the way of your dreams"

- *David Kane*

[248] As early as October 2013, Mr Thomas talked about a plan for TSIT to secure Horizon Power's business 'directly'.

[249] In response to the concerns about TSIT raised by Harry Perkins' IT Manager Mr Crowhurst, on 18 October 2013 TSIT Business Development Manager, Mr David Kane, sent Mr Thomas an email. The subject of that email was 'Don't let your fears stand in the way of your dreams'. In that email, in the context of discussing whether or not to pursue the Harry Perkins tender in light of the issues raised by Mr Crowhurst, Mr Kane said:

At the moment R1i are putting you in a nervous position due to the fact they know too much and have already disclosed potentially harmful info to Andy [Crowhurst]. As much as this the lowest form of winning business known to man there is nothing indicating that the info will go any further than Andy (just the fear it might).

...

The truth is even if you bow out now and don't win any of the tenders, be it WAIMR and/or DAA, the sensitive information you fear is already out there floating in the ether.⁹⁶

[250] Mr Thomas responded:

I agree and spoke to the guys last night wether [sic] it's this one or the next the outcome maybe the same,

The big part of the plan is securing Horizon directly which will be in the order of 14 million a year, which has taken years to position and we are weeks away from knowing if we can do it or not early Dec, so the question is one of risk do we continue with a \$300k deal and risk 14 or roll the dice and hope nothing happens and we can get both?⁹⁷

[251] Mr Thomas accepted that the '\$300k deal' he was referring to was the Harry Perkins tender. He agreed that he was referring to TSIT. After initially denying that he was talking about TSIT 'securing Horizon directly', Mr Thomas conceded that "maybe I am talking about TSIT and it going out to market and it bidding on" Horizon Power's infrastructure services

⁹⁶ Email from D Kane to P M Thomas, 18 October 2013.

⁹⁷ Email from P M Thomas to D Kane, 18 October 2013.

tender.⁹⁸ He denied the risk that he was referring to was that if TSIT continued with the Harry Perkins tender, Mr Crowhurst's knowledge about his involvement with TSIT may have got back to Horizon Power, risking 'securing Horizon directly'. However, he was unable to say what that risk was.

[252] Throughout 2017, Mr Raspa and Mr Thomas continued to discuss different ways they could position themselves, through various business ventures, to go after Horizon Power's business.

[253] These mechanisms included setting up a business relating to solar power systems, developing mobile phone applications or 'apps', purchasing a shelf company and buying or merging with established companies that were already registered as suppliers with Horizon Power.

[254] The details of the business plans differed, but what was common to each was that they would structure the new entity to hide Mr Thomas and Mr Raspa's interest in that entity.

The solar business

[255] As a result of his position within Horizon Power, Mr Thomas was aware that Horizon Power intended to go to market for the supply of standalone solar power systems.

[256] Mr Thomas and Mr Raspa discussed establishing a business to bid for work at Horizon Power relating to those solar systems. Mr Thomas intended to wait until the new business had won work from Horizon Power before 'seeking forgiveness' by telling Horizon Power that he is a mere shareholder in that business and making 'all the bull, normal bullshit up'.

[257] Mr Thomas accepted that telling Horizon Power he was a mere shareholder of the company would have been a lie.

[258] In March 2017, Mr Thomas engaged a contractor at Horizon Power, Mr Andrew Dawe, to carry out work relating to solar technology.

[259] Mr Dawe gave evidence that around that time, he was in discussions with Mr Thomas and others about establishing a new business focussed on solar technology. He believed Mr Raspa was also involved through TSIT. They discussed naming the new business 'Green Jewel'.⁹⁹

[260] In a telephone discussion with Mr Raspa on 23 March 2017, Mr Dawe expressed reservations about a potential conflict of interest between his

⁹⁸ P M Thomas transcript, public examination, 8 May 2018, p 76.

⁹⁹ A J Dawe transcript, private examination, 30 April 2018, p 14.

engagement at Horizon Power and the new solar business, 'if we're then going to target potentially Horizon as a client then it's a bit iffy if I'm seen there'.

[261] During his examination Mr Dawe elaborated:

*If I was coming in to do Horizon Power work and was gonna be exposed to some of the stuff to do with solar and micro grids and get information and then potentially be putting ... a bid forward with another company, then that wouldn't be right.*¹⁰⁰

[262] In relation to Mr Thomas' engagement of Mr Dawe at Horizon Power, in a telephone call on 29 March 2017, Mr Thomas told Mr Raspa, "the reason I'm only paying him, like, almost nothing is, I have to keep him hungry to go after the bigger prize for us".¹⁰¹

[263] By 'us', Mr Thomas meant TSIT or whatever new entity TSIT became. Mr Thomas denied that he meant he deliberately used his position to pay Mr Dawe less than he ought to have been paid so he would be motivated to win work for an entity Mr Thomas and Mr Raspa controlled. Mr Thomas gave a nonsensical answer as to what he did mean:

*What I mean by that is I needed him to - to, um, um, not just focus on what was right in front of him, just be open to - to getting of the work. This was around the solar business and potentially picking up the, uh, off-shored, uh, solar work that we want to look after. And if he'd got really comfortable then there would be no motivation to do that.*¹⁰²

[264] Mr Thomas accepted that he was not acting in Horizon Power's best interests by attempting to keep Mr Dawe motivated to work for an entity that Mr Thomas and Mr Raspa controlled. He accepted he was doing it for himself.

[265] Ultimately, the solar business was not pursued.

The 'app' development business: "Total dodge"

[266] As a result of his employment, Mr Thomas knew that Horizon Power was interested in developing a mobile application which enabled Horizon Power to deliver customers' bills to their mobile phones.

[267] He and Mr Raspa discussed creating or purchasing an entity that would go after work at Horizon Power by developing those applications.

[268] They did not intend for Mr Thomas to declare his interest in the app development company to Horizon Power. In a telephone conversation

¹⁰⁰ A J Dawe transcript, private examination, 30 April 2018, p 17.

¹⁰¹ P M Thomas transcript, public examination, 8 May 2018, p 124.

¹⁰² Ibid 128.

between Mr Raspa and Mr Noone on 7 February 2017, Mr Noone queried whether Horizon Power would be made aware of Mr Thomas' involvement in the app development business. Mr Raspa replied "No. Bit dodgy. Total dodge".¹⁰³

[269] The app development business was also not pursued.

The shell or shelf company: "not very legal but there you go"

[270] Mr Thomas and Mr Raspa discussed creating or purchasing a shell or shelf company with no real assets. The purpose of creating or acquiring a new entity was so that Mr Hesford could be registered on the company ASIC records at its sole Director and shareholder.

[271] Their intention was that Mr Thomas and Mr Raspa would in fact own and run the company. With Mr Hesford registered as the Director and shareholder, there would be no publicly searchable records connecting either Mr Thomas or Mr Raspa to the entity.

[272] Mr Thomas and Mr Raspa planned to position the shell or shelf company to win work from Horizon Power.

[273] Mr Thomas intended to declare his interest in the company only after it was registered as a supplier with Horizon Power. Mr Thomas' evidence was that he knew if he declared his involvement in the company before it was registered as a supplier, Horizon Power would never have agreed to do business with the company 'because of the conflict'.¹⁰⁴

[274] If the shell or shelf company won work from Horizon Power, Mr Thomas intended to 'seek forgiveness' rather than Horizon Power's approval. In 'seeking forgiveness', Mr Thomas accepted he would lie to Horizon Power about the extent of his involvement in that company.

[275] Between February and April 2017, Mr Raspa telephoned Mr Hesford several times to instruct him to find a company with trading history. He asked Mr Hesford to be the Director and shareholder of that company. Mr Raspa accepted in evidence that 'the idea' was that he and Mr Thomas wanted Mr Hesford to be the Director so they could conceal their involvement in the company.

[276] In a telephone call between Mr Raspa and Mr Hesford on 29 March 2017, Mr Raspa informed Mr Hesford that he and Mr Thomas were looking for an 'IT sounding or consultancy sounding' shelf company.¹⁰⁵ Mr Raspa accepted that he and Mr Thomas were looking for such a company

¹⁰³ A D Raspa transcript, public examination, 10 May 2018, p 31.

¹⁰⁴ P M Thomas transcript, public examination, 8 May 2018, p 110.

¹⁰⁵ A D Raspa transcript, public examination, 10 May 2018, p 40.

because they intended to sell IT or consulting services to Horizon Power. Mr Hesford asked:

HESFORD: Now, who wants to be the shareholders and directors and all that sort of crap?

RASPA: Just you, mate. Just you.

HESFORD: Oh, okay, no worries. Okay, done.

RASPA: Cos we've got about a 15-month, two-year plan. So you're, ah - - -

HESFORD: Okay, no worries, we can do, not what - what - how far do you wanna backdate back share holdings or anything like that, or you don't wanna do that at the moment?

RASPA: Nah, no – no, just put your name on there.¹⁰⁶

[277] Mr Hesford admitted in evidence that he agreed to be a Director of a company.

[278] On 20 April 2017, Mr Raspa continued to ask Mr Hesford to find a company with a trading history:

RASPA: So, we we need, so long story short, right? What we're gonna do

HESFORD: Yep yep.

RASPA: is we are positioning a company to take over work from Horizon Power, right?

HESFORD: Yep yep.

RASPA: And then we want to be you know, two streams down

HESFORD: Yep.

RASPA: And obviously take a cut

HESFORD: Yep.

RASPA: which is uh not very legal, but there you go.

HESFORD: Yeah.

RASPA: Uhm so we need a company with you the head of, this is

HESFORD: Yeah yep.

RASPA: what I'm saying from earlier on

HESFORD: Yep yep yep.

RASPA: that we can just channel that into.

¹⁰⁶ P L Hesford transcript, private examination, 3 May 2018, p 13.

...

RASPA: *So have a think about it because long story short*

HESFORD: *Yeah yeah yeah.*

RASPA: *right we would want you to stay, keep the company under your name right?*

HESFORD: *Yep yep yep.*

RASPA: *So it doesn't hit us anyway so actually nothing would change for you, except we would be paying for it.*

HESFORD: *No. Okay okay.*

RASPA: *Then we would just channel the funds into there and then we would just look after you.*

HESFORD: *Okay, no worries I will give that serious consideration.*¹⁰⁷

- [279] In his evidence, Mr Hesford agreed that the intention was for him to obtain a company, and that company would be used to disguise Mr Thomas and Mr Raspa getting a 'cut' from Horizon Power. Mr Hesford conceded that he agreed to everything Mr Raspa was proposing. Mr Hesford stated 'it would appear' to be the case that he was going to be the Director of the company.

Cheating Horizon Power

- [280] During that telephone call, Mr Raspa and Mr Hesford discussed a trading name that could be given to the new entity:

HESFORD: *Yeah - yeah. Okay, because I'll call it like, um, Cheating Horizon Power, or something like that. Good name?*

RASPA: *What was it? Oh yeah - yeah, that sounds awesome. That's not going to raise any eyebrows.*¹⁰⁸

- [281] Mr Hesford admitted in evidence that he proposed calling the company 'cheating Horizon Power' because he knew that Mr Raspa intended to position the company he and Mr Thomas in fact owned and controlled to benefit from Horizon Power.

- [282] Mr Hesford acknowledged that he knew what Mr Raspa was proposing to do and what he was agreeing to, was wrong. In a telephone conversation with Mr Raspa the previous day, 19 April 2017, Mr Hesford told Mr Raspa, "if I have to visit you in gaol I promise I will".¹⁰⁹

¹⁰⁷ A D Raspa transcript, public examination, 10 May 2018, pp 77-79.

¹⁰⁸ P L Hesford transcript, private examination, 3 May 2018, p 33.

¹⁰⁹ Ibid 27.

- [283] Mr Hesford denied knowing that Mr Raspa's proposal was unlawful. He told the Commission that there is a difference in his view between 'trying to hide something from someone' and something that was fraudulent. His evidence was that "if I had've known they were fraudulent, there is no way I would've gone ahead with it".¹¹⁰
- [284] Mr Raspa's evidence was that he and Mr Thomas 'certainly had the idea' of positioning a company in which he and Mr Thomas had concealed their involvement, to take a 'cut' from work awarded by Horizon Power.¹¹¹ Mr Raspa accepted that he knew their proposal was 'not very legal'.¹¹²
- [285] While Mr Thomas, Mr Raspa and Mr Hesford's plan to create or purchase a shell or shelf company through which Mr Thomas and Mr Raspa would cheat Horizon Power did not eventuate, an inference to be drawn from the various discussions and actions is that Mr Thomas, Mr Raspa and Mr Hesford were conspiring to defraud Horizon Power by dishonestly putting its economic interests at risk.
- [286] Horizon Power would be deceived as to who it was actually contracting with. Mr Thomas was in a position where he may be able to award work to the company whether or not Horizon Power was getting the best value.
- [287] The Commission rejects Mr Hesford's evidence that he did not appreciate Mr Raspa's proposal was unlawful. His tongue-in-cheek remarks about visiting Mr Raspa in jail and calling the entity 'cheating Horizon Power' have no other reasonable explanation. When asked if there is any reason why the Commission should not consider that his conversation with Mr Raspa on 20 April 2017 may be evidence of facilitating a fraud against Horizon Power, Mr Hesford's answer was "only the fact that I ca (sic) - simply can't recall that conversation".¹¹³
- [288] Apart from fees for his services, there is no evidence to suggest that Mr Hesford would profit in any way from the money the entity may have received from Horizon Power. However, Mr Thomas and Mr Raspa's scheme would not have been possible without him. Mr Hesford agreeing to be the Director and shareholder of a company created to 'cheat Horizon Power' would have allowed Mr Thomas and Mr Raspa's involvement in the company to go undetected. His involvement was essential.

¹¹⁰ Ibid 37.

¹¹¹ A D Raspa transcript, public examination, 10 May 2018, p 81.

¹¹² Ibid 81.

¹¹³ P L Hesford transcript, private examination, 3 May 2018, p 36.

VPoint Technologies Pty Ltd

- [289] In early 2017, rather than purchasing a shell or shelf company that would then be registered as a supplier with Horizon Power, Mr Thomas and Mr Raspa explored buying VPoint Technologies Pty Ltd (VPoint). They were interested in VPoint because it had been trading for a period and was already registered as a supplier with Horizon Power.
- [290] Again, once purchased, Mr Raspa and Mr Thomas intended Mr Hesford to be the Director and shareholder of VPoint to conceal their involvement in the company.
- [291] Mr Thomas' 'working assumption' was that after purchasing VPoint, Mr Thomas and Mr Raspa would only 'go after' jobs at Horizon Power of \$100,000 or \$200,000 in value, to avoid the due diligence checks that Horizon Power would perform if they "went after one of the bigger jobs".¹¹⁴
- [292] Mr Thomas conceded in evidence that the primary reason he wanted to buy VPoint was to make money. Once purchased, Mr Thomas denied that he intended to use his position as Manager of Technology at Horizon Power to award VPoint work. However, Mr Thomas later admitted that in a telephone call with Mr Raspa on 15 February 2017, he told Mr Raspa that if they bought VPoint, because of Horizon Power's supply arrangements, in his role as Manager of Technology he would not be limited to awarding VPoint contracts with a value of less than \$100,000.
- [293] Mr Thomas discussed with VPoint's owner, Mr Peter Ellery, a possible purchase price.
- [294] Mr Raspa asked Mr Hesford to obtain the financial history for VPoint from VPoint's accountants. Mr Raspa told Mr Hesford that VPoint was "on the books at Horizon" and this was "probably the sole reason why we want this company".¹¹⁵

"The last person who used this defence is Eddie Obeid. He got five years"

- Peter Noone

- [295] In a telephone call between Mr Noone and Mr Raspa on 31 March 2017, Mr Raspa explained the proposed purchase of VPoint to Mr Noone:

RASPA: So the story is we're buying this so we can make a play at Horizon, right, 'cos they've got fifteen months. So basically we can uhm, you know we might be able to do something with Viz. We might be able to

¹¹⁴ P M Thomas transcript, public examination, 8 May 2018, pp 113-114.

¹¹⁵ A D Raspa transcript, public examination, 10 May 2018, p 74.

do something with, with this company. We need a company. Uhm, it, it's a great long play. It's a fifteen-month play, right? ...

RASPA: So, so the, it, it's got a massive payoff if we can do it, right? The thing is we wouldn't be able to own this company. Uhm, you might be able to. I can't. Thommo can't. Uhm, so Paul Hesford's happy. I've had a conversation with Paul Hesford. He's happy to put it under his name, uhm so it doesn't, you know, raise any alarm bells but uh, that's where it's at.

NOONE: It'll take someone, it'll take someone twenty-three seconds to work out that Hesford has a relationship with you guys.

...

NOONE: that if you're setting this up, right, you cannot be setting this up to be hiding this. You just can't. You've got to be setting this up to be, to be out and say I have an interest in this company. I am a shareholder in this company. I'm not a director. I don't get to make decisions. I'm a shareholder. No way Hesford's

RASPA: If Hesford has it

NOONE: Hesford's not

RASPA: If people can

NOONE: gonna bit a director of this. No way. Is he?

RASPA: Hesford will have it all and then uh, like, it'll be like Thommo's shares under the Hesford uhm, Benevolent Fund

NOONE: But it would take someone twenty-three seconds

RASPA: Err

NOONE: to find the correlation.

RASPA: But that's, mate, let's, let's talk about that then, alright? Let's find the cor

NOONE: Have you heard of Eddie Obeid?

RASPA: Let's find the uh correlation there, right? But it's, we don't own it. You don't own it. I don't own it. Thommo doesn't own it. It, so it doesn't matter if somebody works out that there might be a relationship there. None of us own it.

NOONE: The last person who used this defence is Eddie Obeid. He got five years. Like is it, if you want to put, if you want to put forward for this, this business, then you, like I thought, as I understand it Thommo was not involved in the decision around this. The decision would be completely independent of Thommo, right? So you either have a good story and a good business and you can sell it into Horizon and you declare your interest 'cos it's got nothing to do with him. I'm a shareholder in that company. I have nothing to do with it. I'm not involved in the tender.

*I'm not involved in anything. That's what you should be doing. Is that what the situation is?*¹¹⁶

- [296] In his evidence to the Commission, Mr Raspa said "I don't know the - the whole Eddie Obeid story, but when, um, Peter put it into terms that it was illegal, that it was wrong, well, that's when we stopped".¹¹⁷ However, Mr Raspa accepted that rather than agreeing with Mr Noone that he should declare his interest to Horizon Power, he proposed that purchasing VPoint was a way of getting around the requirement to do so.
- [297] Having obtained VPoint's financial records, in a telephone call to Mr Raspa on 31 March 2017, Mr Hesford advised Mr Raspa that he would not buy the company.
- [298] The purchase of VPoint did not take place.
- [299] Mr Raspa gave evidence that he "went away and researched Eddie Obeid and that's when we knew it was wrong and we didn't go ahead with it".¹¹⁸
- [300] In a telephone call on 13 April 2017, Mr Raspa and Mr Hesford discussed the decision not to purchase VPoint. Mr Raspa told Mr Hesford "Ah, well - ah, you -- we've sufficiently scared Noonie into a position where he says don't buy that company VPoint, so ah we are falling back to Plan A where Paul Hesford needs to buy that older company ..."¹¹⁹
- [301] In a further telephone call between Mr Raspa and Mr Hesford that same day, Mr Raspa told Mr Hesford "Noonie is a risk adverse person" and that "we're actually a little bit jacked off ... because we might of missed an opportunity".¹²⁰
- [302] In a later telephone call between Mr Raspa and Mr Hesford of 20 April 2017, Mr Hesford reiterated in relation to VPoint, "I honestly - I wouldn't have bought it Anthony. And you know I do all sorts of things ... but I wouldn't have bought that company".¹²¹
- [303] Mr Thomas told the Commission that the decision not to buy VPoint was mainly Mr Noone's. Mr Noone did not see any reason why they needed to purchase the company. Mr Thomas said that he 'was a bit dark' about Mr Noone's decision in the beginning, but he accepted it.¹²²

¹¹⁶ Ibid 60-62.

¹¹⁷ Ibid 70.

¹¹⁸ Ibid 73.

¹¹⁹ P L Hesford transcript, private examination, 3 May 2018, p 24.

¹²⁰ A D Raspa transcript, public examination, 10 May 2018, p 75.

¹²¹ P L Hesford transcript, private examination, 3 May 2018, p 29.

¹²² P M Thomas transcript, public examination, 8 May 2018, p 121.

- [304] The Commission rejects Mr Raspa's evidence that his conscience prompted him to abandon the plans to buy VPoint. The weight of the evidence suggests that Mr Hesford's unease about VPoint's financial statements and the failure to convince Mr Noone led to the decision not to buy the company.
- [305] If Mr Raspa decided against buying VPoint because it 'was wrong', he would not have been 'jacked off' about the loss of the opportunity. He would not have instructed Mr Hesford to fall 'back to Plan A' and 'buy that older company' as a vehicle to cheat Horizon Power, and he would not have then tried to purchase Vizstone Pty Ltd.

Vizstone Pty Ltd

- [306] Vizstone Pty Ltd (Vizstone) is a company that provides IT helpdesk services and products. Vizstone had been a subcontractor to TSIT since December 2014. In March 2015, Mr Thomas arranged for Vizstone to be registered as a supplier at Horizon Power.
- [307] From about May 2017, Mr Raspa and Mr Thomas began to discuss with the owners of Vizstone, Ms Kathryn Soares and Mr Benjamin Chan, a proposal that TSIT purchase the company.
- [308] Mr Thomas conceded in evidence that one of the purposes of buying Vizstone was to 'go after Horizon Power business'.¹²³ Mr Raspa accepted that he and Mr Thomas discussed positioning Vizstone to win work at Horizon Power.

"Then we've got a fifteen month play to slowly build it to get 'em to a position to be able to bid for the contract."

- Paul Thomas

- [309] Empired Ltd (Empired) provides IT solutions. In 2015, Empired was awarded a three year contract to provide managed IT services to Horizon Power. That contract was under the control of Horizon Power's Technology department.
- [310] By March 2017, there was 15 months remaining on the Empired contract. As Manager of Technology, in March 2017, Mr Thomas arranged for a review to be undertaken of Empired's performance under that contract.
- [311] In a telephone call between Mr Thomas and Mr Raspa on 29 March 2017, Mr Thomas told Mr Raspa that his 'thought process' was that he could 'bring a couple of people in' to do a review of the Empired contract and 'get them fronting Vizstone as well', 'then we've got a fifteen month play

¹²³ Ibid 142.

to slowing build it to get em' to a position to be able to bid for the contract'.¹²⁴ One of the two people Mr Thomas had in mind to carry out the review was Mr Tony Harris. Mr Thomas said that Mr Harris could 'position, not Vizstone as Vizstone but Vizstone as whatever we decide it's going to be'.¹²⁵

- [312] In his evidence to the Commission, Mr Thomas accepted that what he was saying to Mr Raspa was that in his role as Manager of Technology, he could employ two people at Horizon Power through Vizstone to conduct a review of the Empired contract. Mr Thomas then intended to have some ownership or control over Vizstone to determine whatever alternate company Vizstone would ultimately be.
- [313] Mr Thomas conceded that the purpose of the review was so that over the next 15 months he could build his alternate company to be in a position to bid for Horizon Power's managed IT services contract, once Empired's contract came up for renewal. Despite that concession, Mr Thomas denied that he intended for the review to be critical of Empired. Mr Thomas' evidence was that it was "about the best outcome for Horizon Power".¹²⁶
- [314] The Commission rejects Mr Thomas' claim that he wanted the best outcome for Horizon Power, rather than for himself. If the review of the Empired contract had been positive, there would have been no scope for Mr Thomas and Mr Raspa's 'fifteen month play' or for Vizstone, or whatever entity it became once Mr Thomas and Mr Raspa had purchased it, to bid for the contract.
- [315] In March 2017, Mr Thomas engaged Mr Harris as a contractor at Horizon Power to carry out the review of the Empired contract. Mr Thomas engaged Mr Harris through Vizstone. In a telephone call between Vizstone's owner, Ms Soares and Mr Thomas on 4 April 2017, Ms Soares told Mr Thomas that Vizstone would 'love' to receive an agency margin fee of 10 per cent for Mr Harris. Mr Thomas offered Vizstone 12 per cent. He told Ms Soares that Horizon Power would 'swallow twelve no worries'.¹²⁷
- [316] In a telephone call on 15 May 2017, Mr Thomas told Ms Soares that if Horizon Power went to market rather than extending Empired's contract, while TSIT could not 'go after the business directly', TSIT 'could go after it' through Vizstone. Mr Thomas told Ms Soares that, in addition to the

¹²⁴ Ibid 123.

¹²⁵ Ibid 124.

¹²⁶ Ibid 126.

¹²⁷ Ibid 134.

managed IT services contract, Horizon Power was going to spend millions on analytics work over the next two years. Mr Thomas said that TSIT could go after that business through Vizstone and 'just keep milking it' and it 'will just grow and grow and grow'.¹²⁸

- [317] Mr Thomas' evidence was that 'milking it' meant do more and more work for Horizon Power.
- [318] In about June 2017, Mr Thomas engaged Mr Alistair Power as a contractor at Horizon Power. Mr Thomas engaged Mr Power through Vizstone.
- [319] In a telephone call on 20 July 2017 between Mr Thomas and Ms Soares, in the context of discussing Mr Power's contract, Mr Thomas told Ms Soares that "Alistair's extension will probably come through for another twelve months ... and more importantly uhm we can we can position Viz. There's a couple of big, strategic projects going on there ... and we can position Viz to take on all that work".¹²⁹
- [320] While Mr Thomas denied in evidence that an important part of why he engaged Mr Harris was to further position Vizstone, he accepted that Mr Harris' engagement had that effect.

"... I'd have to declare it mate ... but what I need to do is secure some decent business first."

- Paul Thomas

- [321] Mr Thomas' evidence to the Commission was that he intended to declare the purchase of Vizstone to Horizon Power before the purchase had taken place.
- [322] However, in a telephone call between Mr Thomas and Mr Raspa on 18 May 2017, the following exchange occurred:

THOMAS: Is Pete ... being negative again or was it just a

RASPA: Oh no, no, no he's just he's, I just had to convince him. But uh he doesn't seem convinced yet.

THOMAS: So this is the acquisition of Vizstone or is this doing work at Horizon?

RASPA: Acquisition of Viz.

THOMAS: Right. I see I I think it plays perfectly into my world now.

RASPA: Yeah exactly. We've gotta

¹²⁸ Ibid 137-138.

¹²⁹ Ibid 144.

THOMAS: *Cos I it's, it's very easy now for me to go Horizon Power and go the company that I'm a shareholder of has just brought a company that does business with Horizon Power.*

RASPA: *Oh, I wouldn't even do that mate. I'd just stay well away from that conversation and uh well out of the company. Job done.*

THOMAS: *No, I, I'd have to declare it mate. There, otherwise it's just a, but what I need to do is secure some decent business first.*

RASPA: *Yeah.*

THOMAS: *And then afterwards declare it.*

RASPA: *Well, I'm not. I'm not gonna dec, look I'm not going to declare it cause ah I'll make sure that I'm not on the company register.*

THOMAS: *No, you don't have to declare it, no.*

RASPA: *But even you don't. And I said that even if they go 'cause they'll do a company search and they'll say nuh, you're not on it.*

THOMAS: *Yeah nah no I, at some point I need to declare it because*

RASPA: *Yeah, at some point later on, but.*

THOMAS: *because at some point it will come out ... I'm a firm ... believer that ... too many people fucken talk.¹³⁰*

[323] After being played that telephone call, Mr Thomas conceded that his intention was to wait until after he had purchased Vizstone and Vizstone had secured 'some decent business' before declaring the purchase to Horizon Power.

[324] Once purchased, Mr Thomas admitted that it was his intention to try to use his position at Horizon Power to award decent business to Vizstone.

[325] In order to declare it, Mr Thomas accepted that he intended to tell Horizon Power with feigned surprise that 'the company that I'm a shareholder of has just brought (sic) a company that does business with Horizon Power'. That would have been a false declaration designed to conceal Mr Thomas' true involvement in the purchase. Mr Thomas agreed that rather than just being a shareholder in the company that he was surprised to learn had bought Vizstone, he was a Director and owner of that business and would have been instrumental in orchestrating the purchase.

"Hello Mr Obeid how are you? I mean, is this Eddie Obeid?"

- Peter Noone

¹³⁰ Ibid 146-148.

[326] In a telephone call of 17 May 2017, Mr Raspa and Mr Noone discussed the proposed purchase of Vizstone. Mr Raspa told Mr Noone that "Thommo [Mr Thomas] can orchestrate uhm that business to take over".¹³¹ In response, Mr Noone raised his concerns:

NOONE: *Yeah I agree it makes sense but I mean Thommo's, Thommo's going to have all sorts of troubles*

RASPA: *No he's not*

NOONE: *is the thing.*

RASPA: *because we wouldn't own the business.*

NOONE: *Well who would?*

RASPA: *Paul, Paul ah Hesford.*

NOONE: *No, that was, that fucking doesn't work.*

RASPA: *(Laughs) there's, there's a construct*

NOONE: *isn't that*

RASPA: *that will work.*

NOONE: *It won't it doesn't work, going and have a Google, go and pay*

RASPA: *Yeah I know*

NOONE: *Twenty-nine dollars*

RASPA: *I know, I know what you're saying*

NOONE: *and do an ASIC search right now*

RASPA: *we, we don't need to hear that story again.*

NOONE: *Hello Mister Obeid how are you. I mean, is this Eddie Obeid?*

RASPA: *Mate I'm happy to ah do that and create that business mate.*

NOONE: *So anyway*

RASPA: *(Laughs) You don't have to own that business with us, me. I'm okay.*

NOONE: *I'm just, uhm yeah whatever*

RASPA: *I'd go down that path alone.*¹³²

¹³¹ A D Raspa transcript, public examination, 10 May 2018, p 89.

¹³² Ibid 90-91.

- [327] Mr Raspa agreed in evidence he was proposing that Mr Thomas use his position at Horizon Power to award work to the business. Mr Raspa conceded that he never had any intention of declaring his interest in any new business to Horizon Power.
- [328] Once again, it was proposed that Mr Hesford be the Director of the business to conceal Mr Thomas and Mr Raspa's interest.

The purchase becomes an idea to merge

- [329] On 15 June 2017, Ms Soares and Mr Chan provided TSIT with their business valuation. The purchase of Vizstone did not proceed. Mr Thomas told the Commission that TSIT could not afford it. Similarly, Mr Noone's evidence was that TSIT could not afford to acquire Vizstone. Ms Soares' evidence was that if TSIT had been able raise the funds, she would have been quite happy to sell Vizstone to them.
- [330] Despite telling Mr Noone that he didn't have 'to own that business' with him, and he would 'go down that path alone', Mr Raspa appeared to suggest in evidence that the purchase of Vizstone did not proceed because he would not have bought the company without Mr Noone.
- [331] The Commission rejects any such suggestion. The weight of the evidence establishes that the purchase did not proceed because TSIT could not pay the purchase price.
- [332] Discussions about TSIT acquiring Vizstone turned to discussions about a merger.
- [333] In a telephone call between Mr Thomas and Mr Raspa that took place on 28 August 2017, Mr Raspa described Vizstone as a 'launching pad'. He was an active and willing participant in the discussions about the sale and enthusiastic about a possible merger.
- [334] In that telephone call, Mr Thomas and Mr Raspa discussed merging with Vizstone:

THOMAS: I, I, I must admit I did, I did nearly ring you on the weekend and just say ah just go and get that sham company set up out of what's-his-name.

RASPA: Mate that's just sitting there waiting

...

THOMAS: and what we'll, what we'll just start doing is pushing people through Vizstone into Horizon

RASPA: Easy.

THOMAS: *Right, in that sham company just make some money out of it and uhm, uhm then if Pete wants to get involved at some point he can, if not I don't care (pauses). Right?*

RASPA: *Yeah I, I agree we got to do something.*

THOMAS: *Just get*

RASPA: *Got to get rich.*

THOMAS: *Just get something happening that we can use and then go somewhere else.*

RASPA: *Better (indistinct) I think I mean Vizstone's a launching pad so let's go from there.*¹³³

[335] Mr Raspa's agreement that Mr Noone could get involved in the business at a later point contradicts his suggestion that he would not have purchased Vizstone without him. Mr Raspa accepted that by 'pushing people through Vizstone into Horizon' he understood Mr Thomas meant positioning Vizstone to win work from Horizon Power. Mr Raspa conceded that his objective was to 'get rich'.

[336] During a conference call on 21 September 2017, Mr Thomas, Ms Soares, Mr Raspa and Mr Chan agreed in principle to merge TSIT and Vizstone. The conference call ended with Ms Soares and Mr Chan committing to provide TSIT with 'the terms and conditions' that Vizstone required to facilitate the merger.

[337] Before those terms and conditions could be negotiated, on 4 October 2017, officers from the Commission and the WA Police Force executed search warrants at various addresses, including Horizon Power, Adamo Accounting and the residential addresses of Mr Thomas and Mr Raspa.

"I'll be honest in my mind I'm going how do I create a little entity, wrap up Horizon Power, rape as much as I can out of it and then we both fuck off".

- Paul Thomas

[338] It was put to Mr Thomas during his evidence that whether it was VPoint, Vizstone, a shell company or a sham company, since he started at Horizon Power his intention was to use his position as Manager of KT (and later as Manager of Technology) to award work to an entity that he had concealed his involvement in. Mr Thomas admitted that "the intention potentially was there, yes".¹³⁴

¹³³ Ibid 102-103.

¹³⁴ P M Thomas transcript, public examination, 8 May 2018, p 153.

[339] Mr Thomas admitted that from as early as 2013, when he told Mr Kane in his email of 18 October 2013 that 'the big part of the plan' was to 'secure Horizon directly' which had 'taken years to position', he had tried and continued to try to use his office at Horizon Power to position an entity that he had an interest in to secure business from the utility.

[340] Mr Thomas accepted that the purpose behind those efforts was to make as much money as he could for his privately held business.

[341] That concession is made clear by a telephone conversation between Mr Thomas and Mr Raspa about the proposed merger on 27 September 2017, just seven days before the Commission's intervention:

THOMAS: I'll be honest in my mind I'm going how do I create a little entity, wrap up Horizon Power, rape as much as I can out of it and then we both fuck off.

THOMAS: I don't want to see TSIT die, I really don't uhm but I also I'm not too sure I want to put two-hundred thousand dollars into Katherine's business.

...

RASPA: Yeah (sighs) I don't know. Mate. Tell me, tell me the best way here?

...

RASPA: The reason is I just think if Horizon's going to be a play you know, you need that once removed company.

...

THOMAS: I mean there is the alternative which is we create a ten dollar company and just use Vizstone as a contracting mechanism.

RASPA: And get them to put in the percentage so you know

THOMAS: and we just, we give them a patter of points between five and ten.

RASPA: Ooh is that too dodgy?

THOMAS: Oh no. It's no dodgier.

RASPA: Absolutely (laughs)

THOMAS: Right, we're not then I mean we are artificially growing their business but we're not massively artificially growing their business.

RASPA: You could have both cakes you could say look I'm going to give you the Horizon business, chuck money in here and (laughs) pay commission. Pay commission and ah we'll be part of the business. I don't know, I don't know, let's work out a structure that you and I are cool with

THOMAS: I mean Pete, Pete

RASPA: *Noonie won't, Noonie would definitely not be cool with ah you know*

THOMAS: *Pete would not go for that*

RASPA: *No, no that's undeclared commissions*

THOMAS: *That's, that's the*

RASPA: *so*

THOMAS: *whatever he calls it yeah*

RASPA: *Yeah*

THOMAS: *Under handed*

RASPA: *so Pete will opt out*

THOMAS: *commission*

RASPA: *Yeah*

THOMAS: *But as long as I'm not seen on those books, it doesn't matter*

RASPA: *So yes alright.*

THOMAS: *So Raspa Consulting could absolutely wrap up all those contractors. Put it in through Vizstone and ah you'd have to give me a brown paper bag on a monthly basis (laughs).*

RASPA: *Raspa Consulting could absolutely speak to all the guys there and say come across to me I'll pay ya if this uhm deal works out.*

THOMAS: *Absolutely.*

RASPA: *But I don't know, you need to work out how real, you, we could*

THOMAS: *As long*

RASPA: *orchestrate that*

THOMAS: *as I'm not, as long as I'm not a part of it and*

RASPA: *Yeah*

THOMAS: *there is not trace back to me, I can do exactly what I want.*

RASPA: *Well if you moved all the projects across to me and this ah, and this consulting, happy days.*

THOMAS: *Yeah. I mean we could even do a panel contract with Vizstone and Duncan Hayes and a few others and, and just the reality is we just say well Viztone is winning them or Raspa's winning them and putting them through Vizstone.*

RASPA: *Yep, or we you know, best of breed*

THOMAS: *Right.*

RASPA: *where the uh the project management are.*

THOMAS: *Well at that point you couldn't hold your current position*

RASPA: *Well that's okay, if we won mate, if we won right realistically we could get this and then you know what, we could then got to Western Power, Synergy all these other places.*

THOMAS: *Yeah.*

RASPA: *Multiply*

THOMAS: *Oh look I*

RASPA: *our money*

THOMAS: *Absolutely.*¹³⁵

[342] While Mr Thomas' evidence was that his comment about being given a bribe on a monthly basis was just "us joking around",¹³⁶ he accepted they had discussed using Mr Raspa's private business to secure work from Horizon Power.

[343] Mr Thomas denied that his view was, as long as there was no trace back to him, he could use his position at Horizon Power exactly as he wanted. Mr Thomas told the Commission that he "absolutely wanted the very best for Horizon Power".¹³⁷

[344] The Commission considers Mr Thomas' evidence about his sentiments towards Horizon Power unconvincing. They are at stark odds with Mr Thomas' admissions that he tried to use his office to make as much money as he could for an entity he secretly controlled. They are contradicted by Mr Thomas' thoughts as to how he can 'wrap up Horizon Power' and 'rape as much as he can out of it'.

[345] While, as Mr Thomas suggested to the Commission, there may have been a degree of 'bravado' in Mr Thomas and Mr Raspa's conversation, it is entirely consistent with the manner in which Mr Thomas had conducted himself in his public office over many years.

¹³⁵ Ibid 154-158.

¹³⁶ Ibid 159.

¹³⁷ Ibid 160.

CHAPTER SEVEN

Opinions of serious misconduct and recommendations

Mr Paul Thomas

- [346] Mr Thomas agreeing that Horizon Power would pay agency margin fees to TSIT, a company in which he was an owner and Director, was more than a conflict of interest. Mr Thomas used his position at Horizon Power to gain a financial benefit for TSIT and himself. Mr Thomas accepted in evidence that it was his use of the authority that Horizon Power gave him to engage contractors which resulted in TSIT being paid those agency margin fees.
- [347] An opinion of serious misconduct will not be made lightly. The Commission is always cautious about forming an opinion. Here the evidence abundantly justifies an opinion that Mr Thomas corruptly took advantage of his employment as a public officer to obtain a benefit for TSIT, and himself.
- [348] In the case of Mr Esmail, in addition to corruptly receiving fees for his time, the Commission is of the view that Mr Thomas corruptly used his position at Horizon Power to engage Mr Esmail as a contractor for the purpose of gaining a financial benefit for TSIT.
- [349] With respect to the CUA, Mr Thomas' own admissions clearly establish that he used his position as Manager of Technology at Horizon Power to successfully obtain the benefit of inclusion in the CUA for TSIT. The Commission's opinion is that Mr Thomas corruptly used his position at Horizon Power to gain a benefit for TSIT and himself.
- [350] In 2017, Mr Thomas corruptly used his position as Manager of Technology to engage his wife as a contractor for the purpose of obtaining a financial benefit for his family. The Commission is of the opinion that Mr Thomas did so without providing Mrs Thomas' CV to Mr Chidukwani because he knew she did not have the requisite experience for the role. Mr Thomas did not declare a conflict of interest arising out of Mrs Thomas' engagement because he knew that because of such a patent conflict of interest, the engagement would not, in any event, have been approved.
- [351] In relation to the conspiracy entered into between Mr Thomas, Mr Raspa and Mr Hesford to conceal Mr Thomas and Mr Raspa's purchase of an entity that would then obtain work from Horizon Power, both Mr Thomas and Mr Raspa were at pains to convey to the Commission that their schemes were no more than conversations.

[352] While the Commission's investigation did capture many conversations, there were also overt acts. Mr Thomas admitted in evidence that he engaged in the following conduct:

- he entered into discussions with Mr Ellery to purchase VPoint and obtained the company's financial statements;
- he and Mr Raspa entered into discussions with Ms Soares and Mr Chan to buy Vizstone and received the company valuation;
- he engaged Mr Harris at Horizon Power through Vizstone for the purpose of conducting a review of the Empired contract; and
- he engaged Mr Power at Horizon Power through Vizstone, which had the effect of further raising the profile of Vizstone at Horizon Power.

[353] Mr Thomas acknowledged that an inference to be drawn from those actions is that he was very serious about using his position at Horizon Power to gain a benefit for an entity that he owned. The Commission has no hesitation in drawing that inference.

[354] Consistent with his admissions to that effect, the Commission concludes that Mr Thomas tried to and continued to try to use his office at Horizon Power to position an entity that he had a concealed interest in to secure business from the utility.

[355] The Commission is of the view that Mr Thomas, Mr Raspa and Mr Hesford conspired to defraud Horizon Power.

[356] Mr Raspa was provided with a copy of this report. His response was that the evidence does not support a conclusion that he conspired with Mr Thomas or Mr Hesford to defraud Horizon Power. Mr Raspa said that his conduct never passed the stage of exploring means to obtain work from Horizon Power, and that he drew back from actually engaging in, or agreeing to engage in, any conduct that he knew or believed was or might be unlawful.

[357] The Commission does not agree. In a telephone call between Mr Thomas and Mr Raspa on 4 May 2017, in the context of discussing Vizstone Mr Thomas told Mr Raspa that they had to 'have a direction if we're going after Horizon Power's business'. Mr Raspa replied:

RASPA: If, if you're absolutely serious about it right, cause I am, I'm a hundred percent in mate whatever it takes. I'll drop everything ... else and solely focus on this but ... you're in the, you're the lead here buddy, you know how far we can push it and

THOMAS: Yeah.

RASPA: *If you tell me XY Anthony, do one, two, three, I'll do one, two, three before you know.*

THOMAS: *Yeah.*

RASPA: *So but I'm just worried that you know we need to do something, we've been a lot of talk before so let's, let's smash it.*

THOMAS: *Well.*

RASPA: *Whatever construct, I'm in.*¹³⁸

[358] Mr Raspa was committed to a course of conduct that Mr Raspa himself considered to be 'not very legal'.¹³⁹ Whatever mechanism was to be used to cheat Horizon Power, Mr Raspa was in.

[359] Upon being informed of some of the substance of the Commission's investigation, Horizon Power suspended Mr Thomas' employment. Mr Thomas ultimately resigned.

[360] The Commission forms an opinion of serious misconduct against former public officer, Mr Thomas, pursuant to the *Corruption, Crime and Misconduct Act 2003* s 4(b).

[361] Mr Thomas was provided with a copy of this report and responded saying that he 'does not agree with the findings made that relate to him'.

Mr Anthony Raspa

[362] The Commission concludes that Mr Raspa failed to declare a conflict of interest at Horizon Power in relation to TSIT. By his failure to do so, he was complicit in the deception of Horizon Power and TSIT's corrupt receipt of agency margin fees. If Mr Raspa had made an appropriate and frank declaration of a conflict of interest, Horizon Power may have been alerted to Mr Thomas' conduct.

[363] Mr Raspa did not have a role in engaging the contractors for which TSIT received agency margin fees from Horizon Power. They were in fact all engaged prior to his appointment. There is no evidence that Mr Raspa had any control over the duration or terms of their contracts or any contract renewals, although he may have signed timesheets from time to time.

[364] As a result, Mr Raspa's conduct does not have the same nexus to his office or employment as that of Mr Thomas. The Commission has concluded that it will form no opinion of serious misconduct.

¹³⁸ A D Raspa transcript, public examination, 10 May 2018, pp 83-84.

¹³⁹ Ibid 77-79.

[365] The Commission has no jurisdiction to form an opinion of minor misconduct.

[366] When his behaviour came to light, Horizon Power terminated Mr Raspa's engagement as a contractor.

Mr Paul Hesford

[367] Mr Hesford is not a public officer and the Commission has no jurisdiction to form an opinion in respect of him.

Recommendations

[368] The Commission recommends that a relevant authority give consideration to the prosecution of Mr Thomas for corruption in a public office contrary to the *Criminal Code* s 83.

[369] The Commission recommends that a relevant authority give consideration to the prosecution of Mr Thomas, Mr Raspa and Mr Hesford for conspiracy to commit the indictable offence of fraud pursuant to the *Criminal Code* s 558, or any other offence that may be disclosed.

[370] A recommendation made by the Commission is not a finding, and is not to be taken as a finding, that a person has committed or is guilty of a criminal offence.¹⁴⁰

¹⁴⁰ CCM Act s 43(6).