

ICAC

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COMMISSION
AGAINST
CORRUPTION

**Report on an investigation
into corrupt conduct
associated with the regulation
of brothels in Parramatta**

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President
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SYDNEY NSW 2000

The Hon Richard Torbay MP
Speaker
Legislative Assembly
Parliament House
SYDNEY NSW 2000

Mr President
Mr Speaker

In accordance with section 74 of the *Independent Commission Against Corruption Act 1988* I am pleased to present the Commission's report on its investigation into corrupt conduct associated with the regulation of brothels in Parramatta.

I presided at the public inquiry held in aid of this investigation. The Commission's findings and recommendations are contained in the report.

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

Yours faithfully

A handwritten signature in black ink, appearing to read 'Jerrold Cripps', written in a cursive style.

The Hon Jerrold Cripps QC
Commissioner

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Executive summary

The investigation

The Commission's investigation concerned the conduct of Mr Wade Fryar, the Team Leader of Compliance Services at Parramatta City Council (the Council).

The investigation arose from information received by the Commission in October 2006 alleging that Mr Fryar had corruptly solicited and received cash payments and sexual services from brothel owners and prostitutes in return for not taking action on behalf of the Council to prevent unauthorised use of premises for prostitution.

In determining to undertake an investigation the Commission took into account the seriousness of the allegations which would, if established, constitute corrupt conduct within the meaning of the *Independent Commission Against Corruption Act 1988* (the ICAC Act). It also took into account issues raised by the allegations as to whether the procedures at the Council may have had certain weaknesses that provided the opportunity for Council officers to engage in improper conduct in connection with the detection and prevention of brothels operating illegally within the Council's area.

As detailed in Chapter 2 of this report, local councils in New South Wales are empowered to regulate the establishment and operation of brothels within their local area in a variety of ways.

In the course of its investigation the Commission:

- obtained warrants under the relevant legislation to enable the use of listening devices and the interception of telecommunications
- obtained and analysed relevant files from the Council through the issuing of notices under sections 22 and 23 of the ICAC Act
- lawfully executed a number of search warrants to obtain additional documentation
- undertook physical surveillance of suspected persons
- interviewed and took statements from a large number of people including prostitutes and brothel owners.

The Commission also conducted compulsory examinations involving Mr Fryar and a brothel owner, Ms Min Lu, and held a public inquiry over two days in May 2007. Five persons gave evidence at the public inquiry and the Hon Jerrold Cripps QC, Commissioner, presided.

The Commission's findings

The Commission's findings of fact are set out in Chapter 3 of this report, which focuses on how Mr Fryar sought and obtained regular payments and sexual services from various women who were working as brothel operators or prostitutes from unauthorised premises within the Council's area.

As Team Leader, Compliance Services at the Council, Mr Fryar was required to properly investigate and oversee the investigation of complaints about the unauthorised use of premises within the Council's area and to take action in accordance with the Council's procedures to enforce compliance with the land use permitted by the Council.

From approximately 2003 to February 2007 Mr Fryar received free sexual services from at least five prostitutes and up to \$40,000 by way of corrupt payments from brothel operators.

The Commission found that Mr Fryar sought and received cash payments and/or sexual services from Min Lu, Janaporn Srijan, Somsri Innes, Jin Xia Kuang, "Tina", Youxia Carle, Li Ping Song, Qing Qiu Shan and Cui Mian Xu as an inducement or reward for refraining from taking action to curtail their unauthorised use of premises for prostitution.

The Commission also found that Mr Fryar warned Ms Lu and Ms Song and attempted to warn Ms Carle of impending or possible inspections of their premises by Council officers so as to frustrate attempts by the Council to investigate allegations or suspicions that they were using premises in an unauthorised manner.

Findings of corrupt conduct are made against Wade Fryar, Min Lu, Janaporn Srijan, Somsri Innes, Jin Xia Kuang, "Tina", Youxia Carle, Li Ping Song, Qing Qiu Shan and Cui Mian Xu. A finding of corrupt conduct is also made against Mr Yixin Huang, in relation to his giving Mr Fryar the sum of \$1,000 as an inducement for Mr Fryar to make arrangements to allow Mr Huang to continue using premises in an unauthorised manner.

Chapter 3 also contains statements, pursuant to section 74A(2) of the ICAC Act, that the Commission is of the opinion that consideration should be given to obtaining the advice of the Director of Public Prosecutions with respect to the prosecution of Wade Fryar, Min Lu, Janaporn Srijan, Somsri Innes, Jin Xia Kuang, "Tina", Li Ping Song,

Qing Qiu Shan, Cui Mian Xu and Yixin Huang for various criminal offences.

During the public inquiry, Ms Carle admitted that she had lied when she denied that she had paid any money to Mr Fryar during the course of an earlier interview with Commission investigators. The Commission states that it is of the opinion that the advice of the Director of Public Prosecutions should be obtained with respect to the prosecution of Ms Carle for criminal offences.

Corruption prevention issues and recommendations

Chapter 4 of this report details the Commission's examination of practices and procedures of Council relating to the enforcement of the planning controls applicable to brothels. While Mr Fryar clearly and deliberately manipulated the system under which it was intended he carry out his enforcement responsibilities, there were elements of the system that gave him the opportunity to act corruptly without detection for several years.

Ten recommendations are made to Parramatta City Council, which focus on introducing system modifications, and monitoring and compliance mechanisms designed to reduce opportunities for similar corrupt conduct in future.

Chapter 4 also considers the legal framework within which the control of brothels has been undertaken by councils since 1995, when the control of brothels became a matter for planning law rather than criminal law. The task of enforcing planning law is one which in most cases falls to local councils. The likelihood that the brothel industry remained a high-risk industry and that these changes saw the corruption risk previously centred on the police force transferred to local councils is considered and three recommendations to the Minister for Planning and the Attorney General are made in this regard.

RECOMMENDATION 1

It is recommended that the Minister for Planning and the Attorney General commission a review of the corruption risks attached to the regulation of brothels by local councils, and develop an appropriate strategy to deal with those risks.

RECOMMENDATION 2

It is recommended that the Minister for Planning and the Attorney General give consideration to adopting a system to prevent unsuitable persons operating brothels.

RECOMMENDATION 3

It is recommended that the Minister for Planning and Attorney General introduce legislation to require sex industry advertisements to show the relevant development approval number. If the business does not require consent, the advertisement should be required to show an exemption number issued by the local council.

RECOMMENDATION 4

It is recommended that Parramatta City Council implements a system of active staff and performance management in the compliance area.

RECOMMENDATION 5

It is recommended that designated senior staff of Parramatta City Council regularly review closed matters and the information made available to them by the review and audit program recommended in Recommendation 12, and take action if this information suggests the possibility of corrupt conduct. Protocols regarding responsibilities and appropriate actions need to be developed.

RECOMMENDATION 6

It is recommended that the duties of the strategic analyst, crime and corruption prevention at Parramatta City Council include ascertaining the training needs of team members, service managers and senior managers; and procuring and/or developing relevant training programs.

RECOMMENDATION 7

It is recommended that Parramatta City Council provide initial and ongoing training tailored to the needs of team members and managers, targeted at recognising and reducing corruption risks.

RECOMMENDATION 8

It is recommended that senior managers at Parramatta City Council undertake specialised training in risk management and methods for early detection of corrupt conduct.

RECOMMENDATION 9

It is recommended that Parramatta City Council institute a program of rotation of the position of Team Leader, Compliance Services.

RECOMMENDATION 10

It is recommended that the service matter owner of CRMs concerning brothels should be the Service Manager, Compliance Services, rather than the Team Leader. It is also recommended that the Customer Relationship Management system be upgraded so that this does not remove from the Team Leader the ability to allocate tasks to inspectors in the team.

RECOMMENDATION 11

It is recommended that the Customer Relationship Management system be upgraded to support the protocol that if an officer undertakes an inspection, he or she cannot close a CRM.

RECOMMENDATION 12

It is recommended that Parramatta City Council develops a rigorous review and audit system for the compliance function and that a high-level manager oversees that process.

RECOMMENDATION 13

It is recommended that Parramatta City Council introduces a system of fact checking of statements entered into the Customer Relationship Management system by the Compliance Team.

Chapter 1: Introduction

This report concerns an investigation conducted by the Independent Commission Against Corruption (the Commission) into an allegation that Wade Fryar, the Team Leader of Compliance Services at Parramatta City Council (the Council), corruptly solicited and received cash payments and sexual services from brothel owners and prostitutes in return for not taking action on behalf of the Council to prevent unauthorised use of premises for prostitution.

From approximately 2003 to February 2007 Mr Fryar received free sexual services from at least five prostitutes and up to \$40,000 by way of corrupt payments from brothel operators.

Why the Commission investigated

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

- (i) *corrupt conduct, or*
- (ii) *conduct liable to allow, encourage or cause the occurrence of corrupt conduct, or*
- (iii) *conduct connected with corrupt conduct, may have occurred, may be occurring or may be about to occur ...*

The Commission's role is set out in more detail in Appendix 1, while Appendix 2 sets out the definition of corrupt conduct under the ICAC Act.

Initial information received by the Commission in October 2006 was serious and would, if established, constitute corrupt conduct within the meaning of the ICAC Act. It also raised issues as to whether the procedures at the Council may have had certain weaknesses that provided the opportunity for Council officers to engage in improper conduct in connection with the detection and prevention of brothels operating illegally within the Council's area. In these circumstances the Commission decided to investigate the allegation.

Conduct of the investigation

As the conduct under investigation was potentially very serious, the Commission obtained warrants under the relevant legislation to enable the use of listening devices and the interception of telecommunications.

The Commission obtained and analysed relevant files from the Council through the issuing of notices under sections 22 and 23 of the ICAC Act. The Commission also lawfully executed a number of search warrants as a result of which further documentation was obtained and analysed. Physical surveillance of suspected persons was also undertaken by the Commission.

A large number of people including prostitutes and brothel owners were interviewed and statements were taken.

The evidence obtained from these sources strongly indicated that Mr Fryar had sought and accepted payments of money and sexual services from a number of people in return for not taking action to prevent the unauthorised use of premises for prostitution.

The Commission conducted compulsory examinations involving Mr Fryar and a brothel owner, Ms Min Lu, who was suspected of making a payment to Mr Fryar on 23 February 2007. Both witnesses made admissions about engaging in improper conduct.

The public inquiry

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

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

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

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

While Mr Fryar had made admissions during the course of his evidence at the compulsory examination, the Commission believed that he had knowingly minimised

the extent of his misconduct. A public inquiry which allowed for the questioning under compulsion of Mr Fryar and other persons from whom he was suspected of having sought and accepted payments provided the Commission with a further means of exposing the full extent of wrongdoing. Furthermore, as there appeared to be compelling evidence of serious and systemic misconduct and the significant benefit in exposing this conduct outweighed any prejudice to the reputation of those who were the subject of the investigation, the Commission determined it was in the public interest to conduct a public inquiry.

The public inquiry commenced on Monday 14 May 2007 and concluded on the following day. Evidence was taken from five persons. The Hon Jerrold Cripps QC, Commissioner, presided over the public inquiry. Mr Michael King SC was Counsel Assisting. In accordance with the usual practice of the Commission and the requirements of procedural fairness, submissions on possible findings were made by Counsel Assisting and an opportunity to respond given to those who may be the subject of adverse findings. Submissions received in response were considered in preparing this report.

Investigation outcomes

In Chapter 3 the Commission makes findings that Wade Fryar, Yixin Huang, Min Lu, Janaporn Srijan, Somsri Innes, Jin Xia Kuang, “Tina”, Youxia Carle, Li Ping Song, Qing Qiu Shan and Cui Mian Xu engaged in corrupt conduct.

Chapter 3 also contains statements pursuant to section 74A(2) of the ICAC Act that the Commission is of the opinion that consideration should be given to obtaining the advice of the Director of Public Prosecutions with respect to the prosecution of Wade Fryar for offences of corruptly receiving benefits under section 249B(1) of the *Crimes Act 1900* (NSW) and the giving of false or misleading evidence under section 87 of the ICAC Act.

The Commission is also of the opinion that consideration should be given to obtaining the advice of the Director of Public Prosecutions with respect to the prosecution of Youxia Carle for an offence under section 80(c) of the ICAC Act for wilfully making a false statement to an officer of the Commission; and Yixin Huang, Min Lu, Janaporn Srijan, Somsri Innes, Jin Xia Kuang, “Tina”, Youxia Carle, Li Ping Song, Qing Qiu Shan and Cui Mian Xu for offences of corruptly giving a benefit under section 249B(2) of the *Crimes Act 1900* (NSW).

Chapter 4 sets out the corruption prevention issues in relation to the events described in previous chapters and the Commission’s recommendations to address

these issues. That chapter outlines the corruption risks inherent in the regulation of brothels by local councils, discusses how flaws in the Council’s procedures provided the opportunity for corrupt conduct and makes ten recommendations to assist the Council to minimise or prevent similar misconduct in the future. Three recommendations are made to the Minister for Planning and the Attorney General for reforms to the regulation of the prostitution industry in NSW.

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

Recommendation that this report be made public

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

Chapter 2: Regulation of brothels by local councils

The purpose of this chapter is to briefly set out the relevant legislative background governing the regulation of brothels within New South Wales and the procedures at Parramatta City Council to enforce the legislative scheme. The information in this chapter will be of assistance in understanding the evidence and issues set out in subsequent chapters of this report.

Legislative framework

The *Disorderly Houses Amendment Act 1995* abolished the common law offence of keeping a brothel and living off the earnings of prostitution. Prior to the *Disorderly Houses Amendment Act 1995* all brothels were “disorderly houses” and could be closed down.

Following the enactment of the 1995 legislation a brothel became a recognised land use that could be regulated by local councils under the *Environmental Planning and Assessment Act 1979* (the EPA Act).

Councils are empowered to regulate brothels in a variety of ways. Local environmental plans are prepared by councils and made by the Minister administering the EPA Act. They establish the legal framework for planning in local areas by identifying locations for particular land uses, and whether or not particular uses require development consent. The relevant local environmental plan usually contains provisions designed to ensure that brothels are appropriately located. Development control plans prepared under the EPA Act provide detailed planning guidance about land use and provide additional means to control development. Assessments of development applications under the EPA Act provide a further mechanism by which local councils, in this case the Parramatta City Council, may regulate the establishment and operation of brothels within a particular area.

As is the case with other land uses, the approach taken to the appropriate location of brothels varies from council to council. Brothels are typically a separately defined use in planning instruments, permissible (most commonly, with consent) in particular zones and prohibited in others. If brothels are not separately defined they are regarded as a commercial use and their permissibility is the same as for other forms of commercial use.

The *Restricted Premises Act 1943* and the EPA Act also provide a means by which local councils may control both the authorised and unauthorised use of premises for the purposes of prostitution. These Acts have been recently amended by the *Brothels Legislation Amendment Act 2007* to give councils more power to identify and shut down illegal brothels.¹

The *Restricted Premises Act 1943* provides that a local council may apply to the Land and Environment Court to obtain an order restraining the use of premises lawfully authorised to operate as a brothel in circumstances where the council has received sufficient complaints from residents or occupiers of premises in the vicinity of the brothel and the council can demonstrate that the brothel is having a detrimental effect on the local community.²

Any person, including a council, can take proceedings under the EPA Act for an order of the court to restrain a breach of the Act and the court is given very wide powers in the exercise of its discretion. Furthermore, section 121B(1) of the EPA Act provides that a local council may order the operator of a brothel to cease using the premises for the purpose of prostitution where the brothel is operating without development consent. Failure to observe that order by a brothel owner may constitute a criminal offence and allow the council to commence criminal proceedings in the Local Court or the Land and Environment Court.

The process for dealing with unauthorised brothels at the Council

At Parramatta City Council responsibility for enforcing the provisions of environmental planning instruments fell to the Construction and Compliance Unit. This unit has two teams, namely, Construction Services and Compliance Services. Mr Fryar occupied the position of Team Leader of Compliance Services until his dismissal by the Council in February 2007 as a result of the Commission’s investigation. Compliance Services consists of a team leader and three compliance officers.

Information about brothels operating unlawfully within the Council’s area was received by the Council through

1. At the time of writing this report these amendments had not come into operation.

2. Amendments to the *Restricted Premises Act 1943* by the *Brothels Legislation Amendment Act 2007* provide that one complaint may be sufficient to warrant the making of an application in the case of a brothel consisting of two or more prostitutes. The amendments also enable a council to make an application where it has received a complaint from persons who work in the vicinity of or regularly use, or whose children regularly use, facilities in the vicinity of a brothel.

complaints from members of the public and the conduct of preliminary enquiries by officers of Compliance Services. These enquiries included identifying the potentially unauthorised use of premises by surveying the “Adult” advertisements in both English-language and foreign-language publications and telephoning the advertised numbers to determine whether sexual services were offered from the premises.

Both approaches resulted in the creation of an entry in the Council’s computerised Customer Relationship Management system. This process is also known as “creating a CRM”. Each CRM has a “service matter owner” who is able to allocate tasks to particular officers. The system then allows for automatic email reminders to the officer allocated the task. Each task has a deadline and if not met, the matter “escalates” to a more senior officer.

The system allows the service matter owner to change the status of a CRM to “closed”. The officer allocated tasks by the service matter owner cannot do so. In the case of complaints dealt with by Compliance Services, the service matter owner was Mr Fryar.

It was one of Mr Fryar’s functions to review complaints received by the Council and if appropriate to allocate a complaint to a compliance officer for investigation into the use made of the premises using the system described above.

Investigative activities conducted by the compliance officers included visual inspections of premises by two compliance officers and the interviewing of the occupants of those premises. On occasions Mr Fryar also conducted enquiries of this nature.

The results of these activities were recorded in the Customer Relationship Management system. As team leader, Mr Fryar reviewed those enquiries. Where there was insufficient evidence to support a complaint, Mr Fryar had authority to close the matter on the Customer Relationship Management system. Where there was evidence that the premises were being unlawfully used for the purposes of prostitution Mr Fryar was authorised to issue a Notice of Demand on the occupier and/or owner of the premises to cease the prohibited use of the premises. Failure to do so within the time frame indicated in the Notice of Demand could result in the Council commencing enforcement proceedings before the Land and Environment Court.

It is noteworthy that Mr Fryar alone could determine whether or not to discontinue an investigation into the use made of particular premises. The following chapter will explore the extent to which Mr Fryar exploited this autonomy to achieve his own ends.

Chapter 3: Misconduct of a Council employee and brothel owners and operators

This chapter examines how Mr Fryar sought and obtained regular payments and sexual services from various women who were working as brothel operators or prostitutes from unauthorised premises within the Council's area. The chapter also examines an attempt by Yixin Huang to bribe Mr Fryar.

It is convenient to start this account at the stage of the Commission's investigation where Mr Fryar was apprehended immediately after receiving a corrupt payment from a brothel operator.

Wade Fryar accepts payments and sexual services from Min Lu

On 23 February 2007 Commission officers saw Mr Fryar travel in a Council vehicle to a brothel at Chester Hill, outside the Council's area, and enter the premises.

Upon exiting the brothel, Mr Fryar was stopped and searched by officers from the NSW Police Force who had earlier agreed to assist the Commission in its investigation of Mr Fryar. Commission officers were also present. A sum of \$400 was found in Mr Fryar's wallet. He was questioned by Commission investigators and admitted that he had just received the sum of \$400 from "Anna", the proprietor of the brothel from which he had just exited.

"Anna" was identified by the Commission as Ms Min Lu. Other enquiries conducted by the Commission established that Ms Lu was also the proprietor of a brothel at Toongabbie, within the Council's area. Ms Lu was interviewed by Commission investigators on 24 February 2007 and, while she admitted providing Mr Fryar with free therapeutic massages on a number of occasions, denied paying him any money.

On 26 February 2007 Ms Lu gave evidence before the Commission at a compulsory examination.

Ms Lu said that the business she purchased at Toongabbie was authorised by the Council to provide massage services only. However, she admitted that she also used the premises to provide sexual services to various clients. Contrary to her earlier statements about the matter, Ms Lu told the Commission that she had paid Mr Fryar the sum of \$400 on 23 February 2007.

Ms Lu said that she first met Mr Fryar when he and another compliance officer from the Council had conducted an inspection of the Toongabbie premises. She stated that Mr Fryar telephoned her a number of

hours after the inspection and told her that she "may do hand relief in [her] business", a use of the premises that she knew was not authorised by the Council. She said that a few days later Mr Fryar returned to the premises by himself and asked her for a massage. Ms Lu told the Commission that during the massage Mr Fryar told her he wanted to be paid \$100 a week. She said that about a week later she met Mr Fryar at a Chinese restaurant and paid him \$500 and thereafter \$400 each month. She said that on a few occasions she paid Mr Fryar a lower sum of either \$200 or \$300.

Ms Lu said that the payment on 23 February 2007 was the last of such payments. She told the Commission that in addition to these payments she and prostitutes employed by her at the premises at Toongabbie provided Mr Fryar with massages and sexual services. Ms Lu said that she provided these benefits to Mr Fryar as she understood that if she did so he would allow her to continue to use the premises to provide unauthorised sexual services.

Ms Hancock, a prostitute at Ms Lu's brothel at Toongabbie, provided a statement to the Commission.

She said that she began working for Ms Lu at the Toongabbie premises in 2004 providing massage services and sexual services to clients of the business. Ms Hancock said that she realised that the premises were not "licensed" to provide sexual services. She recalled Mr Fryar and another compliance officer inspecting the premises in late 2004. She said that shortly after the inspection Mr Fryar attended the premises alone. She said that on this occasion she was directed by Ms Lu to provide him with a massage and she complied. Ms Hancock told the Commission that she provided Mr Fryar with sexual services during the massage. She said that he left without paying. Ms Hancock stated that she provided the same service to Mr Fryar on another occasion without him having to pay and after being directed to do so by Ms Lu. On both occasions Ms Lu paid Ms Hancock for the sexual services she provided to Mr Fryar.

On 26 and 27 February 2007 Mr Fryar gave evidence before the Commission at a compulsory examination.

Mr Fryar admitted receiving a payment of \$400 from Ms Lu on 23 February 2007. He said that he may have received one or two other payments in the sum of \$200 or \$300 from Ms Lu. He said that he may have also received massages on infrequent occasions from Ms Lu. While he recalled having *yum cha* with Ms Lu

he denied receiving any cash payment from her on that occasion. He denied that he received payments from her on a regular basis.

He said that in return for the payments it was his role to “look after her [Toongabbie] establishment if there were any complaints”. He explained to the Commission that in 2006 he became aware that sexual services were offered from the premises and agreed that it was possible that he suggested to Ms Lu that, in return for her making the payments to him, he would allow her to use the premises at Toongabbie to provide those sexual services.

At the public inquiry Mr Fryar told the Commission that he had in fact been receiving payments from Ms Lu in the 15 to 18 months preceding the last payment he received from her on 23 February 2007. He said that during that period he may have received around six payments each in the sum of \$400 together with sexual services on some occasions. He agreed that he received the sum of \$500 and a bottle of scotch from her during their *yum cha* lunch and that his earlier disavowal of the receipt of this payment at the compulsory examination was deliberately false.

Mr Fryar told the Commission that in return for these payments and sexual services he would warn Ms Lu of impending inspections by compliance officers. He said that those officers would return from the inspections without evidence of any unauthorised activity having been conducted from the premises. He said that he would then close the complaint on the Customer Relationship Management system.

Wade Fryar’s involvement with other prostitutes

As a result of its investigative activities the Commission was able to identify a number of women from whom Mr Fryar had sought and accepted payments and sexual services. Most of these witnesses provided a statement to or participated in an interview with Commission investigators before the commencement of the public inquiry. Others gave evidence before the Commission at the public inquiry.

Janaporn Srijan

Ms Srijan was interviewed by Commission investigators.

She told the Commission that in February 2006 she set up premises at North Parramatta and without Council’s consent used the premises as a brothel. Ms Srijan told the Commission that before doing so she contacted Mr Fryar, who had been introduced to her by a fellow

prostitute, Somsri Innes, and asked him whether she could operate the brothel from the premises at North Parramatta, to which he agreed. She said that immediately after commencing the business she began paying Mr Fryar the sum of \$100 each week. She said that she reduced the amount of the payments to \$50 each week towards the end of 2006 as her business suffered a downturn. She stated that she may have paid Mr Fryar as much as \$4,000 in total. Ms Srijan also indicated that she provided Mr Fryar with sexual services at a discounted price or directed prostitutes in her employ to do so.

Ms Srijan provided these benefits to Mr Fryar in return for him ensuring that the Council did not take any action to terminate the use of her premises as a brothel. She said that Mr Fryar told her that if she stopped making the payments he would close her “shop”.

Mr Fryar told the Commission that he had been receiving weekly payments from Ms Srijan since February 2006 in return for not taking action to terminate her unauthorised use of the premises at North Parramatta for prostitution. He agreed that the payments were originally in the sum of \$100 and were later reduced to the amount of \$50 each week. Mr Fryar said that in addition to the payments he was provided with sexual services at a discounted rate by Ms Srijan or other prostitutes employed by her.

Somsri Innes

Ms Innes provided a statement to the Commission.

She told the Commission that in 2003 she unlawfully used premises at Brickfield Street, North Parramatta for prostitution. She said that three or four months after she opened for business she received a Notice of Demand from the Council to cease operating as a brothel from the premises. A short while later she received a visit from Mr Fryar who told her that she could continue to provide sexual services from the premises notwithstanding that it was an unauthorised use.

Ms Innes told the Commission that Mr Fryar then became a regular visitor to the premises and while she did not pay him any money she provided him with sexual favours on some occasions. She said that due to the increasing number of complaints made against her Mr Fryar encouraged her to relocate her business. In July 2004 she moved to new premises at Sorrell Street, Parramatta. She told Mr Fryar of her new location and he told that it was “okay” for her to use the premises for prostitution notwithstanding the fact that she had no consent from the Council to use the premises in that way.

She said that Mr Fryar began visiting her at the new address almost immediately after she relocated. She continued to provide him with free sexual services from these premises.

Ms Innes told the Commission that approximately two months after moving to Sorrell Street Mr Fryar asked her to pay him \$100 each week, which she agreed to do. She continued paying Mr Fryar until February 2006. On Ms Innes' evidence, she would have paid Mr Fryar a total of about \$6,800. The payments were to ensure that Mr Fryar did not take any action to end her use of the premises as a brothel.

Mr Fryar admitted receiving cash payments and sexual services from Ms Innes when she was at the Brickfield Street premises for a period of six months or less. He could not recall the amount of these payments. Mr Fryar told the Commission that he also received cash payments and sexual services from her after she moved her business to the premises at Sorrell Street, Parramatta. He said that he received payments in the sum of \$200 each month for a period of three or four months.

Jin Xia Kuang

Ms Kuang made a statement to the Commission.

She obtained the Council's consent to operate a massage business from premises at Granville and commenced doing so in February 2006. In addition to offering a massage service some of the women in her employ also provided sexual services to clients. Ms Kuang said that she knew she was not authorised by the Council to use the premises for prostitution.

Ms Kuang told the Commission that shortly after opening for business she received a visit from Mr Fryar. She said that she gave him a free massage. Ms Kuang said that Mr Fryar visited her again at the Granville premises around Easter 2006. On this occasion she gave him a massage and the sum of \$100. Ms Kuang said that she continued to provide Mr Fryar with free massages and payments in the sum of \$100 on a regular basis until February 2007. She said that she made the regular payments of cash to Mr Fryar as she did not want him to cause problems for her business.

Mr Fryar told the Commission at the compulsory examination on 26 February 2007 that he had received the sum of \$100 from Ms Kuang on three or four occasions.

At the public inquiry Mr Fryar stated that he had been receiving payments from Ms Kuang before she moved to the premises at Granville. He stated that he encouraged Ms Kuang to obtain the Council's consent to establish a massage business at the Granville premises. He said that

he knew that she also used the premises for the purposes of prostitution.

Mr Fryar told the Commission that he received sexual services and regular fortnightly payments in the sum of \$100 from Ms Kuang for a period of 12 months after she moved to the Granville premises. He admitted that he had deliberately given false evidence to the Commission on this matter during his evidence at the compulsory examination.

"Tina"

At the commencement of the public inquiry the legal representative of two of the women who had earlier admitted making payments to Mr Fryar made an application to the Commissioner under section 112 of the ICAC Act to restrict the publication of their names. The Commissioner determined that it was in the public interest to grant this application and ordered that their names not be published. The witnesses will be referred to hereafter as "Tina" and "Janet Hogan".

"Tina" made a statement to the Commission.

She stated that in August 2005 she was working as a prostitute from premises at Parramatta when Mr Fryar attended for the purposes of conducting an inspection. "Tina" did not have the Council's consent to use the premises as a brothel. She said that Mr Fryar served her with a Notice of Demand to cease using the premises for prostitution.

"Tina" stated that Mr Fryar attended on a second occasion and requested sexual services from her which she provided; that during another visit to the premises Mr Fryar told her that she could continue using the premises for the purposes of prostitution on condition that she provided him with sexual services at no cost to him; and that towards the end of 2005 Mr Fryar requested a cash payment from her, to which she acceded by paying him the sum of \$500 on 7 December 2005. "Tina" stated that she told "Janet Hogan", her receptionist, of the payment she had made to Mr Fryar and that "Janet Hogan" made a written note of the payment.

From December 2005 to late 2006 "Tina" made two further payments each in the sum of \$500 to Mr Fryar and instructed "Janet Hogan" to pay Mr Fryar the sum of \$500 on each of six other occasions.

"Janet Hogan" also made a statement to the Commission.

She confirmed that she had made those payments to Mr Fryar and produced a diary in which she had

recorded the amount and date of those payments. These payments totalled \$4,500.

“Tina” made the payments to Mr Fryar and instructed “Janet Hogan” to make the payments to Mr Fryar as she feared that if she had not done so Mr Fryar would have taken action on behalf of the Council to close down her business.

Mr Fryar told the Commission at the compulsory examination on 26 February 2007 that he had never asked for or received money from “Tina”. However, during his evidence at the public inquiry Mr Fryar stated that he had received payments in the sum of \$500 each month from “Tina” or one of her employees for a period of approximately 12 months.

Youxia Carle

Ms Carle gave evidence at the public inquiry.

She told the Commission that since November 2006 she had operated a massage business from premises at Merrylands. Ms Carle said that she had paid Mr Fryar the sum of \$500 on two occasions in return for his assistance in lodging an application with the Council to use the premises for the purpose of conducting an acupuncture service.

She admitted that she had lied when she denied that she had paid any money to Mr Fryar during the course of an earlier interview she participated in with Commission investigators.

Mr Fryar told the Commission that Ms Carle had been unlawfully using premises at Merrylands for prostitution when he first met her in late 2006. Between November 2006 and February 2007 he received three payments from Ms Carle, each in the sum of \$500, in return for not taking action on behalf of the Council to close down her business.

During his evidence Mr Fryar was played a lawfully intercepted telephone call between himself and “Michelle”, a friend of Ms Carle, on 19 November 2006. He stated that one of the purposes of the call was to instruct “Michelle” to advise Ms Carle that there was a possibility that Council officers would attend her premises at Merrylands for the purpose of conducting an inspection.

Ms Carle’s explanation for the payments she made to Mr Fryar lacked credibility and was unconvincing. She presented as a witness who was intent upon minimising her culpability by telling half-truths. In these circumstances the Commission accepts the reason advanced by Mr Fryar for the payments made to him by Ms Carle.

Li Ping Song

Ms Li Ping Song gave evidence before the Commission at the public inquiry.

She told the Commission that she was operating a massage business, without the Council’s consent, from premises at O’Connell Street, Parramatta. She paid Mr Fryar the sum of either \$400 or \$500 each month for a period of 18 months in return for him not taking action to close down her business. On this basis, Mr Fryar would have received a total of between \$7,200 and \$9,000.

Mr Fryar told the Commission that Ms Song used the premises at O’Connell Street for the purposes of prostitution. He had known Ms Song for approximately 18 months and during that period she paid him the sum of \$400 or \$500 each month in return for him not taking action to end her use of the premises for prostitution. Mr Fryar said that on occasions he warned Ms Song of impending inspections by compliance officers.

Mr Fryar’s attention was drawn to the evidence he gave before the Commission at the compulsory examination on 26 February 2007 during which he stated that he had received money to the value of \$500 from Ms Song. He agreed that in his previous evidence he had deliberately downplayed the amount of money he had received from Ms Song.

Qing Qiu Shan

Ms Shan gave evidence before the Commission.

She said that she commenced operating a massage business from premises at Guildford in November 2006. She paid Mr Fryar the sum of \$400 on three occasions so as to avoid being closed down by him.

Mr Fryar told the Commission that he received payments in the sum of \$500 each month from approximately November 2006 to February 2007 from Ms Shan.

Cui Mian Xu

Ms Xu gave evidence before the Commission.

She stated that she was the owner of premises at Rydalmere. Ms Xu indicated that she leased the premises to another person who used it for the purposes of prostitution.

Ms Xu said that Mr Fryar served her with a Notice of Demand to cease use of the premises for prostitution. She said that she then applied to the Council to

lawfully operate a brothel from the premises and sought Mr Fryar's assistance in finding a "town planner consultant" to help with the application. She paid Mr Fryar the sum of \$500 for his assistance in this regard and an additional sum of \$500 when he provided her with the names of those persons who had objected to her development application.

Mr Fryar told the Commission that after serving a Notice of Demand on the occupier of the premises at Rydalmere in approximately August 2006 he was contacted by Ms Xu who arranged a meeting with him to discuss the notice.

He said that Ms Xu made three payments to him each in the sum of \$500 and provided him with sexual services on two occasions. He stated that he provided her with a copy of the objections to her development application and refrained from taking any action against the occupier of the premises until Ms Xu's development application was determined by the Council.

Wade Fryar approaches the Commission

In December 2006 compliance officers at the Council began investigating the use of premises at Phillip Street, Parramatta. Council had authorised the premises to operate as an accountancy practice only. The use of the Phillip Street premises for the provision of massage or sexual services had not been authorised by the Council.

Enquiries conducted by Council officers indicated that the premises were being improperly used as a brothel or at the very least for the purposes of providing massage services. On 8 January 2007 the occupier of the premises, Mr Yixin Huang, was advised by compliance officers that in order to operate as a massage parlour he was required to obtain the Council's consent. He subsequently forwarded a development application to the Council in which he sought to use the premises for the purpose of providing a massage service.

On 10 January 2007 Mr Huang attended the Council in relation to his development application. During the course of discussions with Council officers he indicated that he wished to use the premises as a brothel and was provided with a further development application form to complete and submit to the Council. At the same time, Mr Huang was advised that he would be prosecuted for commencing his business without first obtaining the consent of the Council.

On 11 January 2007 Mr Fryar received a telephone call from Mr Huang. Mr Huang invited Mr Fryar to attend the massage parlour to speak privately about a matter he would not identify. Mr Fryar refused this request

and, suspecting that Mr Huang intended to offer him a bribe, reported the matter to his supervisor, Mr Stephen Toohey. The approach made to Mr Fryar was then reported by the Council to the Commission.

On 17 January 2006 Mr Huang was served with a Notice of Demand from the Council to cease using the premises for prostitution.

At the time the Commission received the notification from the Council concerning Mr Huang and Mr Fryar, it had already gathered sufficient evidence to suggest that Mr Fryar had, in the course of his official functions, formed inappropriate associations with persons engaged in the provision of sexual services and had engaged in improper conduct with respect to those persons. Notwithstanding this, the Commission determined that it was appropriate to take Mr Fryar into its confidence to the extent necessary to investigate whether Mr Huang was intending to offer a bribe to Mr Fryar. In the event that a bribe was offered it would be highly relevant to the Commission's investigation to ascertain why Mr Huang had approached Mr Fryar. In particular, it would be relevant to ascertain if Mr Huang had any knowledge of previous acceptance of bribes by Mr Fryar from other people and, if so, the basis of such knowledge. The Commission did not, of course, disclose to Mr Fryar that he was under investigation.

In order to investigate Mr Huang the Commission sought and obtained Mr Fryar's consent to engage in a controlled operation involving Mr Huang. The Commissioner can authorise a controlled operation for the purpose of obtaining evidence of criminal activity or corrupt conduct. The *Law Enforcement (Controlled Operations) Act 1997* sets out a scheme for the authorisation, conduct and monitoring of controlled operations. Provided a participant in the controlled operations acts in accordance with the authority, any activity that might otherwise be contrary to law is not unlawful and does not constitute an offence or corrupt conduct.

In providing his consent, Mr Fryar falsely declared to the Commission that he had not engaged in any improper dealings with persons connected with the brothel or massage parlour industry in his capacity as a Council officer.

Having agreed to assist the Commission, Mr Fryar then arranged to meet with Mr Huang at his premises at Phillip Street on 24 January 2007. Prior to attending the premises Commission investigators installed a lawfully obtained listening device on Mr Fryar. During the meeting Mr Huang paid Mr Fryar the sum of \$1,000. At the time he made the payment the following exchange took place between Mr Huang and Mr Fryar:

[Fryar]: *What — what's the thousand dollars for?*

[Huang]: *Nothing, nothing, just make friends, a friend.*

[Fryar]: *You don't give a thousand dollars to every friend.*

[Huang]: *Okay, no worries —*

[Fryar]: *What do you want me to do?*

[Huang]: *Just, if — just like — if I can approve — normal — normal — normal approval —*

[Fryar]: *You want me to approve this one for you?*

[Huang]: *Yeah, okay.*

Mr Fryar indicated to Commission investigators that during the course of the conversation Mr Huang had before him the Council's Notice of Demand that had been served on him seven days earlier. Mr Fryar said that Mr Huang pointed at it when responding to Mr Fryar's enquiry as to what he should do in return for the payment of \$1,000.

Mr Huang was interviewed by Commission investigators and denied meeting with Mr Fryar on 24 January 2007 or paying him any sum of money.

Mr Huang could not be located prior to the public inquiry and did not give evidence before the Commission at the public inquiry.

Wade Fryar as a witness

During his evidence at the compulsory examination on 26 February 2007, Mr Fryar told the Commission that he first began accepting money from persons using premises to provide sexual services at the beginning of 2006. At the public inquiry Mr Fryar admitted that his evidence in that regard was deliberately false.

It is clear from this example, and others referred to earlier in this report, that during his evidence at the compulsory examination Mr Fryar endeavoured to diminish the level of his culpability as to the amount of money he had received from brothel owners and prostitutes and the period during which he received that money.

He continued in that vein during his evidence at the public inquiry, albeit to a lesser extent. For example, he was asked to estimate the amount of money improperly paid to him by brothel owners and prostitutes during the period of his employment as a compliance officer at the Council. Mr Fryar replied that he thought the figure was probably around the sum of \$15,000. However, a review of the evidence

of those women who made the payments to Mr Fryar from approximately mid-2004 to February 2007 suggests that the figure was closer to \$40,000. The Commission accepts their evidence on this matter as more accurate and reliable than Mr Fryar's.

Findings of fact

Based on the evidence set out above, the Commission is satisfied that the following facts have been established to the requisite degree:

1. At all relevant times, Mr Fryar held the position of Team Leader of Compliance Services at the Council.
2. In performing that role, Mr Fryar was required to properly investigate and oversee the investigation of complaints about the unauthorised use of premises within the Council's area and to take action in accordance with the Council's procedures to enforce compliance with the land use permitted by the Council.
3. Min Lu, Janaporn Srijan, Somsri Innes, Jin Xia Kuang, "Tina", Youxia Carle, Li Ping Song, Qing Qiu Shan and Cui Mian Xu owned or operated premises within the Council's area and used the premises for the purposes of prostitution or to provide a massage service without the Council's consent.
4. Mr Fryar sought and received cash payments and/or sexual services from Min Lu, Janaporn Srijan, Somsri Innes, Jin Xia Kuang, "Tina", Youxia Carle, Li Ping Song, Qing Qiu Shan and Cui Mian Xu as an inducement or reward for refraining from taking action to curtail their unauthorised use of premises for prostitution.
5. In addition, Mr Fryar warned Ms Lu and Ms Song and attempted to warn Ms Carle of impending or possible inspections of their premises by Council officers so as to frustrate attempts by the Council to investigate allegations or suspicions that they were using premises in an unauthorised manner.
6. On 24 January 2007 during a controlled operation in which Mr Fryar was acting at the request of the Commission, Mr Yixin Huang paid the sum of \$1,000 to Mr Fryar as an inducement for Mr Fryar to make arrangements to allow him to continue using the premises at Phillip Street in an unauthorised manner.

Corrupt conduct

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

For the purposes of the ICAC act, “conduct” is defined as including “neglect, failure and inaction”. It would therefore include the conduct of Mr Fryar in failing to take action to curtail the unauthorised use of premises as well as his conduct in seeking and receiving payments from prostitutes.

Wade Fryar

Mr Fryar’s conduct in receiving payments from Min Lu, Janaporn Srijan, Somsri Innes, Jin Xia Kuang, “Tina”, Youxia Carle, Li Ping Song, Qing Qiu Shan and Cui Mian Xu as an inducement or reward for refraining from taking action to curtail their unauthorised use of premises for prostitution, and also his conduct in deflecting or attempting to deflect the Council’s investigation into the use made of premises occupied by Ms Lu, Ms Song and Ms Carle, is conduct that adversely affects, or that could adversely affect, either directly or indirectly, the honest or impartial exercise of official functions by a public official. As such it is conduct which comes within section 8(1)(a) of the ICAC Act. It is conduct which involves the dishonest and partial exercise of official functions by Mr Fryar and a breach of public trust. As such it is conduct which comes within section 8(1)(b) and (c) of the ICAC Act.

Mr Fryar’s conduct in disclosing information about impending or possible Council inspections of premises occupied by Ms Lu, Ms Song and Ms Carle is also conduct that involves the misuse of information that he acquired in the course of his official functions and comes within section 8(1)(d) of the ICAC Act.

This conduct could also constitute or involve separate criminal offences of corruptly receiving a benefit under section 249B(1) of the *Crimes Act 1900* (NSW), separate common law offences of misconduct in public office and disciplinary grounds for dismissal. As such Mr Fryar’s conduct comes within section 9(1)(a), (b) and (c) of the ICAC Act.

The Commission finds that Mr Fryar engaged in corrupt conduct by accepting cash payments and/or sexual services from Min Lu, Janaporn Srijan, Somsri Innes, Jin Xia Kuang, “Tina”, Youxia Carle, Li Ping Song, Qing Qiu Shan and Cui Mian Xu as an inducement or reward for refraining from taking action to curtail their unauthorised use of premises for prostitution, and by deflecting or attempting to deflect the Council’s investigation into the use made of premises occupied by Ms Lu, Ms Song and Ms Carle.

Min Lu, Janaporn Srijan, Somsri Innes, Jin Xia Kuang, “Tina”, Youxia Carle, Li Ping Song, Qing Qiu Shan and Cui Mian Xu

The conduct of these women in making payments and/or providing sexual services to Mr Fryar is conduct that adversely affects, or that could adversely affect, either directly or indirectly, the honest or impartial exercise of official functions by a public official and falls within section 8(1)(a) of the ICAC Act. The conduct is also conduct that adversely affects, or that could adversely affect, either directly or indirectly, the exercise of official functions by any public official, and which could involve the offence of bribery. As such the conduct falls within section 8(2)(b) of the ICAC Act.

The conduct could also constitute or involve separate criminal offences of corruptly giving benefits under section 249B(2) of the *Crimes Act 1900* (NSW). As such the conduct comes within section 9(1)(a) of the ICAC Act.

The Commission finds that Min Lu, Janaporn Srijan, Somsri Innes, Jin Xia Kuang, “Tina”, Youxia Carle, Li Ping Song, Qing Qiu Shan and Cui Mian Xu engaged in corrupt conduct by giving cash payments and/or sexual services to Mr Fryar as an inducement or reward for refraining from taking action to curtail their unauthorised use of premises for prostitution.

Mr Yixin Huang

Mr Huang’s conduct in making a payment of \$1,000 to Mr Fryar is conduct that adversely affects, or that could adversely affect either directly or indirectly, the honest or impartial exercise of official functions by a public official and falls within section 8(1)(a) of the ICAC Act. The conduct is also conduct that adversely affects, or that could adversely affect either directly or indirectly, the exercise of official functions by any public official, and which could involve the offence of offering a secret commission. As such the conduct falls within section 8(2)(d) of the ICAC Act.

The conduct could also constitute or involve the criminal offence of corruptly giving a benefit under section 249B(2) of the *Crimes Act 1900* (NSW). As such the conduct comes within section 9(1)(a) of the ICAC Act.

The Commission finds that Mr Huang engaged in corrupt conduct by giving Mr Fryar the sum of \$1,000 as an inducement for Mr Fryar to make arrangements to allow Mr Huang to continue the unauthorised use of the premises at Phillip Street for prostitution.

Section 74A(2) statements

In making a public report, the Commission is required by the provisions of section 74(A)(2) of the ICAC Act to include, in respect of each “affected” person, a statement as to whether or not in all the circumstances, the Commission is of the opinion that consideration should be given to certain matters. For present purposes those matters include obtaining the advice of the Director of Public Prosecutions with respect to the prosecution of the person for a specified criminal offence and consideration of the taking of disciplinary proceedings against a public official with a view to securing their dismissal.

An “affected person” is a person against whom, in the Commission’s opinion, substantial allegations have been made in the course of or in connection with an investigation.

In the present circumstances Wade Fryar, Min Lu, Janaporn Srijan, Somsri Innes, Jin Xia Kuang, “Tina”, Youxia Carle, Li Ping Song, Qing Qiu Shan, Cui Mian Xu and Mr Huang are “affected” persons.

Wade Fryar

The Commission states that it is of the opinion that consideration should be given to obtaining the advice of the Director of Public Prosecutions with respect to the prosecution of Mr Fryar for offences under section 249B(1) of the *Crimes Act 1900* (NSW) in relation to his receipt of payments made by Min Lu, Janaporn Srijan, Somsri Innes, Jin Xia Kuang, “Tina”, Youxia Carle, Li Ping Song, Qing Qiu Shan and Cui Mian Xu.

Mr Fryar gave his evidence before the Commission under objection. Pursuant to section 37(3) of the ICAC Act his evidence about receiving payments and sexual services from brothel owners and prostitutes in return for failing to act in a manner consistent with his duties as a compliance officer is not admissible against him in any criminal proceedings in respect of these offences.

In determining whether to prosecute Mr Fryar for these offences the Director of Public Prosecutions may have regard to evidence obtained by the Commission during the course of its investigation including recordings of lawfully intercepted telephone conversations involving Mr Fryar and surveillance of Mr Fryar with the various women from whom he received the payments.

It would assist any prosecution to have, in addition, the evidence of the brothel owners and operators who may object to answering questions on the grounds that the answers may incriminate them. However, consideration could be given to a request that the Attorney General issue an indemnity to

these witnesses, if the Director of Public Prosecutions considered it appropriate.

Section 87(1) of the ICAC Act makes it an offence for a person to give evidence, at a compulsory examination, that is false or misleading in a material particular, knowing it to be false or misleading, or not believing it to be true. Self-incrimination immunity is not available to a person charged with an offence against the ICAC Act.

The Commission states that it is of the opinion that consideration should be given to obtaining the advice of the Director of Public Prosecutions with respect to the prosecution of Mr Fryar for offences under section 87 of the ICAC Act in relation to evidence given before the Commission during his compulsory examination when he said that:

- (a) prior to the payment he received from Min Lu on 23 February 2007 he had only received one or two other payments from her
- (b) on the occasion he had yum cha with Min Lu she did not make a payment of money to him
- (c) Jin Xia Kuang paid him the sum of \$100 on three or four occasions only
- (d) he had never asked for or received money from “Tina”
- (e) he was unsure whether he had received any money from Cui Mian Xu
- (f) he had only received payments from Li Ping Song in the sum of \$500
- (g) he first began accepting payments from a person operating a massage parlour at the beginning of 2006.

As Mr Fryar’s employment with the Council was terminated there is no need for the Commission to state an opinion with respect to the consideration of disciplinary action against him.

Min Lu, Janaporn Srijan, Somsri Innes, Jin Xia Kuang, “Tina”, Li Ping Song, Qing Qiu Shan and Cui Mian Xu

Min Lu, Jin Xia Kuang, “Tina”, Li Ping Song, Qing Qiu Shan and Cui Mian Xu either gave their evidence before the Commission under objection or provided a statement to the Commission following a promise being made to them that the information contained therein would not be used against them in criminal proceedings. As such, the evidence these affected persons have provided to the Commission and which may tend to incriminate them cannot be used against them in criminal proceedings.

Somsri Innes provided a statement to the Commission in the absence of a criminal caution and it is unlikely that this evidence would be admitted against her in criminal proceedings.

Any prosecution of these affected persons by the Director of Public Prosecutions for the offence of corruptly giving benefits under section 249B(2) of the *Crimes Act 1900* (NSW) would necessarily require the evidence of Mr Fryar, who may object to answering questions on the grounds that the answers may incriminate him. The Director of Public Prosecutions would also have available recordings of lawfully intercepted telephone conversations which record arrangements made by Mr Fryar to meet with some of these affected persons and evidence obtained by physical surveillance by Commission investigators.

Given Mr Fryar's level of culpability it appears unlikely that the Director of Public Prosecutions would consider recommending to the Attorney General that he should be issued with an indemnity. However, upon the completion of any criminal proceedings commenced against Mr Fryar, the Director of Public Prosecutions may call Mr Fryar to give evidence against these affected persons. The determination of his criminal liability would remove Mr Fryar's right to invoke the privilege against self-incrimination.

Janaporn Srijan received a criminal caution from Commission investigators before participating in an interview in which she made admissions about paying money to Mr Fryar. This evidence may be admitted against her in criminal proceedings.

In these circumstances, the Commission states that it is of the opinion that consideration should be given to obtaining the advice of the Director of Public Prosecutions with respect to the prosecution of Min Lu, Janaporn Srijan, Somsri Innes, Jin Xia Kuang, "Tina", Li Ping Song, Qing Qiu Shan and Cui Mian Xu for the offences of corruptly giving benefits under section 249B(2) of the *Crimes Act 1900* (NSW).

Mr Yixin Huang

The Commission states that it is of the opinion that consideration should be given to obtaining the advice of the Director of Public Prosecutions with respect to the prosecution of Mr Huang for an offence under section 249B(2) of the *Crimes Act 1900* (NSW) in relation to his payment of the sum of \$1,000 to Mr Fryar.

Both Mr Fryar's evidence as to the receipt of the money from Mr Huang and the recording of the lawfully intercepted conversation between Mr Fryar and Mr Huang during which Mr Huang paid the money to Mr Fryar and sought his assistance in continuing to

use the premises at Phillip Street in an unauthorised manner would be available for use in any prosecution.

Youxia Carle

Section 80(c) of the ICAC Act creates an offence of wilfully making a false statement to or mislead, or attempt to mislead, the Commission or an officer of the Commission, in the exercise of functions under the ICAC Act.

The Commission states that it is of the opinion that consideration should be given to obtaining the advice of the Director of Public Prosecutions with respect to the prosecution of Youxia Carle for an offence under section 80(c) of the ICAC Act in relation to a statement made to Commission officers in an interview conducted on 27 March 2007 during which she falsely denied that she had paid Mr Fryar any money and an offence of corruptly giving benefits under section 249B(2) of the *Crimes Act 1900* (NSW).

Chapter 4: Corruption prevention

The Commission's corruption prevention role

The Commission's corruption prevention role is established under section 13(1) of the ICAC Act, as follows:

- ...
- (d) *to examine the laws governing, and the practices and procedures of, public authorities and public officials, in order to facilitate the discovery of corrupt conduct and to secure the revision of methods of work or procedures which, in the opinion of the Commission, may be conducive to corrupt conduct,*
 - (e) *to instruct, advise and assist any public authority, public official or other person (on the request of the authority, official or person) on ways in which corrupt conduct may be eliminated,*
 - (f) *to advise public authorities or public officials of changes in practices or procedures compatible with the effective exercise of their functions which the Commission thinks necessary to reduce the likelihood of the occurrence of corrupt conduct.*
- ...

Section 13(2) establishes the corruption prevention functions that apply to investigations carried out by the Commission. The Commission is to conduct its investigations with a view to determining:

- ...
- (b) *whether any laws governing any public authority or public official need to be changed for the purpose of reducing the likelihood of the occurrence of corrupt conduct, and*
 - (c) *whether any methods of work, practices or procedures of any public authority or public official did or could allow, encourage or cause the occurrence of corrupt conduct.*

In this chapter, as part of its response to the systemic issues raised in this investigation, the Commission examines those practices and procedures of Council which may have assisted Mr Fryar to act corruptly.

While Mr Fryar clearly and deliberately manipulated the system under which it was intended he carry out his enforcement responsibilities, there were elements of the system that assisted him to undertake corrupt activity and to do so undetected for several years. Many of the recommendations made in this chapter are focused on introducing into the system modifications, and monitoring and compliance mechanisms designed to reduce opportunities for similar corrupt conduct in future. In addition, this chapter considers the legal framework within which the control of brothels has been undertaken by councils since 1995 when, in the context of the police corruption exposed by Commissioner Wood in the Royal Commission into the NSW Police Service³ (the Wood Royal Commission), the offences of keeping a brothel and living off the earnings of prostitution were abolished. The control of brothels became a matter for planning law rather than criminal law, and the task of enforcing planning law is one which in most cases falls to local councils. The likelihood that the brothel industry remained a high-risk industry and that these changes saw the corruption risk previously centred on the police force transferred to local councils is considered. Several recommendations are made in this regard.

Planning control of brothels in Parramatta

As noted in Chapter 2, the local controls that stipulate where brothels may and may not be granted approval to operate are found in environmental planning instruments made under the EPA Act.

Two principal planning instruments apply in the Council's area. The Parramatta CBD and several city precincts are covered by a State Government initiated planning instrument, Sydney Regional Environmental Plan No. 28 – Parramatta (SREP 28), which makes brothels a permissible use throughout much of the area it covers.⁴ The remainder of the Parramatta local government area is subject to Parramatta Local Environmental Plan 2001 (LEP 2001).

At the time of the events which gave rise to the Commission's investigation, brothels were permissible under LEP 2001 in "3A centre business" zones and in "4 Employment" zones (the industrial zones). In all

3. Royal Commission into the NSW Police Service (Commissioner, The Hon Justice TRT Wood), *Final Report, Volume 1: Corruption*, May 1997.

4. Advice from the Council is that brothels are permissible within the following zones within SREP 28: business zones, light industrial zones, automotive business zones, technology and enterprise zones, trade and industry support zones, regional enterprise zones, and business and transport zones. Brothels are not a permissible use in the residential zones of the Harris Park precinct.

other zones created by the LEP they were a prohibited use. On 1 June 2007 the LEP was amended and the permissibility of brothels in the “3A centre business” zones was removed. Brothels were also excluded from parts of some industrial zones.

If a brothel is a permissible use in a particular area, it also needs to conform to a number of additional provisions. Within the area covered by SREP 28, Clause 79 of the SREP applies:

79. Brothels

In determining an application to carry out development for the purpose of a brothel, the consent authority must consider the following:

- (a) whether the operation of the brothel will be likely to cause a disturbance in the neighbourhood because of its size, location, hours of operation or clients or the number of employees and other people working in it,*
- (b) whether the operation of the brothel will be likely to interfere with the amenity of the neighbourhood,*
- (c) whether the operation of the brothel will be likely to cause a disturbance in the neighbourhood when taking into account other brothels operating in the neighbourhood involving similar hours of operation,*
- (d) any other environmental planning instruments that the consent authority considers relevant.*

Within the area covered by the Parramatta LEP 2001 a broader range of additional considerations and special locational requirements apply. At the time of the events which were the subject of this investigation, Clause 24 of the LEP provided:

24. Brothels

- (1) Regardless of any other provision of this plan, premises shall not be erected or used for the purpose of a brothel where they are located:*
 - (a) on any land zoned residential or within 100 metres of any land zoned residential; or*
 - (b) near or within view from any church, hospital, school, community facility or public open space or from any other place frequented by children for recreational or cultural facilities, or*
 - (c) within 50 metres of a public transport facility, being a railway station entrance, bus stop, taxi rank, ferry terminal or the like.*
- (2) In determining an application to carry out development for the purpose of a brothel, the*

consent authority must consider the following matters:

- (a) whether the operation of the brothel will be likely to cause a disturbance in the neighbourhood because of its size, location, hours of operation, clients or the number of employees and other people working in it,*
- (b) whether the operation of the brothel will be likely to interfere with the amenity of the neighbourhood,*
- (c) whether the operation of the brothel will be likely to cause a disturbance in the neighbourhood when taking into account other brothels operating in the neighbourhood involving similar hours of operation,*
- (d) any other environmental planning instruments that the consent authority considers relevant.*

On 1 June 2007 the “exclusion zone” in paragraph 1(a) was increased from 100 metres to 200 metres.

There are eight approved brothels in the area covered by SREP 28, and seven approved brothels in the area covered by Parramatta LEP 2001.

How the compliance process was manipulated

As the Team Leader of Compliance Services, Mr Fryar was responsible for dealing with complaints about a range of matters including noisy or polluting construction practices, damaged footpaths, footpath obstructions, and unauthorised uses. Compliance Services operates in parallel with Construction Services, which has responsibility for the issue of a range of approvals and certificates relating to buildings. Enforcement action relating to unauthorised building works is dealt with by Compliance Services, which may seek advice from Construction Services in terms of compliance with the Building Code of Australia and fire safety.

These two teams are not the only areas of the Council with regulatory responsibilities. A number of other areas of Council also have responsibility for regulatory functions, for example those relating to the health and safety standards of restaurants, and those exercised by Council rangers.

The process by which enforcement action was expected to be undertaken against unauthorised brothels was briefly described in Chapter 2. It was noted that complaints could come from external sources, or could be generated by proactive actions by compliance officers

to identify unauthorised brothels from advertisements. Either approach resulted in the making of an entry in the Council's computerised Customer Relationship Management system, which was known as "creating a CRM". Each CRM has a designated service matter owner who allocates tasks to particular individuals by making entries in the Customer Relationship Management system, and closes the CRM on the system when the matter has been resolved. Only the service matter owner can do this. In the case of complaints dealt with by Compliance Services, the service matter owner was the Team Leader, Mr Fryar.

Complaints relating to brothels do not necessarily relate to an absence of approval. They can also concern authorised brothels operating outside their approvals. There are, for example, complaints on the Council's Customer Relationship Management system about an authorised brothel installing eye-catching external lighting, and thus undermining the discreet operation that was approved.

At the time of Mr Fryar's corrupt activities there was a set of written procedures specific to dealing with complaints about suspected unauthorised brothels, which Compliance Services was expected to follow:

1. *Upon receiving advice that a property is being used as a brothel the compliance officer searches council records to confirm if development consent has been granted,*
2. *If no development consent has been obtained for the purposes of a brothel, a CRM is created by the Officer, with Team Leader made the owner to follow the investigation process,*
3. *In addition, a search of the papers [is] undertaken to determine if there is any advertising which may assist in the investigations process,*
4. *Once an address and information is obtained, no less than two Council officers attend the premises and conduct an inspection where the occupants are interviewed,*
5. *Information is collected and upon returning to Council the CRM is updated and a reinspection date or phone call are entered to remind the officer to follow up status and the Team Leader briefed of the investigation,*
6. *Once this has been done, a Notice of Demand is created by the officer and peer reviewed by the Team Leader of Compliance where it is sent to the occupiers and the owners of the property,*

7. *Team Leader of Compliance informs Manager of Construction and Compliance of action being taken and discusses action to be taken in the Courts,*
8. *Officer is reminded through a CRM that a reinspection of the property is to be undertaken and reinspects the property with other compliance officer or makes a telephone call to the advertised number to confirm use is continuing to occur,*
9. *CRM is updated with information provided by the officer,*
10. *Should it be confirmed that the use continues without the consent of council, the officer then commences legal proceedings in the Land and Environment Court to have the use cease,*
11. *Draft legals are prepared and reviewed by Team Leader and Compliance Manager to be forwarded to Council's solicitors to file the proceedings,*
12. *Council officers attend the Court for the hearing and judgement.⁵*

Louise Connolly holds the position of Manager, Development Services Unit, and has responsibility for the Unit in which the Compliance and Construction Teams are located. In an interview with Commission officers Ms Connolly stated that an additional protocol was that, if the service matter owner had undertaken an inspection personally, he or she should not close the CRM. In such cases the CRM was to be closed by a more senior officer. As noted later in this chapter, the technical limitations of the CRM system meant that it did not support this protocol.

The investigation revealed that Mr Fryar sometimes went, on his own, to premises on which a Notice of Demand to cease an unauthorised use had been served, and made an arrangement to protect the premises from closure in exchange for money and sexual services. In most cases he was acting on his own initiative, but in some cases he was responding to an approach made to him by a brothel operator or the owner of the premises.

Mr Fryar intervened at that point to derail the process described above at step six. He did this by telephoning the operators of premises to let them know when the next inspection was about to occur. The result was that no evidence of unauthorised use could be obtained by the inspectors, since the brothel operator had sufficient warning to remove

5. Since the Commission's investigation, Parramatta City Council has advised that this set of procedures has been supplemented by some new measures. The key new measure of relevance to corruption prevention is the involvement of the Council's Legal Support Officer in the preparation of Notices of Demand and orders to cease an unauthorised use (see step 6 in the procedure).

such evidence. Mr Fryar was then able to close the CRM on the basis that compliance officers could not confirm that the premises were in use as a brothel.

Areas of corruption risk

In line with current research about crime in general and corruption in particular, the Commission's experience demonstrates that corrupt conduct is associated with people who are motivated to behave corruptly, often for personal gain; have the opportunity to perpetrate the corruption; and believe the improper conduct is unlikely to be detected.

As the analysis below shows, each of these conditions was present in this case. The areas of risk that contributed to the corrupt conduct in this case were:

- **High-risk function:** Any regulatory function is essentially a high-risk function; moreover, the brothel industry is an industry which is able to offer significant personal benefit to regulators in exchange for failure to carry out statutory responsibilities, and has historically been aligned to that pattern of behaviour.
- **Management priorities:** At Parramatta City Council there was a low level of awareness of the corruption risk attached to brothel regulation; Compliance Services focused on processing times rather than on the high level of risk in this function. High levels of autonomy in the team leader were accepted, and perceived "micromanagement" was discouraged.
- **High levels of discretion and low levels of accountability:** Consistent with the management priorities described above, the team leader was given a high level of autonomy and there was a low level of supervision of his actions and decisions.
- **Monitoring and compliance mechanisms:** There was a lack of systematic monitoring and compliance mechanisms applicable to the actions and decisions of Compliance Services, particularly in relation to "closed" matters.

Each of these areas of risk is considered below.

A high-risk function

All forms of regulatory activity carry some corruption risk, and the Commission has produced a number of publications focused on regulatory functions. The Commission has observed that:

While regulators are no more likely to act corruptly than any other kind of public official, the nature of their work exposes them to situations in which they can face special risks of corruption. Regulators are authorised to make decisions that often affect matters of significant value and importance to members of the public. In such circumstances a regulator has opportunities for exploiting his or her position for personal gain, that is, to act corruptly. A member of the public whose activities are regulated, may seek to escape compliance with standards or responsibilities that have been imposed in the public interest. They may try to corruptly influence a regulator to obtain a favourable result or other advantage. Thus the risks of corruption can be higher for a regulator than for other kinds of public officials.⁶

Following a 1997 investigation which found corrupt conduct by a health and building surveyor⁷ the Commission issued a publication focusing on the heightened risks associated with the traditional mobility and autonomy of the work performed by health and building inspectors.⁸ The activities performed by Compliance Services were traditionally part of that work.

The extent of the corruption exposed in this investigation, and the number of brothel operators prepared to pay bribes to Mr Fryar, suggest that the regulation of brothels is an area of special risk above and beyond that associated with the regulation of many other forms of activity. It is worth noting that, in his report on the Royal Commission into the NSW Police Service, Commissioner Wood grouped prostitution with liquor licensing, the gaming industry, commercial and private inquiry agents, drug needle exchanges and "shooting galleries" as an activity "the policing of which has been shown by this Royal Commission to attract a high risk of corruption".⁹

6. *Strategies for Preventing Corruption in Government Regulatory Functions*, Independent Commission Against Corruption, Sydney, March 1999, p. 4.

7. *Report on the Conduct of: George Bertoncello of Lane Cove Council, Nazem Bechara in relation to certain Councillors of Holroyd City Council and Vittorio Fasan and Antonio Cavallaro and their dealings with Fairfield City Council*, Independent Commission Against Corruption, Sydney, November 1997.

8. *Accountable Health and Building Inspections: Recommendations for Local Government*, Independent Commission Against Corruption, Sydney, June 1998.

9. Royal Commission into the NSW Police Service (Commissioner: The Hon Justice TRT Wood), *Final Report, Volume 1: Corruption*, May 1997, p. 12.

Transfer of corruption risk

Notwithstanding Commissioner Wood's observation, when brothels ceased to be a matter for the criminal law and became instead a use subject to regulation by the planning system, no special corruption prevention measures accompanied the changes. It was apparently assumed that removing the police from the field was both necessary and sufficient to deal with the corruption risks attached to prostitution. The prevailing view appears to have been that brothels should be regarded as just another business.

In hindsight, this may have been an overly benign view of an industry that had become accustomed to paying bribes to police and may have reasons (other than the former illegality of its activities) to prefer not to be subject to scrutiny. The business of prostitution has a high value to operators, and local councils, through their officers, effectively control legitimate entry into that business.

This investigation demonstrates that the continuing corruption risks associated with the brothel industry were not appreciated and dealt with in the context of the 1995 legislative changes. It is clear that a thorough review of the corruption risks now faced by councils needs to be undertaken by the State government, and measures to deal with these risks need to be developed.

RECOMMENDATION 1

It is recommended that the Minister for Planning and the Attorney General commission a review of the corruption risks attached to the regulation of brothels by local councils, and develop an appropriate strategy to deal with those risks.

Suitability of applicants

The brothel owners the subject of this investigation appear to have behaved differently from the proprietors of most other businesses in that they made no attempt to seek out areas in which their proposed use would be permissible, and to apply for consent. Four of the brothel operators involved did not seek approval even when they had fortuitously located in areas in which brothels were permissible (Cui Mian Xu did so only after receiving from the Council a Notice of Demand to cease an unauthorised use).¹⁰

The reasons for this apparent reluctance to operate "within the system" may include taxation, social security, or immigration irregularities, or there may be more prosaic reasons such as a reluctance to pay commercial rents, or that the use of the premises as a brothel is not allowed by the operator's lease.

Another unusual characteristic of brothels, not associated with less contentious businesses, is that they add sex to the more usual mix of money and power underpinning corrupt exchanges. For Mr Fryar, the combination of sex, money and power seems to have been an irresistible mix that motivated him to abandon his statutory responsibilities.

A related issue is that the NSW approach of treating brothels as a planning matter alone means that only the use of premises as a brothel is subject to scrutiny. There is no "fit and proper person" requirement applicable to intending brothel operators, and there is no check for criminal links. As noted in Chapter 3, while most of the corrupt approaches were made by Mr Fryar, there was little if any resistance to the payment of bribes by the brothel owners and operators, and there were some instances in which the initial approach was made by the brothel owner or operator rather than by Mr Fryar.

In considering whether or not to grant approval to an application for development consent, councils are obliged to take into account the relevant planning instruments (set out in Chapter 2) and the more general considerations set out in section 79C of the EPA Act. It may be that matters concerning the character of the applicant, such as convictions for serious crimes (including, for example, sexual servitude or drug dealing), could be taken into account under one or more of the heads of consideration available to councils. They may, however, feel constrained in doing so, not least because for councils to undertake criminal records checks, informed consent would be required.

By contrast, in some other States such as Victoria and Queensland, the planning regulation of premises is a matter for the relevant council,¹¹ but there is also an independent licensing authority which regulates individual brothel operators (in Victoria, "prostitution service providers") and brothel managers. In both States, the commission of certain offences renders a person unfit to hold a licence to operate a brothel. The list of disqualifying offences under the Queensland legislation includes official corruption, rape, kidnapping, and prostitution offences involving a child or an intellectually impaired person. The Victorian legislation exempts from the licensing requirement (but not from planning control) small owner-operated prostitution service providers, defined so as to include businesses operated by one or two particular persons. The exemption does not apply if, for example, clients are managed or directed to the business by another business.¹²

10. The operators of the brothels at Merrylands, Granville, Rydalmere and Toongabbie fell within this category at the relevant time.

11. *Prostitution Control Act 1994* (Vic.); *Prostitution Act 1999* (Qld).

12. *Prostitution Control Act 1994* (Vic.), section 23.

Not taking steps to keep criminal elements out of the industry is conducive to corruption. The Commission has not undertaken a detailed review of the effects and effectiveness of the alternative approaches taken in other States, and so does not make any specific recommendations. The Commission does, however, recommend that the issue be reconsidered by the Government in the light of this investigation. Consideration could then be given to whether there are alternative approaches to a licensing system, such as “reverse licensing”, where a person can operate a brothel unless they are within a prohibited category (e.g. they have convictions for certain kinds of offences or are associates of persons with such convictions).

It was noted in Chapter 2 that changes to both the EPA Act and the Restricted Premises Act are included in the *Brothels Legislation Amendment Act 2007*. The impact on the regulation of brothels as currently defined, particularly those operated by a sole prostitute, will also need to be considered. There is some discussion of the provisions of this Act later in this chapter.

RECOMMENDATION 2

It is recommended that the Minister for Planning and the Attorney General give consideration to adopting a system to prevent unsuitable persons operating brothels.

Advertising restrictions

Another feature of the Victorian legislation is that published advertisements for adult services must feature the operator’s licence number.¹³ In the case of small owner-operated prostitution service providers the advertisement may show an exemption number given to the business by the licensing authority.¹⁴

The Commission notes that a similar requirement could be adopted in NSW whether or not a fully fledged system of licensing of individuals, similar to that existing in other States, is introduced. It would be possible simply to adopt this aspect of the Victorian licensing system, but with the development approval number being substituted for the licensing number. If there are instances where the premises do not require consent, the local council could issue a unique identifying number serving the same purpose as the exemption number able to be issued to small owner-operated prostitution service providers in Victoria.

The advantage of this system is that it would be a largely “self-enforcing” way to encourage brothel

operators to seek approval and require minimal involvement by council officers. The Commission considers this would be a useful system to introduce.

RECOMMENDATION 3

It is recommended that the Minister for Planning and the Attorney General introduce legislation to require sex industry advertisements to show the relevant development approval number. If the business does not require consent, the advertisement should be required to show an exemption number issued by the local council.

Opportunities to operate lawfully

It is implicit in the Government’s approach to brothels since the 1995 legislative reforms that attempts by councils to completely remove opportunities for the legal establishment of brothels would defeat the purpose of the reforms. The supposition is that, if there are no avenues to operate lawfully, the result will be the establishment of unlawful operations.

The Wood Royal Commission final report of May 1997 noted that:

1.39 In light of Royal Commission evidence showing a clear nexus between police corruption and the operation of brothels, the NSW Attorney-General in June 1995 announced a reform of prostitution laws in NSW to remove the basis for an application under the Disorderly Houses Act to close a brothel which was not otherwise disorderly.

1.40 In permitting well-run brothels to operate, a potential opportunity for corrupt conduct on the part of police was closed off.¹⁵

The Department of Planning issued a circular to councils in December 1995 which advised that it is not consistent with the legislative amendments to prohibit brothels in all parts of a council area, as some councils had sought to do. The Department advised councils that it considered brothels to be most suited to industrial zones and commercial zones that are not adjacent to schools or facilities frequently used by children.

Subsequently, in July 1996, the Department wrote to councils to advise that the Government would not object if brothels were restricted to industrial areas, if that were appropriate to the local circumstances. The policy decision of the Minister was stated to be “in response to community concerns about the prospect of brothels being located in shopping centres”.

13. *Prostitution Control Regulations 2006*, regulation 9.

14. *Prostitution Control Act 1994* (Vic.), section 23.

15. *Royal Commission into the NSW Police Service (Commissioner: The Hon Justice TRT Wood), Final Report Volume 1: Corruption*, May 1997, p. 13.

Brothels are a permissible use in a number of areas in Parramatta and there are 14 approved brothels within the city's land area of 65 sq. km. It would be unreasonable to attribute the decision taken by a number of operators to operate illegally, and to pay Mr Fryar to enable them to do so, to a lack of opportunity to operate lawfully.

It is usual, and consistent with the advice of the Department of Planning referred to above, for brothels of any size to be prohibited in residential areas.¹⁶ The Commission has received material from a section of the sex industry both prior to and subsequent to this investigation, suggesting that if "home-based" brothels were treated as home occupations permitted without consent in residential areas, corruption risks associated with brothels would be reduced.

The *Brothels Legislation Amendment Act 2007* introduces a definition of "brothel" into the EPA Act. The term does not include "premises used or likely to be used for the purposes of prostitution by no more than one prostitute". The effect appears to be that, once these amendments come into operation, planning controls relating to brothels will no longer apply to such premises, although it is not yet clear what planning controls are intended to apply to them.

In any event, the suggestion that "home-based" brothels be treated as home occupations permitted without consent in residential areas does not have any relevance in the circumstances dealt with in this investigation. The investigation did not reveal any instances of Mr Fryar soliciting bribes from any person operating a "home-based" brothel, and provides no basis for concluding that his corrupt behaviour would have been less likely if a sole prostitute could operate without consent in residential areas. If the basis of the suggestion is that prostitutes would operate from their own homes without approval if it were legal to do so, resulting in fewer brothels requiring approval, the Commission's investigation similarly provided no basis for such a conclusion. A number of the prostitutes involved showed a strong disinclination for their line of work to become known to relatives and friends, and the anonymity of brothel work would presumably continue to be of value to them.

The Commission concludes that whether or not sex work on any scale is an appropriate use in residential areas is a policy issue for Government, councils and the community, and makes no further comment on the issue.

Management priorities

There is no indication that corrupt behaviour was condoned at any level within the Council. The management priorities adopted within Compliance Services, and within the Council more generally, however, reflected the fact that the possibility of corruption was not at the front of anyone's mind. This made it easier for someone so minded to engage in corrupt behaviour and escape challenge or detection for a significant period of time.

Emphasis on prompt closure of complaints

As noted earlier in this chapter, there are numerous regulatory functions carried out by the Council. In discharging these functions, the Council places strong emphasis on processing times and gears its reporting arrangements accordingly. In doing so it is responding to imperatives at the State level, whereby the performance of councils is evaluated largely in those terms.

The Customer Relationship Management system used by the Council allows for automatic email reminders to the person allocated a particular task. Each task has a deadline and if the deadline is not met, the matter "escalates" to a more senior officer. The result of this emphasis on processing times is that delays in achieving closures attract attention, while unusually prompt closures attract no scrutiny. Indeed, maximising the aggregate number of closures within a given time frame is likely to be viewed favourably.

In the compliance area, this emphasis was reflected in the agenda of the weekly meetings that took place between Mr Fryar and his supervisor Stephen Toohey, the Service Manager, Construction and Compliance. Only matters which had not yet been "closed" were listed for discussion at this weekly meeting. Only when Mr Fryar's corrupt activities had been detected was the Customer Relationship Management system interrogated in relation to closed matters, and it was then clear that there were anomalies in relation to certain brothels, as discussed later in this chapter.

The emphasis on processing times was supported by a preference for what might be termed "hands-off management", and a negative attitude towards what is seen as "micromanagement". The evidence from the Council below and on page 29 points to the conclusion that the active involvement of senior managers tends to be regarded as "micromanagement" (unwarranted interference) unless outcomes are

16. In the area of the City of Sydney to which the planning scheme developed by the former South Sydney Council applies, brothels operated by a single prostitute are treated as "home businesses" which are permitted without consent in residential areas.

not being achieved — and the outcomes sought are defined in terms of meeting targets relating to processing times.

A statement made to the Commission by a former compliance officer supports this conclusion:

I observed that Fryar would, at times, close complaints on the CRM system prior to enquiries being undertaken or finalised. I would go to the system to enter in notes about enquiries or inspections I had undertaken and find the matter had already been closed by Fryar. Fryar just made up reasons to close matters. The matters that he closed in this fashion were usually of a trivial nature. I always assumed his reason for doing this was to make the “stats” look good, because the area had such a high level of work.

Having apparently formed the view that “making the stats look good” was an unremarkable reason for closing complaints still requiring enquiries or inspections, the officer concerned did not report this discrepancy.

As brothel regulation is an area of exceptionally high corruption risk, the Council needs to recognise that there is a need for active management of staff and regular review of closed matters, as well as open matters. That review should be concerned with the reasons for closures as well as timeliness of closures, and unusually short times taken to deal with and close complaints should be taken as a possible indicator of failure to follow procedure.

RECOMMENDATION 4

It is recommended that Parramatta City Council implements a system of active staff and performance management in the compliance area.

RECOMMENDATION 5

It is recommended that designated senior staff of Parramatta City Council regularly review closed matters and the information made available to them by the review and audit program recommended in Recommendation 12, and take action if this information suggests the possibility of corrupt conduct. Protocols regarding responsibilities and appropriate actions need to be developed.

Low level of awareness of corruption risk

It is impossible to attribute Mr Fryar’s corrupt actions to a lack of awareness of his responsibilities or a lack of understanding that what he was doing was corrupt.

It is, however, possible to attribute the failure of the people above him to detect the signs they identified

after the event to a lack of awareness of the corruption risks attaching to regulatory functions in general and to brothel regulation in particular. The clear corruption prevention measure in place at the time that was relevant to the task was the requirement noted above that at least two officers attend brothel inspections. While it appears that by and large this procedure was followed in the case of actual inspections, it did not address the possibility of an officer returning to brothel premises alone for purposes other than a genuine inspection. There was also a rotation program for inspectors in Mr Fryar’s team, but as noted later in this chapter, his position was not subject to rotation.

A degree of trust in staff is necessary for any organisation to function, but the possibility that trust can be abused also needs to be acknowledged, and a corruption risk management focus by senior management is essential.

The Council is in the course of recruiting a strategic analyst, crime and corruption prevention, and this is a valuable start. Ascertaining the initial and ongoing training needs of team members, service managers and senior managers; and procuring and/or developing relevant training programs, should be included in the role of the appointee. The Commission recommends that senior management at the Council has exposure to training in the specialist area of early detection of corrupt conduct in key risk areas.

The Council advised the Commission in July 2007 that specialist training will be provided to all managers, to assist in raising awareness of corruption detection as a management responsibility.

RECOMMENDATION 6

It is recommended that the duties of the strategic analyst, crime and corruption prevention at Parramatta City Council include ascertaining the training needs of team members, service managers and senior managers; and procuring and/or developing relevant training programs.

RECOMMENDATION 7

It is recommended that Parramatta City Council provide initial and ongoing training tailored to the needs of team members and managers, targeted at recognising and reducing corruption risks.

RECOMMENDATION 8

It is recommended that senior managers at Parramatta City Council undertake specialised training in risk management and methods for early detection of corrupt conduct.

While there will undoubtedly be expense involved, there may be opportunities to institute training and detection systems in conjunction with other councils to alleviate the cost burden. As the issue potentially affects all councils, it may also be that assistance would be available from the Department of Local Government or from the Local Government and Shires Associations.

High levels of autonomy and low levels of supervision

All the aspects of enforcement of planning law in relation to brothels came to be within Mr Fryar's power over a period of time. At the same time the level of supervision to which he was subject progressively diminished.

In addition to management acceptance of high levels of autonomy (provided targets were met), the capacities of the Customer Relationship Management system did not sufficiently support managers in ensuring that the procedures described earlier in this chapter were being followed. Mr Toohey told the Commission that the system did not at the time enable him to be the service matter owner without removing from Mr Fryar the ability to allocate tasks to the inspectors. It appears that there was nothing in the Customer Relationship Management system to flag situations in which the Team Leader (and service matter owner) had been part of the inspection team, and to remove the ability to close the CRM from the service matter owner in those circumstances.

Mr Toohey also transferred to Mr Fryar responsibility for signing off on a range of matters he (Toohey) would previously have dealt with himself. Mr Toohey told the Commission that he was influenced by staff feedback in which, he said, Compliance Unit staff complained that they "were unsure as to who their boss was". Although no instruction was given to him to make these specific changes, the Commission notes that there was at the time a view from senior management that Mr. Toohey should change his "controlling ways".

As both Team Leader and service matter owner, Mr Fryar:

- decided who would go out to undertake inspections and when they would go, which put him in a position to tip off brothel owners about forthcoming inspections
- authorised the issue of all intended Notices of Demand to cease a prohibited use (this process was called "peer review"), so he knew of every brothel potentially facing closure action and thus whom to approach
- decided when and by whom these notices would be followed up (or not) by allocating, or deliberately not allocating, tasks
- closed CRMs without reference to anyone else, whether or not he had been involved in inspecting premises as part of the inspection team, knowing that closed matters would not be the subject of his regular meetings with his supervisor.

The following exchange clearly illustrates how a high level of autonomy and a low level of supervision, plus the knowledge that his activities went largely unchecked, contributed to the corruption in which Mr Fryar allowed himself to become enmeshed.

Counsel Assisting: What I want to ask you is this, from your wealth of experience what do you think there was about the procedures in the Parramatta City Council that allowed you to get away with this for three years?

Fryar: If I may say this. I don't think having such responsibility on someone — on one person — it's a good idea. I think it opened — it opens this type of thing up.

Counsel Assisting: So are you saying, the reason why you thought you could get away with it for so long was because you were the only person who knew about this?

Fryar: Nobody was — I thought nobody was peer reviewing me at the time. Now if you have a micro manager. The micro manager may do that, but if he sees — if he only sees that there's no evidence to close these down he's not going to ask any more questions. So I guess my answer to yourself is — and — and to everybody — not only to have one person responsible but to — to possibly create a board, a committee so to speak.

....

Counsel Assisting: ... presumably you thought you weren't going to be detected, didn't you?

Fryar: I eventually thought that, yes.

The Commission has recommended closer supervision of the Team Leader, and performance management in Compliance Services, earlier in this chapter. In this section it considers additional mechanisms to create a better balance between levels of supervision and team leader autonomy in this high-risk function.

Rotation of staff is a common method of diminishing the corruption risk that arises when a position carries a high level of autonomy. Members of the compliance inspection team are responsible for specific geographical areas and they are regularly rotated to different areas. The team leader's job, however, could not be rotated because his responsibilities were for the whole area and his job skills were not transferable, even to the parallel position of Team Leader, Construction Services. This situation arose because the officers of Construction Services are responsible for a range of technical approvals and its staff members are qualified health and building surveyors. These qualifications are not required of officers within Compliance Services.

As noted earlier in this chapter, compliance activities were traditionally carried out by trained health and building surveyors, or by town planners. In recent years officers without this background have been introduced into these positions. While the difficulties councils face in obtaining and retaining trained and well-qualified staff are recognised, the Commission recommends that job specifications in sensitive regulatory positions take account of the desirability of allowing for rotation of personnel. This is an issue being addressed by the Council which now requires appropriate tertiary qualifications for the role of Team Leader, Compliance Services. This will facilitate the rotation of the incumbent.

The type of tertiary qualification held by future Team Leaders (e.g. health and building surveying, planning, law) will dictate the other positions in Council into which the incumbent can be rotated.

RECOMMENDATION 9

It is recommended that Parramatta City Council institute a program of rotation of the position of Team Leader, Compliance Services.

RECOMMENDATION 10

It is recommended that the service matter owner of CRMs concerning brothels should be the Service Manager, Compliance Services, rather than the Team Leader. It is also recommended that the Customer Relationship Management system be upgraded so that this does not remove from the Team Leader the ability to allocate tasks to inspectors in the team.

RECOMMENDATION 11

It is recommended that the Customer Relationship Management system be upgraded to support the protocol that if an officer undertakes an inspection, he or she cannot close a CRM.

Another way to diminish the corruption risk associated with excessive autonomy is to introduce shared responsibility for enforcement decisions, and ensure a prescribed structure of responsibility and review. The Commission notes that the Council has already instituted such a change since the investigation, by developing a panel system to decide whether or not to institute legal action (this refers to step 10 in the procedures set out on page 23). The panel consists of the investigating officer, the Team Leader, Compliance Services, and the Legal Support Officer, in consultation with the Service Manager and the Manager of Development Services. The Commission endorses this measure and does not think it necessary to make any further recommendations in this area.

Monitoring and compliance mechanisms

As noted previously, until the detection of Mr Fryar's activities, no audit of closed CRMs had been undertaken. When such an audit was undertaken, it revealed useful information.

Louise Connolly, who as Manager, Development Services at Parramatta City Council is Mr Toohey's immediate superior, stated in an interview with Commission officers that when she herself reviewed the closed CRMs for the relevant period after Mr Fryar's activities were detected, she immediately had concerns about some of the notes made and the very short period of time in which some matters had been opened and closed. The following table contains information extracted from the material reviewed by Ms Connolly and provided to the Commission, relating to two of the premises involved in this inquiry. The table shows that some CRMs were closed on the day they were opened or within a day or two, and all were closed far earlier than the expected resolution date.

	CRM no.	Date opened	Expected resolution date	Date closed
Wentworth Ave Toongabbie	177498	13 Jan. 2006	13 Feb. 2006	17 Jan. 2006
	178334	23 Jan. 2006	6 March 2006	30 Jan. 2006
	176080	6 Jan. 2006	17 Feb. 2006	23 Jan. 2006
	185676	16 March 2006	27 April 2006	16 March 2006
	190432	19 April 2006	31 May 2006	21 April 2006
O'Connell St Parramatta	184122	2 March 2006	13 April 2006	3 March 2006
	184142	2 March 2006	13 April 2006	16 March 2006
	184382	6 March 2006	17 April 2006	15 March 2006

The absence of a formal auditing program appropriate to the needs and resources of the Council for the compliance function decreases the actual and perceived risk of detection. This situation needs to be rectified. Such a program needs to cover closed matters as well as open matters. To counter the possibility of systemic corruption affecting the whole unit or several members of it the responsibility for the audit program and any follow-up action should lie with high-level managers rather than the service manager.

In addition, there is currently no process of cross-checking the stated facts entered into the Customer Relationship Management system justifying particular decisions made, especially closure/no further action decisions. Mr Fryar's evidence, quoted above, makes the point that even if his supervisor had questioned him in more detail, the supervisor would not have been in a strong position. He could not have known that the facts were being misrepresented because he had no independent verification of the facts as presented to him.

Fact checking could be undertaken on a random sample of matters, and could take the form of calls to complainants, the use of independent investigators from time to time, or the use of staff of other councils, by mutual arrangement, to undertake inspections.

Like auditing, the making of arrangements for fact checking is best done at a level higher than Service Manager level.

RECOMMENDATION 12

It is recommended that Parramatta City Council develops a rigorous review and audit system for the compliance function and that a high-level manager oversees that process.

RECOMMENDATION 13

It is recommended that Parramatta City Council introduces a system of fact checking of statements entered into the Customer Relationship Management system by the Compliance Team.

Appendix 1: The role of the Commission

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

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

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

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

The role of the Commission is to act as an agent for changing the situation which has been revealed. Its work involves identifying and bringing to attention conduct which is corrupt. Having done so, or better still in the course of so doing, the Commission can prompt the relevant public authority to recognise the need for reform or change, and then assist that public authority (and others with similar vulnerabilities) to bring about the necessary changes or reforms in procedures and systems, and, importantly, promote an ethical culture, an ethos of probity.

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

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

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

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

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

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

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

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

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

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

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

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

A finding of corrupt conduct against an individual is a serious matter. It may affect the individual personally, professionally or in employment, as well as in family and social relationships. In addition, there is no right of appeal against findings of fact made by the Commission nor, excluding error of law relating to jurisdiction or procedural fairness, is there any appeal against a determination that a person has engaged in corrupt conduct. This situation highlights the need to exercise care in making findings of corrupt conduct.

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

... reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the fact or fact to be proved.

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

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

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

See also *Rejfeck v. McElroy* (1965) 112 CLR 517, the report of McGregor J into Matters in Relation to Electoral Redistribution in Queensland in 1977 and the report by the Hon W Carter QC into An Attempt to Bribe a Member of the House of Assembly (Tasmania) in 1991.

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



INDEPENDENT
COMMISSION
AGAINST
CORRUPTION

