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\$12,650  
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bins] \$4,01  
\$16,6



INDEPENDENT COMMISSION  
AGAINST CORRUPTION  
NEW SOUTH WALES



Sardonyx Project Management

# Invoice

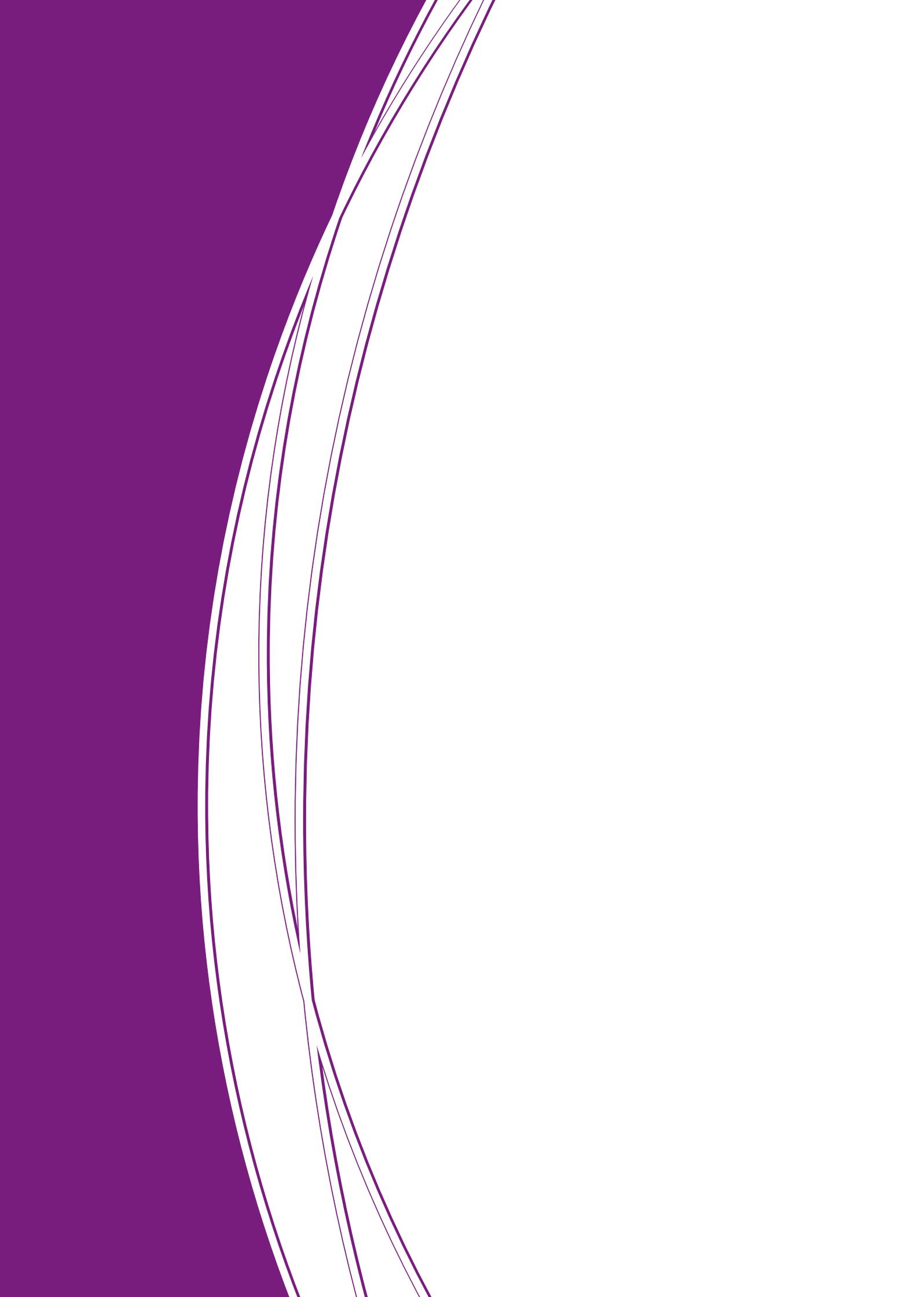
Date: 4/18/2017  
INVOICE # 07042017

PO Box [REDACTED]  
Phone [REDACTED]  
ABN: [REDACTED]

| Description  | Total                                   |
|--|---|
| 976 Canterbury Rd, Roselands   | Payment Terms<br><b>Strictly 7 Days</b> |
| Kitchen [ <i>installation of new kitchen, polyurethane doors, 2200 high, stone bench tops</i> ]  | \$12,650                                |
| Rubbish [ <i>removal of rubbish from property, demolition of walls, kitchen, clean yard, removal of lounges, washing machines plus 2 x 9 cubic meter skip bins</i> ] | \$4,010                                 |
| (Inc GST) Total Due  | \$16,660                                |

## INVESTIGATION INTO THE ALLEGED CORRUPT PRACTICES OF A HEADLEASE COORDINATOR AT THE NSW DEPARTMENT OF FAMILY AND COMMUNITY SERVICES

ICAC REPORT  
AUGUST 2020



**ICAC**

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INDEPENDENT COMMISSION  
AGAINST CORRUPTION  
NEW SOUTH WALES

**INVESTIGATION INTO  
THE ALLEGED CORRUPT  
PRACTICES OF A  
HEADLEASE COORDINATOR  
AT THE NSW DEPARTMENT  
OF FAMILY AND COMMUNITY  
SERVICES**

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**ICAC REPORT  
AUGUST 2020**

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AGAINST CORRUPTION  
NEW SOUTH WALES

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President  
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Parliament House  
Sydney NSW 2000

The Hon Jonathan O' Dea MP  
Speaker  
Legislative Assembly  
Parliament House  
Sydney NSW 2000

Mr President  
Mr Speaker

In accordance with s 74 of the *Independent Commission Against Corruption Act 1988* (the ICAC Act) I am pleased to present the Commission's report on its investigation into allegations that between 1 January 2015 and 31 December 2017, a headlease coordinator at the then Department of Family and Community Services awarded work to his own company to gain a financial benefit and authorised the payment of public funds for private work undertaken at his residence.

After taking into account matters set out in s 31 of the ICAC Act, the Commission was not satisfied that it was in the public interest to conduct a public inquiry. Instead, the Commission was satisfied that the matters raised in the investigation could be addressed satisfactorily by way of a public report pursuant to s 74(1) of the ICAC Act.

The Commission's findings and recommendations are contained in the report.

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

Yours sincerely



Stephen Rushton SC  
Commissioner

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## Summary of investigation and results

This investigation by the NSW Independent Commission Against Corruption (“the Commission”) concerned an allegation that, between 1 January 2015 and 31 December 2017, Chanse Baynham, while a headlease coordinator at the then NSW Department of Family and Community Services (FACS), awarded work to his own company, Sardonyx Project Management Pty Ltd, to gain a financial benefit.

The Commission also examined an allegation that Mr Baynham authorised the payment of public funds for private work undertaken at his residence.

### Outcomes

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

- between August 2015 and February 2018, improperly exercising his public official functions as a headlease coordinator to obtain \$1,673,330 for his company, Sardonyx Project Management, by authorising payments himself, or arranging for the authorisation of payments, to real estate agents/owners for work on properties leased by the NSW Land and Housing Corporation (LAHC), knowing that the real estate agents/owners would then pay Sardonyx Project Management (chapter 3)
- misusing information or material acquired in the course of his official functions in relation to properties at 62 Mason Street, Maroubra, and 1 First Avenue, Maroubra, and, as a consequence, securing work for Sardonyx Project Management at the two properties (chapter 3)
- authorising the payment by FACS of two invoices dated 2 February 2017 and 10 March 2017 purportedly from contractor AJ Frankfort for work carried out at 23 Centennial Street,

Marrickville, which he knew to be false in order to obtain the invoiced amounts totalling \$16,970.80 for the benefit of his company, Sardonyx Project Management (chapter 4).

Statements are made in the report pursuant to s 74A(2) of the *Independent Commission Against Corruption Act 1988* (“the ICAC Act”) that the Commission is of the opinion that consideration should be given to obtaining the advice of the Director of Public Prosecutions (DPP) with respect to the prosecution of Mr Baynham for the following offences:

- misconduct in public office
- fraud pursuant to s 192E of the *Crimes Act 1900* (“the Crimes Act”).

Chapter 6 of this report sets out the Commission’s review of the corruption risks identified during the course of the investigation. The Commission makes the following corruption prevention recommendations.

### Recommendation 1

That the NSW Department of Communities and Justice (“the DCJ”) reviews the design of its headleasing repairs process so that responsibilities for key activities are clarified and sufficiently segregated.

### Recommendation 2

That the DCJ develops and enforces a clear and comprehensive set of policies and procedures governing the headleasing process. The policies and procedures should include:

- assessing and negotiating the scope of repair work
- recordkeeping requirements
- sourcing and assessing quotations
- extending rental payments.

### Recommendation 3

That the DCJ develops and provides guidelines to real estate agents/owners of headlease properties concerning the headleasing process, including information about each party's responsibilities regarding the repair process.

### Recommendation 4

That the DCJ provides real estate agents/owners with a copy of its statement of business ethics.

### Recommendation 5

That the DCJ changes its system for repair work to provide visibility over who is undertaking repair work, at what cost, for what property, and whether the work was performed.

### Recommendation 6

That the DCJ develops systems to record, monitor and analyse expenditure patterns on its headleased properties.

### Recommendation 7

That the DCJ develops a set of benchmarks, taking into account regional variations, related to the time and cost of different categories of repair work.

### Recommendation 8

That the DCJ develops a system to ensure that rental payments cannot continue without senior authorisation after a headleased property is vacated. Any decision to extend rental payments should be subject to ongoing management review at set intervals.

### Recommendation 9

That the DCJ develops a comprehensive position description for headlease coordinators that reflects the key skills and capabilities required for the role.

### Recommendation 10

That the DCJ develops and periodically delivers training for all staff (including managers) involved in the headleasing process to equip them with the skills and knowledge required for the role.

### Recommendation 11

That the DCJ considers proactive measures to help identify conflicts of interest and influence staff behaviour, such as requiring all headleasing staff to regularly complete declarations related to private work and conflicts of interest.

### Recommendation 12

That the DCJ reviews its policies and procedures relating to secondary employment and private work to ensure they require managers to actively monitor compliance with requirements.

### Recommendation 13

That the DCJ informs managers of existing employee secondary employment and private work approvals, including when reporting lines change.

### Recommendation 14

That the DCJ reviews its internal investigations processes to ensure:

- allegations are investigated by officers with sufficient skills and capabilities
- matters are not closed inappropriately and are followed up when referred to other areas
- investigation recommendations are implemented.

These recommendations are made pursuant to s 13(3)(b) of the ICAC Act and, as required by s 111E of the ICAC

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Act, will be furnished to the DCJ and the responsible minister.

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

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

The Commission will publish the response to its recommendations, any plan of action and progress reports on its implementation on the Commission's website at [www.icac.nsw.gov.au](http://www.icac.nsw.gov.au).

### **Recommendation that this report be made public**

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

## Chapter 1: Background

This chapter sets out some background information concerning the investigation conducted by the NSW Independent Commission Against Corruption (“the Commission”), the role of NSW Department of Family and Community Services (FACS), the headleasing process, the role of a headlease coordinator, the principal persons of interest, and the relevant policies and procedures.

### How the investigation came about

On 4 December 2017, the Commission received a notification pursuant to s 11 of the *Independent Commission Against Corruption Act 1988* (“the ICAC Act”) in relation to an employee of FACS. The employee was Chanse Baynham. Section 11 of the ICAC Act requires the principal officer of a public authority to report to the Commission any matter that the person suspects on reasonable grounds concerns, or may concern, corrupt conduct. Mr Baynham was identified as the director of Sardonyx Project Management. A number of serious allegations were made in respect of Mr Baynham, including that he had failed to notify FACS of his private employment and had been quoting and invoicing for maintenance works on headleased properties using his company Sardonyx Project Management.

### Why the Commission investigated

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

- (i) *corrupt conduct, or*
- (ii) *conduct liable to allow, encourage or cause the occurrence of corrupt conduct, or*
- (iii) *conduct connected with corrupt conduct,*

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

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

The conduct reported to the Commission was serious and could, if established, constitute corrupt conduct within the meaning of the ICAC Act. It was alleged that Mr Baynham had failed to notify FACS that he had engaged in private employment as the director of Sardonyx Project Management Pty Ltd and that he had manipulated the quotation process to ensure the engagement of Sardonyx Project Management by agents/owners of headleased properties. The allegation involved a significant amount of money, namely over \$500,000, and conduct that may have taken place over several years.

In January 2018, the Commission commenced a preliminary investigation. The evidence gathered during the preliminary investigation corroborated the allegation. In April 2018, the Commission decided to undertake a more extensive investigation.

### Conduct of the investigation

During the course of the investigation, the Commission:

- interviewed and/or obtained statements from a number of persons, including FACS employees and the real estate agents/owners of headleased properties
- obtained documents from various sources by issuing one notice under s 21 of the ICAC Act, 29 notices under s 22 of the ICAC Act and one notice pursuant to s 21/22 of the ICAC Act
- conducted three compulsory examinations
- executed two search warrants.

The Commission’s investigation revealed significant issues with Mr Baynham’s conduct while employed as a

headlease coordinator at FACS. It also identified serious weaknesses in FACS's internal operational controls, financial controls, human resource controls, budgetary management and investigative failures that needed to be addressed.

## Decision not to hold a public inquiry

After taking into account matters set out in s 31 of the ICAC Act, the Commission was not satisfied that it was in the public interest to conduct a public inquiry. Instead, the Commission was satisfied that the matters raised in the investigation could be addressed satisfactorily by way of a public report pursuant to s 74(1) of the ICAC Act.

In making that determination, the Commission had regard to the following matters:

- a substantial amount of cogent evidence was obtained in the course of the investigation that indicated the likelihood of corrupt conduct
- based on the evidence obtained during the investigation, it was unlikely that a public inquiry would uncover new evidence relevant to the investigation
- the evidence obtained by the Commission indicated that the alleged corrupt conduct was limited to Mr Baynham
- a public report would make the public sufficiently aware of the relevant conduct and system weaknesses and the Commission's corruption prevention recommendations.

Submissions were made on behalf of Mr Baynham and one other person that the report should be furnished pursuant to s 14(2) of the ICAC Act. The Commission is not satisfied that this is appropriate for the reasons set out below and in Appendix 4 of this report.

A report furnished pursuant to s 14(2) of the ICAC Act would not adequately address the matters exposed during the investigation. The reasons for reaching this conclusion include that:

- as a result of the investigation, the Commission was satisfied that Mr Baynham had engaged in serious corrupt conduct
- this corrupt conduct involved the expenditure of a significant amount of public funds for private advantage
- a report to the minister pursuant to s 14(2) of the ICAC Act is subject to the secrecy provisions of s 111 of the ICAC Act. The principal functions of

the Commission include educating and informing the public about the detrimental effects of corrupt conduct, the promotion of the integrity and good repute of public administration, and the fostering of public support in combatting corrupt conduct. These functions, which are set out in s 13(1)(h) to s 13(1)(j) of the ICAC Act, would be undermined absent a public report.

At the conclusion of the investigation, Counsel Assisting the Commission prepared submissions addressing the evidence and identifying the available findings and recommendations said to be open on that evidence. The Commission's Corruption Prevention Division also prepared submissions identifying weaknesses in the systems, practices and procedures of FACS that enabled Mr Baynham's conduct to occur.

On 20 December 2019, submissions by Counsel Assisting the Commission were provided to all relevant parties and submissions were invited in response. On 15 January 2020, the Commission's corruption prevention submissions were provided to all relevant parties and submissions were invited in response. During February and March 2020, submissions in response were received from Mr Baynham, Sandra Hayek, the NSW Department of Communities and Justice ("the DCJ" – formerly FACS) and the NSW Land and Housing Corporation (LAHC).

In preparing this report, all submissions received in response to the submissions of Counsel Assisting and the corruption prevention submissions have been taken into account. All relevant parties were also invited to request that a summary of their response to the adverse findings contended for by Counsel Assisting in their submissions be included in the report in the event the Commission made such findings. Mr Baynham took up that invitation. The summary is at Appendix 3 to this report.

## The Department of Family and Community Services

In 2008, the Department of Housing became known as Housing NSW. It remained a separate department until about July 2009, when Housing NSW became part of the then Department of Human Services. From April 2011, the Department of Human Services became FACS.

FACS was the department in NSW with statutory responsibility for child protection, housing, homelessness and community inclusion. From 1 July 2019, FACS and the Department of Justice were merged to form the DCJ.

Although Housing NSW is not an entity, it is colloquially known as a division within the DCJ (and formerly FACS), with responsibility for the provision and management of public housing services with the aim of preventing

homelessness in NSW. The Housing, Disability and District Services and Emergency Management Division and the Housing and Homelessness Directorate are collectively known as Housing NSW. All conduct relevant to this investigation by the Commission occurred while the department was known as FACS.

At the relevant time, FACS was the principal regulator and administrator of the NSW social housing system. FACS established the overall policy directions and regulation for NSW social housing and with other departments, agencies and organisations to address homelessness in NSW. FACS also played a key role in policy development and administering programs to increase access to the supply of social housing in NSW.

Between the financial years of 2015–16 and 2017–18, FACS received \$42 million in public funding to manage headleased properties; principally to subsidise rent payments to private owners. In September 2016, the Sydney District, in which Mr Baynham worked, was restructured into the Sydney, South Eastern Sydney and Northern Sydney Cluster (SSESNS). The SSESNS cluster received \$15.4 million annually from the overall headlease budget, and as at December 2017, it managed 830 headleased properties.

Overall, FACS had a decentralised model to manage its headleased properties. While Housing NSW districts were responsible for property management of headleased properties, both the LAHC and the FACS head office had responsibility for headleased budgeting, monitoring and reporting. The FACS head office, in particular its Customer Service and Business Improvement Team, was responsible for allocating budgets to its districts and statewide coordination of the headlease program. Headleased properties are managed by headlease staff within the geographical boundaries of each FACS regional district.

## The headleasing process

Headleasing refers to Housing NSW's practice of increasing its supply of public housing by leasing properties through the private rental market and then subleasing them to approved public housing tenants. The level of demand for public housing vastly exceeds supply. This has created a significant waiting list of applicants, particularly in inner-city areas. Additionally, headleasing supplemented existing public housing when available property did not suit a tenant's needs. The incentives for private owners to lease their properties as headleased properties included secure rental payments and the return of the property to the condition in which it was originally leased (apart from fair wear and tear) at the completion of the lease.

Headleasing involved two leases. *The Residential Tenancies Act 2010* applied to both leases.

The first lease was between the private owner and the LAHC on behalf of Housing NSW. The LAHC was the lessee on all headleases. The LAHC was established in 2001 under the *Housing Act 2001*, and is a statutory body that, during the period covered by this report, was under the portfolio and direction of the minister for FACS.

The LAHC was responsible for the management of the NSW Government's social housing portfolio and played a critical role in the social housing system. The LAHC owned and/or provided asset management for land, buildings and other assets within the public housing portfolio. The LAHC was, and remains, responsible for planning and building public housing as well as maintaining and upgrading the public housing portfolio of dwellings. From 1 July 2019, the LAHC has operated under the control of the minister for water, property and housing and falls within the NSW Department of Planning, Industry and Environment.

The second lease was a sublease between Housing NSW and the tenant. Generally, the LAHC did not provide any property management services in relation to headleased stock.

FACS was responsible for returning any headleased property to the real estate agent/owner in the same condition in which it was first leased, save for fair wear and tear. Repairs would often need to take place at the end of the headlease and sublease. There was a distinction in Housing NSW's policies and procedures between urgent and non-urgent repairs. Non-urgent repairs were the type of repairs relevant to this investigation. Non-urgent repairs to headleased properties generally occurred when a lease was terminated or when damage had occurred during its term.

## The role of the FACS headlease coordinator

The headlease coordinator was responsible for inspecting the property at the end of the term and comparing the condition of the property with the condition report and photos taken at the commencement of the headlease, usually in the company of the owner or a real estate agent. Repairs to fix tenant damage could be undertaken by Housing NSW or by the real estate agent/owner and then charged to FACS. It was more common for the real estate agent/owner to arrange for the repairs to be done and then submit the contractor quotations and invoices to the FACS headlease coordinator for approval. When the works were carried out by Housing NSW, they were referred to the LAHC and pre-approved contractors

were then engaged. Repairs facilitated by the agent/owner and the headlease coordinator were the type of repairs relevant to the Commission's investigation.

The responsibilities of a FACS headlease coordinator included:

- identifying the need for headleased properties
- locating a suitable headlease property through an agent/owner
- entering into a lease with an agent/owner on behalf of LAHC
- general recordkeeping and updating of FACS's client and housing system (known as HOMES) and FACS's records management system (known as TRIM) by entering the details of a headlease property, lease commencement, expiry dates, and details of any payments
- paying rent and water accounts
- managing headlease repairs and invoices over the lease period
- communicating and maintaining working relationships with agents/owners
- attending headlease property inspections and completing incoming and outgoing property condition reports
- negotiating with agents/owners on the scope of works for which FACS would be liable due to "tenant damage" during and at the end or termination of a lease
- requesting and accepting quotes from agents/owners for repairs to be undertaken as a result of tenant damage
- approving payments to agents/owners based on quotes provided from agents/owners for tenant damage
- handing back properties to agents/owners when they were no longer required by FACS or when the lease was terminated by the owner
- extending a headlease, and rental payments, when a headlease was terminated or otherwise came to an end so repairs could be undertaken before giving vacant possession of the premises back to the agent/owner.

Headlease coordinators did not have responsibility for budgeting, forecasting or overall program management. This was the responsibility of FACS's head office. Nor were they responsible for dealing with FACS's social housing clients. This was the responsibility of FACS's client service officers.

## Relevant FACS staff

### Mr Baynham

In 2003, Mr Baynham commenced employment at the then Department of Housing as a trainee client service officer. On 27 April 2004, he was permanently employed as a client service officer. He commenced his role as a headlease coordinator in April 2014. On 14 November 2017, Mr Baynham was suspended from his position after a number of allegations were made against him. On 23 January 2019, his employment was terminated.

Mr Baynham holds a diploma in facilities management and accounting and an associate diploma in accounting. He did not have any building qualifications. Mr Baynham established two companies, Sardonyx Australia Pty Ltd and Sardonyx Project Management.

### Michael Modder

Michael Modder was the manager of operational support at the Burwood office of FACS from July 2014 to April 2017. He commenced employment with FACS in 1987 and held various positions with FACS thereafter. In his role as manager of operational support, he was responsible for the supervision of the headleasing teams in two districts; namely, the Sydney District and the Northern Sydney District. This meant that, although others held that role from time-to-time, he was Mr Baynham's supervisor for much of the period relevant to the investigation.

Mr Modder reported to Brett Louat, the director of housing services for the Sydney District. From May to November 2017, following an internal restructure, headlease coordinators reported to a team leader, Nick Lavdeos, who, in turn, reported to Mr Modder.

### Sandra Hayek

Sandra Hayek was a headlease coordinator who worked with Mr Baynham. Ms Hayek commenced work with FACS as a client service officer in November 2003. She became a headlease coordinator at the end of 2014 or early 2015. She took a period of maternity leave in May 2017, and resigned from her position at FACS in early 2019.

## The relevant policies and procedures

There are a number of policies that were, and remain, relevant to FACS employees, generally including headlease coordinators. They are addressed below.

## NSW Procurement Policy Framework for NSW Government Agencies

This policy provides that, when purchasing goods and services or funding organisations to deliver services, workers must ensure that:

- expenditure is approved by the relevant delegated officer
- procurement decisions are not influenced by private interests
- the tendering or selection process is impartial
- best value for money is achieved and offers are assessed on merit
- the process is transparent and can withstand scrutiny
- they do not endorse suppliers unless authorised to do so.

Workers must also comply with the NSW Code of Practice for Procurement and FACS procurement policies.

### Private work

Under FACS's Code of Ethical Conduct, all workers must seek approval to undertake private work or secondary employment. Private work is paid work undertaken for an employer other than FACS, including self-employment, and owning, operating or being a director of a private business. Secondary employment is paid work undertaken in a secondary position within FACS in addition to a staff member's primary employment with FACS. Generally, FACS supports staff who choose to undertake secondary employment within FACS or private work outside FACS where such work does not conflict with or compromise their primary FACS employment.

Under FACS's Secondary Employment and Private Work Policy, employees must seek approval for private work or secondary employment with their manager and complete an application form.

The Commission's review of the policies and procedures in respect of private work revealed that:

- approvals to undertake private work could be given for a maximum of 12 months after which a further application for approval must be made by the employee
- private work could not be undertaken at the expense of services to FACS's clients
- an employee who owns, or works within, a private practice could not use their role in FACS to solicit clients or imply any special competence

for private client recruitment, promotional or commercial purposes

- employees could not misuse information obtained while working at FACS for their private work
- employees could not misuse FACS's time, resources or facilities (for example, by making telephone calls about work for another employer while at FACS or using photocopiers for their private work).

### Conflicts of interest

FACS's Code of Ethical Conduct provides that a conflict of interest occurs when a worker is in a position to be influenced, or appears to be influenced, by private interests when doing their job. A conflict of interest can involve avoiding personal disadvantage as well as gaining personal advantage.

FACS's Guidelines for Managing Conflicts of Interest provide examples of situations that may lead to a conflict of interest, including staff:

- seeking approval for private work that causes a conflict of interest with their primary employment with FACS
- using clients to access personal opportunities for secondary employment such as potential customers for the sale of services (for example, home maintenance, professional or special services).

### Financial delegations

During the relevant period, Mr Baynham had a financial delegation limited to \$50,000 (inclusive of GST).

## Chapter 2: Did Mr Baynham have approval for private employment?

As previously noted, Mr Baynham established two companies, Sardonyx Australia and Sardonyx Project Management. The Commission examined the role of these two companies and how one company, Sardonyx Project Management, was ultimately used by Mr Baynham to dishonestly secure payments from FACS.

### Sardonyx Australia

Sardonyx Australia was registered with the Australian Securities and Investments Commission (ASIC) on 9 November 2012. The directors of the company were Mr Baynham and Shaun Leggett. On 24 June 2013, Mr Baynham resigned from his directorship and his father, Leslie Baynham, became director of the company until the company was deregistered on 12 February 2015.

A business plan prepared by Sardonyx Australia in December 2012 described it as a construction company focused on providing maintenance solutions to the social housing sector, with a primary focus on regional NSW.

Mr Baynham applied for secondary employment/business approval to work with Sardonyx Australia. His application stated that his main duties would be administrative ones to be performed after hours and on weekends. In his application he declared, among other things, that:

- the work did not arise from, or interfere with, his official duties
- the work would be undertaken outside working hours
- he understood Housing NSW's Code of Conduct and Ethics, in particular his obligations relating to secondary employment/business and conflicts of interest.

On 12 February 2013, the application was approved by Mr Louat, then acting general manager/executive director of Housing NSW.

Mr Baynham then applied for Sardonyx Australia's inclusion on the select tender list for building works with the LAHC. On 6 March 2013, Wayne Carter, general manager of projects at LAHC, wrote to Mr Baynham. The letter stated, in effect, that the LAHC could not offer Sardonyx Australia the opportunity to be included on the LAHC select tender list for building works, or to offer Sardonyx Australia the opportunity to tender for any program of works under LAHC management, because of the "high level conflict of interest" posed by Mr Baynham. The conflict of interest existed because Mr Baynham was a full-time employee of FACS and had also been seconded to the LAHC in 2011. The letter stated that advice on Mr Baynham's application had been sought from the principal auditor of corruption prevention and investigations within the Internal Audit Unit of the NSW Department of Finance and Services.

Mr Baynham gave evidence that he set up the company with his friend, Mr Leggett, but that it never carried out any work. He said that the company tried to do work for LAHC (which at the time was part of FACS) but LAHC did not want to engage the company. Mr Baynham said he could not remember why Sardonyx Australia's application to work for LAHC was rejected.

On 2 April 2013, Ken Kanofski, the executive director of the Housing and Property Group at the LAHC, wrote to Mr Baynham and confirmed that the decision to reject Sardonyx Australia's application to be included on the LAHC select tender list for building works was in the best interests of the LAHC. Mr Baynham said that he could not recall seeking a review of the decision. However, after being shown Mr Kanofski's letter of 2 April 2013, he accepted he must have sought a review of the decision. Mr Baynham said he could not remember receiving the letter from Mr Kanofski.

On 15 April 2013, Mr Leggett wrote on behalf of Sardonyx Australia to Brian Gore, acting manager of the Aboriginal Housing Team at the LAHC. Mr Leggett

stated that Sardonyx Australia wanted to put forward an expression of interest to the LAHC to become an accredited builder with the LAHC, and that Sardonyx Australia was an Aboriginal company looking to start work in the social housing sector. The business owners were listed as Mr Leggett and Leslie Baynham. At the time the letter was written, Mr Baynham was still a director of Sardonyx Australia and his father, Leslie Baynham, was not.

In his evidence to the Commission, Mr Baynham said that he had no recollection of this letter but he did recall that Mr Leggett was intending to write to the LAHC. He claimed he could not explain why Mr Leggett had put down his father's name rather than his own when, at that time, Mr Baynham was still a director of Sardonyx Australia. He agreed that, if his interest in Sardonyx Australia had been disclosed to Mr Gore, it was obvious that Sardonyx Australia would not get the LAHC work. Mr Baynham also said that his father became a director of Sardonyx Australia because the LAHC would not engage the company because of his involvement. He confirmed that Sardonyx Australia did not carry out any work. The company was deregistered on 12 February 2015.

The Commission is satisfied that Mr Baynham knew he was required to seek approval to engage in private work. The Commission is also satisfied that Mr Baynham believed approval would not be given for Sardonyx Australia to carry out work for FACS (or the LAHC). His employment at FACS created a conflict of interest and Mr Baynham knew this to be so.

## Sardonyx Project Management

On 12 October 2015, Sardonyx Project Management was registered with ASIC. The directors of the company are Mr Baynham and his wife. Mr Baynham gave evidence, which the Commission accepts, that his wife was not involved with the company's operations.

Initially, Mr Baynham claimed he believed he had FACS approval to work for Sardonyx Project Management and also believed that Sardonyx Project Management had approval to carry out work on headleased properties. He ultimately resiled from this evidence and accepted that he had not sought approval to carry out work with Sardonyx Project Management.

Mr Baynham also initially claimed he was not attempting to hide his conduct by not seeking private employment approval but also changed his evidence on this issue. The following exchange is relevant:

*[Counsel Assisting]: But you've also accepted that you ultimately did work on headleased properties, so why at that time did you not seek approval?*

*[Mr Baynham]: I didn't think, I just didn't do it. I, there was no hiding it. I just didn't do it. I didn't ask them.*

*[Commissioner]: Well, there was hiding it, wasn't there? I mean, we've seen transactions where —?*

*[Mr Baynham]: Okay.*

*[Commissioner]: Where you created false invoices. And you did that, can I suggest, to hide from your employer the fact that you were working on these properties, correct?*

*[Mr Baynham]: On that occasion, yes, I did, yes.*

*[Commissioner]: Because you knew that they wouldn't approve of what you were doing. Correct?*

*[Mr Baynham]: Yes.*

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[Commissioner]: *And that, I suggest to you, is the reason why you didn't seek approval in the first place –*

[Mr Baynham]: *I just didn't ask. And when I spoke to Mikey [Modder], he didn't ask me for – Michael Modder – when I had my chat with him, he didn't ask me where the approval was.*

[Counsel Assisting]: *But he also didn't know that you were doing work on headleased properties.*

[Mr Baynham]: *But he didn't, yeah, that's fine.*

[Counsel Assisting]: *You've accepted that?*

[Mr Baynham]: *Yes.*

[Counsel Assisting]: *So back to the Commissioner's question ... You knew that you had to seek approval for secondary employment, private employment*

[Mr Baynham]: *I, I did know, yes.*

[Counsel Assisting]: *And you didn't do it because you knew it would be refused.*

[Mr Baynham]: *For working on Housing properties, yes.*

The Commission is satisfied that Mr Baynham failed to seek FACS approval to engage in private work with Sardonyx Project Management, knowing that he had an obligation to do so. The Commission is also satisfied that Mr Baynham failed to seek approval to engage in private work with Sardonyx Project Management on FACS headleased properties because he believed that any such application would be refused by FACS. Mr Baynham's efforts to hide his conduct from others at FACS are examined in chapter 4.

## Chapter 3: Sardonyx Project Management's work on headleased properties

This chapter examines an allegation that, between 1 January 2015 and 31 December 2017, Mr Baynham used his position as a headlease coordinator at FACS to award work to Sardonyx Project Management for the purpose of gaining a financial benefit.

The Commission's investigation in relation to this allegation focused on 11 properties. The properties were selected by the Commission to facilitate a detailed examination of Mr Baynham's conduct. The Commission did not carry out an exhaustive analysis of every headleased property at which Sardonyx Project Management carried out work.

The Commission's financial analysis demonstrated that, between 27 August 2015 and 28 February 2018, Sardonyx Project Management received \$1,673,330 from real estate agents/owners for work on FACS headleased properties. Between 19 August 2015 and 19 December 2017, Sardonyx Project Management received payments totalling \$503,156.50 from agents/owners for the project management of work in relation to the 11 headleased properties examined below.

Although the Commission is satisfied that Sardonyx Project Management and Mr Baynham profited from the work carried out, the precise extent of the overall profit cannot be established with certainty. Payments were made to the contractors engaged by Sardonyx Project Management to carry out the work. The sum retained by Sardonyx Project Management after payment of the contractors may have been profit. However, the Commission accepts that, on occasion, there may have been expenses incurred by Sardonyx Project Management affecting the size of its profit. It should also be noted that the Commission does not know whether or not FACS received value for money or whether or not the work was carried out in a tradesperson-like manner or to an appropriate standard.

### Mr Baynham's evidence

Mr Baynham gave evidence to the Commission over four days. He said that, as a headlease coordinator, he was responsible for the management of maintenance issues on headleased properties both during and at the end of a lease. At the end of the lease, a joint inspection of the property would be undertaken with the agent/owner, at which time, those involved would assess the state of the property for the purpose of ascertaining what was fair wear and tear and what damage could be classified as tenant damage. It was the responsibility of the tenant (that is, the LAHC) to return the property to the condition in which it was leased, fair wear and tear excepted.

Mr Baynham said that the damage caused by the tenants would be paid for by FACS, and the work would be arranged by the real estate agents managing the property or the owners themselves. The agents/owners were required to provide quotations to Mr Baynham and the number of quotations obtained would depend on the work that needed to be undertaken at the property. According to Mr Baynham, he would accept the lowest quotation provided to him. Without Mr Baynham's approval of the quotation, FACS would not make payment to the agent/owner for the work undertaken.

Once the work was completed, the agent/owner would send an invoice to Mr Baynham who would authorise a payment to the agent/owner. The agent/owner was responsible for paying the contractor. Mr Baynham said he was never informed of the extent of his financial delegation. He believed he could authorise any amount that needed to be paid. Although the Commission considers this unlikely, FACS's systems and processes were such that it failed to identify Mr Baynham was authorising significant payments of public funds well in excess of his financial delegation.

Mr Baynham admitted that he was motivated by financial gain. He claimed Sardonyx Project Management was

initially used to manage private maintenance works for real estate agents. According to Mr Baynham, at a later point, some agents approached him to enquire whether he could manage the rectification and maintenance work on properties occupied by Housing NSW's tenants (headleased properties). He agreed to carry out work for these agents.

Mr Baynham described the role of Sardonyx Project Management as a project manager or a "go between" for the contractors and the agents/owners. This meant that the agents/owners were not required to deal directly with the contractors. Mr Baynham acknowledged that he carried out work for Sardonyx Project Management during his workdays. Effectively, he worked two jobs simultaneously. On occasion, he used his FACS email address to forward Sardonyx Project Management invoices to agents/owners for work carried out on headleased properties. He was unable to provide any coherent explanation as to why he engaged in this conduct. He agreed it was an inappropriate use of his FACS email account.

Mr Baynham explained the scheme he established had the following features:

- He would submit a Sardonyx Project Management quotation to the agent/owner in respect of works to be carried out (sometimes after having access to quotations from other contractors) or was directly engaged by the real estate agent/owner to carry out works without submitting a Sardonyx Project Management quotation.
- As the headlease coordinator, he was responsible for approving any quotations provided by the agents/owner and it was accepted practice to approve the lowest quotation provided. The effect of his conduct was that he routinely approved the quotations of Sardonyx Project Management.
- He was responsible for engaging contractors to carry out the work. The work was managed by Sardonyx Project Management.
- After the work was completed, he sent the Sardonyx Project Management invoice to the agent/owner. Sometimes he did this from his FACS email address.
- The agent/owner would then send the Sardonyx Project Management invoice to him in his capacity as a headlease coordinator.
- Upon receipt of the Sardonyx Project Management invoice, he would authorise the payment by FACS to the agent/owner. Sometimes payment was made to the agent/owner before he had provided the Sardonyx Project Management invoice.
- The agent/owner would then pay the money received from FACS to Sardonyx Project Management.

## The properties

The 11 properties examined by the Commission were:

1. 3/39 York Street, Belmore
2. units 1-8/21 Burdett Street, Hornsby
3. 16 Alfred Street, Leichhardt
4. 21/29 King Street, Enfield
5. 60 Fawcett Street, Ryde
6. 3/495 Great North Road, Abbotsford
7. 62 Mason Street, Maroubra
8. 976 Canterbury Road, Roselands
9. 1 First Avenue, Maroubra
10. 680 Victoria Road, Ryde
11. 76 Lord Street, Newtown.

It was common ground that:

- the properties were headleased properties
- Sardonyx Project Management managed the rectification works that were undertaken in relation to properties 1 to 9 and property 11
- in relation to properties 1, 3, 7, 9 and 10, Mr Baynham prepared Sardonyx Project Management quotations
- Mr Baynham prepared each of the Sardonyx Project Management invoices issued to the agents/owners by Sardonyx Project Management
- in relation to each of the Sardonyx Project Management invoices, Mr Baynham authorised the payments by FACS to the agents/owners in his capacity as headlease coordinator.

However, there were three issues in dispute:

1. how Mr Baynham's company, Sardonyx Project Management, was engaged to carry out work on headleased properties
2. whether Mr Baynham knew that the agents/owners would pay money paid to them by FACS to Sardonyx Project Management

3. whether Mr Baynham knew that Sardonyx Project Management would be engaged to carry out the work on properties 7 (62 Mason Street, Maroubra) and 9 (1 First Avenue, Maroubra), after submitting Sardonyx Project Management quotations.

In relation to the first issue in dispute, there is a significant disparity between Mr Baynham's evidence and that of the relevant agent/owners concerning the circumstances surrounding the engagement of Sardonyx Project Management and the agent/owner's understanding of Mr Baynham's involvement in Sardonyx Project Management.

Mr Baynham's evidence was that each of the agents knew about his dual role as a headlease coordinator with FACS and as project manager with Sardonyx Project Management. The following exchange, which concerned the managing agent for property 7, Filomena D' Alessandro, reflects Mr Baynham's position generally in relation to his dealings with the agents.

[Commissioner]: *Did she [Filomena D' Alessandro] know about your involvement with the company [Sardonyx Project Management]?*

[Mr Baynham]: *Yes.*

[Q]: *And is that because you told her?*

[A]: *Yes. Yes, I told her. I, the same as I told all of them, I have my own company that does this work. Would you like – and they all knew.*

[Q]: *They [the agents/owners] all knew two things, did they, one, [know] that you were a headlease coordinator with the Department. They knew that?*

[A]: *Yes.*

[Q]: *Is that right?*

[A]: *Yes.*

[Q]: *And the second thing they knew is that you also had the company Sardonyx that carried out the sort of work that they needed to be carried out at the end of the leases?*

[A]: *Yes.*

[Q]: *And that's because you told them?*

[A]: *Yes.*

The evidence of the agents/owners in respect of each of the properties is set out below. With the exception of properties 7 and 9, the Commission considers it is unnecessary to resolve the conflict in the evidence concerning the circumstances in which Sardonyx Project Management came to be engaged to carry out work and the agent/owner understanding of Mr Baynham's involvement with Sardonyx Project Management. The degree of disclosure, if any, made by Mr Baynham to the agent/owner is largely irrelevant. The relevant issue is the extent to which, if any, he made disclosure to FACS. The Commission is satisfied, however, that FACS provided limited guidance to agents/owners in respect of the end-of-lease repairs process.

On the basis of the evidence of the agents/owners, the Commission is satisfied that, Mr Baynham, as the headlease coordinator, was the primary, and often only, FACS contact for the agents/owners concerning tenant damage and rectification works. As a consequence, Mr Baynham was able to control the process and ensure the engagement of Sardonyx Project Management.

The second and third issues in dispute were raised in the submissions made on behalf of Mr Baynham. Those submissions are addressed in Appendix 3. For reasons set out therein, the Commission is satisfied that:

- whether or not Mr Baynham knew that the agents/owners would pay over the money received by FACS to Sardonyx Project Management, he certainly intended that this would occur. The scheme established by him was designed to ensure that Sardonyx Project Management was paid. At no time did Mr Baynham believe that the agents/owners would withhold the funds received by them for payment to Sardonyx Project Management
- Mr Baynham knew that Sardonyx Project Management would be engaged to carry out the work on properties 7 (62 Mason Street, Maroubra) and 9 (1 First Avenue, Maroubra).

### **Property 1: 3/39 York Street, Belmore**

On 27 August 2013, the owners of 3/39 York Street, Belmore, and LAHC entered into a Residential Tenancy Agreement. The agent responsible for the property was Marc Crisafulli of LJ Hooker Ashfield.

On 9 July 2015, Mr Baynham arranged to inspect the property. Text messages obtained by the Commission reveal that Mr Baynham subsequently arranged for contractors to inspect the property for the purpose of providing quotations. On 15 July 2015, he sent a text message to Mr Crisafulli, stating that he had prepared a scope of works for the unit.

On 28 July 2015, a Sardonyx Project Management quotation in the amount of \$12,900 was issued to Mr Crisafulli. On 29 July 2015, Mr Baynham sent a text message to Mr Crisafulli: "I have the guys ready to start. I'm just waiting on your approval". At this time, Sardonyx Project Management had not been registered with ASIC. Mr Baynham told the Commission he was operating as a sole trader.

Mr Crisafulli provided a statement to the Commission. He said that he attended an inspection with Mr Baynham and the owner of the property. They found that there was extensive damage to the property caused by the tenants. His impression was that the house had been "trashed". He recalled that Mr Baynham told him that Housing NSW would attend to the repairs.

On or about 28 July 2015, Mr Crisafulli received a quotation from Sardonyx Project Management, which he understood to be a quotation organised and approved by Mr Baynham. He said this was the first time he became aware of a company called Sardonyx Project Management and he believed it was a project management or building business. He had no knowledge of Mr Baynham's involvement with Sardonyx Project Management.

Sardonyx Project Management was engaged to project manage the repairs on the property. Two invoices, dated 18 August 2015, were ultimately issued by Sardonyx Project Management totalling \$15,050 (\$14,700 + \$350). Mr Baynham accepted that he prepared both invoices, supplied them to Mr Crisafulli and also authorised the payment of both invoices by FACS to LJ Hooker Ashfield.

On 27 August 2015, LJ Hooker Ashfield paid \$14,700 to Sardonyx Project Management. On 14 October 2015, LJ Hooker Ashfield paid \$350 to Sardonyx Project Management. After paying the contractors who worked on the property, the amount retained by Sardonyx Project Management was \$4,884.50.

The Commission is satisfied that, in relation to 3/39 York Street, Belmore:

- Sardonyx Project Management was responsible for the project management of the work carried out
- Mr Baynham prepared a Sardonyx Project Management invoice, dated 18 August 2015, in the amount of \$14,700 and authorised the payment by FACS of that invoice on 19 August 2015 to LJ Hooker Ashfield, with the intention that the real estate agency, LJ Hooker Ashfield, would pay this amount to Sardonyx Project Management, which it did on 27 August 2015
- Mr Baynham prepared a Sardonyx Project Management invoice, dated 18 August 2015, in

the amount of \$350 and authorised the payment by FACS of that invoice on 21 September 2015 to LJ Hooker Ashfield, with the intention that the agency would pay this amount to Sardonyx Project Management, which it did on 14 October 2015.

### Property 2: units 1–8/21 Burdett Street, Hornsby

On 19 February 2001, John Michael, the owner of a block of units at 1–8/21 Burdett Street, Hornsby, and the LAHC entered into a lease to rent the whole block of units for the purpose of providing housing to Housing NSW tenants. By July 2015, significant rectification works needed to be undertaken. Mr Michael and Mr Baynham engaged in discussions about the scope of the work to be undertaken. Sardonyx Project Management was responsible for the management of the rectification works at the property.

Between 7 and 16 March 2016, Sardonyx Project Management issued six invoices, totalling \$80,000. On 9 and 10 March 2016, Mr Baynham authorised payment by FACS of the invoiced amounts to Mr Michael. Mr Michael provided a cheque dated 10 March 2016 for \$62,000 to Sardonyx Project Management, in partial payment of the amount owing. The sum retained by Sardonyx Project Management after payment of the contractors was \$24,000.

On 15 August 2016, Sardonyx Project Management issued a further eight invoices, totalling \$94,320.

On 16 August 2016, Mr Baynham authorised payment by FACS to Mr Michael of those invoices. On 25 August 2016, Mr Michael paid \$112,320 by cheque to Sardonyx Project Management. This represented payment of \$94,320 for the eight invoices issued on 15 August 2016, and payment of the outstanding \$18,000 for the invoices issued between 7 and 16 March 2016. The sum retained by Sardonyx Project Management after payment of the contractors was \$50,193.

Mr Michael provided a statement to the Commission, in which he stated:

*He [Mr Baynham] explained to me that the Department of Housing had a company that would do the work and they would fix it. He explained that the Department of Housing would pay me the money and I would pay the company. He didn't indicate how much the cost would be just that the Department of Housing would do it.*

Mr Michael said the first time he became aware of the company, Sardonyx Project Management, was when he received invoices with the company's name written

on them. Mr Michael said that he was not aware of any connection between Mr Baynham and Sardonyx Project Management at the time he received the invoices.

Mr Baynham gave evidence that Mr Michael engaged Sardonyx Project Management. Mr Baynham said that he mentioned to Mr Michael that he project-managed maintenance upgrades and Mr Michael asked if he would manage the works at the block of units. Mr Baynham said that Mr Michael was aware that he was also employed by FACS.

As previously noted, the Commission considers it unnecessary to make any finding in relation to these contradictory versions of events.

Mr Baynham acknowledged he issued the invoices and authorised the payments by FACS for works undertaken at the property. He also accepted Sardonyx Project Management received payments from Mr Michael by cheque for the work undertaken.

The Commission is satisfied that, in relation to the block of units at 1–8/21 Burdett Street, Hornsby:

- Sardonyx Project Management was responsible for the project management of works carried out at the property
- Mr Baynham prepared 14 Sardonyx Project Management invoices in amounts totalling \$174,320 and authorised the payment by FACS of those invoices to the owner, Mr Michael, with the intention that Mr Michael would pay these amounts to Sardonyx Project Management (which Mr Michael did by cheques made out to Sardonyx Project Management, dated 28 March 2016 and 25 August 2016, in amounts totalling \$174,320).

### **Property 3: 16 Alfred Street, Leichhardt**

On 30 May 2012, the owner of the property at 16 Alfred Street, Leichhardt, and the LAHC entered into a Residential Tenancy Agreement. The agent responsible for the property was Peter Montano of Montano Realty. On 29 February 2016, Mr Baynham arranged to meet Mr Montano for an inspection of the property. On 22 March 2016, Mr Montano received a quotation from Sardonyx Project Management in the amount of \$15,428 for work to be undertaken at the property. On 4 May 2016, Mr Baynham arranged for contractors to carry out the work.

Two Sardonyx Project Management invoices were issued by Mr Baynham for work carried out at the property; both dated 24 May 2016. One was for \$24,200 and the other for \$20,400. Mr Baynham authorised payment by FACS

to Montano Realty on 25 and 26 May 2016 respectively. On 27 May 2016, Montano Realty paid \$24,200 to Sardonyx Project Management. On 30 May 2016, another payment of \$20,400 was made by Montano Realty to Sardonyx Project Management. After payment of the contractors, Sardonyx Project Management retained \$11,315.

In a statement to the Commission, Mr Montano said that he met Mr Baynham at an inspection in late February 2016. He recalled that there was extensive damage to the property. Mr Baynham told him that Housing NSW would rectify the damage caused by its tenants and it would contract people to do the work. It would also pay for the work. On 22 March 2016, he received an email message from Mr Baynham from his Sardonyx Project Management email address. Mr Montano told the Commission:

*I don't know if there is any connection between Chansé Baynham and Sardonyx Project Management. I was focused on getting the house fixed so it could be rented out again.*

Mr Baynham gave evidence that he was engaged by Mr Montano to do the maintenance work at the property. He said that he mentioned to Mr Montano that he did maintenance works and Mr Montano asked him if he could carry out the work at the property. Mr Baynham gave evidence that he believed Mr Montano was aware of his connection to Sardonyx Project Management because he explained to him that he had a project management company that carried out maintenance upgrades.

Again, it is unnecessary for the Commission to make any finding in relation to whether Mr Baynham or Mr Montano's version of events should be preferred. What matters is whether Mr Baynham intended to secure payment.

Mr Baynham agreed he prepared the Sardonyx Project Management invoices, authorised payments of the invoiced amount from FACS to the agent, and that Sardonyx Project Management received payments from the agent.

The Commission is satisfied that in relation to 16 Alfred Street, Leichhardt:

- Sardonyx Project Management was responsible for the project management of works
- Mr Baynham prepared a Sardonyx Project Management invoice, dated 24 May 2016, in the amount of \$24,200 and authorised the payment of the invoice on 25 May 2016 to Montano Realty, with the intention Montano Realty would pay this amount to Sardonyx Project Management (which it did when it made

a payment of \$24,200 to Sardonyx Project Management on 27 May 2016)

- Mr Baynham prepared a Sardonyx Project Management invoice, dated 24 May 2016, in the amount of \$20,400 and authorised the payment of the invoice on 26 May 2016 to Montano Realty, with the intention that Montano Realty would pay this amount to Sardonyx Project Management, which it did on 30 May 2016
- Sardonyx Project Management received \$44,600 in total for work carried out on 16 Alfred Street, Leichardt.

The total amount retained by Sardonyx Project Management after paying contractors was \$11,315.

#### Property 4: 21/29 King Street, Enfield

On 23 February 2010, the owners of the property at 21/29 King Street, Enfield, and the LAHC entered into a Residential Tenancy Agreement. Colin Callil was the owner responsible for the management of the property. On 17 February 2016, Mr Baynham wrote to two of his FACS co-workers seeking the keys to the property in order to carry out a joint inspection with the owner due to the owner's concerns about tenant damage. On 22 March 2016, Mr Baynham arranged for contractors to attend the property and carry out work or to provide quotations for works to be done.

Two Sardonyx Project Management invoices were issued by Mr Baynham to Mr Callil for work carried out at the property. On 24 May 2016, an invoice for \$22,700 was issued. On 25 May 2016, an invoice for \$25,100 was issued. On 25 and 26 May 2016, Mr Baynham authorised payment by FACS to Mr Callil for the invoiced amounts, who then made a payment to Sardonyx Project Management on 30 May 2016 in the amount of \$47,800. After payment of the contractors, Sardonyx Project Management retained \$10,383.

In his statement to the Commission, Mr Callil said that, in January or February 2016, he attended an inspection at 21/29 King Street, Enfield, and observed damage to the property. He was not told by Mr Baynham that he had a company called Sardonyx Project Management that could carry out the repairs. The repairs at the property took place in February and March 2016. Mr Callil stated that he understood Mr Baynham coordinated tradespeople to do repairs. When he received the Sardonyx Project Management invoices, he thought it was possible that Mr Baynham could have started his own company. He stated that, based on his experience in the building industry, he did not believe the Sardonyx Project Management represented value for money for FACS.

He stated:

*I told him words to the effect of 'I don't want to be involved in your schemes'. At the time we had this conversation I believed Chanse was using his contacts within Housing to run a side business as a renovator or part time developer.*

However, despite Mr Callil's reservations, he paid Sardonyx Project Management the invoiced amount.

Mr Baynham gave evidence that he told Mr Callil that he had a company called Sardonyx Project Management. Mr Baynham accepted that he prepared the invoices, provided them to Mr Callil, authorised payments on behalf of FACS, and received a cheque in payment from Mr Callil.

Once more, it is unnecessary for the Commission to make any finding in relation to which version of events should be preferred. Further, there is insufficient evidence upon which a finding could be made as to whether FACS received value for money.

The Commission is satisfied that, in relation to 21/29 King Street, Enfield:

- Sardonyx Project Management was responsible for the project management of works carried out
- Mr Baynham prepared a Sardonyx Project Management invoice, dated 24 May 2016, in the amount of \$22,700 and a Sardonyx Project Management invoice, dated 25 May 2016, in the amount of \$25,100, and authorised the payment of the two invoices on 25 and 26 May 2016 respectively to Mr Callil, with the intention Mr Callil would pay these amounts to Sardonyx Project Management (which he did on 30 May 2016 in the amount of \$47,800)
- Sardonyx Project Management received \$47,800 in total for work carried out on 21/29 King Street, Enfield, of which \$10,383 was retained by Sardonyx Project Management after paying its contractors.

#### Property 5: 60 Fawcett Street, Ryde

On 23 October 2012, the owner of 60 Fawcett Street, Ryde, and the LAHC entered into a Residential Tenancy Agreement. David Turley of Turley Real Estate Pty Ltd (trading as Ray White Ryde and First National Hunters Hill, Gladesville and Ryde) was the managing agent. On 3 February 2017, Mr Turley sent an email to Mr Baynham and Ms Hayek, via their FACS email addresses, seeking vacant possession of the property by 13 May 2017. The evidence establishes that a clean-up of the property did not start until around 21 July 2017.

By 25 July 2017, at Mr Baynham's request, contractors were attending the property to provide quotations for work. In August 2017, a significant amount of work, managed by Sardonyx Project Management, was carried out at the property.

On 14 August 2017, Mr Baynham sent Mr Turley an email from his FACS email address attaching three Sardonyx Project Management invoices dated 1 August 2017 for \$17,200, 3 August 2017 for \$17,200 and 6 August 2017 for \$18,460. Mr Turley's email in response indicated that he would arrange payment of the invoices. Mr Baynham authorised payment by FACS to Turley Real Estate of the invoiced amounts on 2 August 2017, 4 August 2017 and 7 August 2017 respectively.

On 29 August 2017, Mr Baynham sent Mr Turley an email from his FACS email address attaching a further Sardonyx Project Management invoice, dated 14 August 2017, for \$8,270 and asked Mr Turley to arrange payment. On 15 August 2017, Mr Baynham authorised payment by FACS to Turley Real Estate of the invoiced amount.

On 21 September 2017, Mr Baynham sent Mr Turley an email attaching a further Sardonyx Project Management invoice, dated 6 September 2017, for \$13,590 for work completed at the property. On 7 September 2017, Mr Baynham authorised payment of the invoiced amount by FACS to Turley Real Estate.

The agency made payments to Sardonyx Project Management on 6 September 2017 (\$42,670), 8 September 2017 (\$18,460) and 28 September 2017 (\$11,590.50). After payment of the contractors, Sardonyx Project Management's retained \$11,315.

In his statement to the Commission, Mr Turley said that he believed he met Mr Baynham at the property on or around 21 July 2017, at the beginning of the clean-up process. He stated the tenant had accumulated a lot of rubbish that needed to be removed from the premises. During that meeting, Mr Baynham offered to clear out the rubbish on behalf of Housing NSW. He also offered to arrange other work at the property.

Mr Turley did not recall Mr Baynham mentioning that he would actually do the work. He did not remember Mr Baynham asking him to get quotations for work or to approve a quotation for work. In Mr Turley's view, the responsibility of the agent was to ensure the work was done to an appropriate standard on behalf of the owner. In August and September 2017, Mr Baynham sent Mr Turley a series of emails from his FACS email address attaching Sardonyx Project Management invoices. Mr Turley stated to the Commission:

*I don't know anything about Sardonyx [Project Management] and am not aware of any connection*

*between the business and Chanse or the Department of Housing. I don't believe I had heard of Sardonyx until I received the email from Chanse on 14 August 2017.*

In contrast, Mr Baynham said that Mr Turley knew that he had a company, Sardonyx Project Management. He said that he had told Mr Turley that he could arrange for the work to be done and Mr Turley told him to get the work done. He accepted that he authorised payment of the Sardonyx Project Management invoices. The financial records indicate that Sardonyx Project Management received payments from the agency.

Again, it is unnecessary for the Commission to make any finding in relation to which version of events should be preferred.

The Commission is satisfied that, in relation to 60 Fawcett Street, Ryde:

- Sardonyx Project Management was responsible for the project management of works carried out
- Mr Baynham prepared Sardonyx Project Management invoices in amounts totaling \$74,720, and authorised the payment of the invoiced amounts to the real estate agency, with the intention that the real estate agency would pay these amounts to Sardonyx Project Management (which it did, when payments totalling \$72,720.50 were made to Sardonyx Project Management on 6 September 2017, 8 September 2017 and 28 September 2017).

### **Property 6: 3/495 Great North Road, Abbotsford**

On 15 May 2015, the owner of 3/495 Great North Road, Abbotsford, entered into a Residential Tenancy Agreement with the LAHC. Simone Hume, a property manager at Cobden & Hayson Real Estate, was the agent responsible for the management of the property.

On 22 March 2017, Mr Baynham and Ms Hume attended an inspection at the property. On the same date, Ms Hume sent an email to Mr Baynham at his FACS email address, outlining the work Housing NSW had agreed should be carried out at the property. Also on 22 March 2017, Mr Baynham arranged for contractors to attend the property to provide quotations for the work to be carried out and to start working on removal of rubbish from the property. On 23 March 2017, Mr Baynham forwarded Ms Hume's email detailing the work to be carried out to his Sardonyx Project Management email account. On 1 May 2017, Mr Baynham, continued to coordinate work at the property.

On 12 May 2017, Mr Baynham sent an email to Ms Hume from his FACS email address, attaching a Sardonyx Project Management invoice, dated 7 May 2017, in the amount of \$16,761 and requested that Ms Hume pay the invoiced amount. Mr Baynham had authorised the invoice for payment by FACS the day prior (11 May 2017). On 18 May 2017, a payment of \$16,761 was made from Cobden & Hayson Real Estate to Sardonyx Project Management. After payment of the contractors, Sardonyx Project Management retained \$5,258.

Ms Hume told the Commission:

*I don't know anything about Sardonyx Project Management and I don't recall Chanse [Baynham] or anyone else at Housing [NSW] explaining anything about this business. I'm not aware of any connection between Chanse [Baynham] and this business [Sardonyx Project Management].*

Mr Baynham gave evidence that he attended the final inspection with Ms Hume and that Sardonyx Project Management managed the rectification work at the property. The property required extensive work and had been left in a "mess". Mr Baynham said he spoke to Ms Hume, who indicated that she needed someone to do the work. Mr Baynham was unable to recall the details of the discussion:

*I don't recall the exact particulars, but yeah, it was along the lines, this work can be provided and she [Ms Hume], yeah, asked for us to go ahead and do it.*

He said that Ms Hume understood that Sardonyx Project Management was his company:

*That I have a business that does this, does this type of work, can provides these services to you and, yeah, would you, yeah, so she said 'Could you please go ahead with the work'.*

He claimed Ms Hume understood that this was separate to his FACS role as a headlease coordinator. He said that he explained to Ms Hume that "this is a company that I own outside of Housing [NSW]". He maintained his position, that Ms Hume knew he had a connection with Sardonyx Project Management, and that she knew this because he told her he had his own business that carried out maintenance works.

It is unnecessary for the Commission to make any findings concerning which version of events should be preferred.

Mr Baynham accepted that he authorised payment by FACS to Cobden & Hayson Real Estate in the amount of \$16,761 on 11 May 2017 and that Sardonyx Project Management received \$16,761 from the agency.

The Commission is satisfied that, in relation to 3/495 Great North Road, Abbotsford:

- Sardonyx Project Management was responsible for the project management of works carried out
- Mr Baynham prepared a Sardonyx Project Management invoice, dated 7 May 2017, in the amount of \$16,761, and authorised the payment of the invoice on 11 May 2017 to Cobden & Hayson Real Estate, with the intention that Cobden & Hayson Real Estate would pay this amount to Sardonyx Project Management (which it did when a payment of \$16,761 was made to Sardonyx Project Management on 18 May 2017)

Sardonyx Project Management retained \$5,258 for work carried out at the property after contractors were paid.

### Property 7: 62 Mason Street, Maroubra

On 19 February 2016, the owner of 62 Mason Street, Maroubra, and the LAHC entered into a Residential Tenancy Agreement. Ms D' Alessandro of Raine & Horne Maroubra was the managing agent. On 11 April 2017, Ms D' Alessandro sent a "no grounds termination notice" of the Residential Tenancy Agreement to the LAHC, with vacant possession to be provided on or before 11 July 2017. By September 2017, the property was vacant.

Ms D' Alessandro sent a number of emails to Mr Baynham's FACS email address with quotations received by Ms D' Alessandro for rectification work that needed to take place at the property because of damage caused by the tenant. On each occasion, Mr Baynham forwarded these quotations to his Sardonyx Project Management email address, as follows.

- On 12 September 2017, Ms D' Alessandro sent an email to Mr Baynham outlining the work that needed to take place at the property and forwarded a quotation for repairs to the shower in the amount of \$3,960. On 14 September 2017, Mr Baynham forwarded the email and quotation to his Sardonyx Project Management email address.
- On 14 September 2017, Ms D' Alessandro sent an email to Mr Baynham attaching a quotation for internal painting in the amount of \$6,138. On the same date, Mr Baynham forwarded this email and quotation to his Sardonyx Project Management email address.
- On 14 September 2017, Ms D' Alessandro sent an email to Mr Baynham attaching a quotation for electrical work in the amount of \$1,760. On the same date, he forwarded this email and quotation to his Sardonyx Project Management email address.

- On 14 September 2017, Ms D' Alessandro sent an email to Mr Baynham attaching a quotation for the installation of new blinds in the amount of \$1,493.80. On 19 September 2017, Mr Baynham forwarded the email and quotation to his Sardonyx Project Management email address.
- On 15 September 2017, Ms D' Alessandro sent an email to Mr Baynham attaching a quotation to Mr Baynham for work that needed to take place on the kitchen in the amount of \$9,100. On 19 September 2017, Mr Baynham forwarded the email and quotation to his Sardonyx Project Management email address.

On 19 September 2017, Mr Baynham sent a Sardonyx Project Management quotation dated 19 September 2017 in the amount of \$53,946 to Ms D' Alessandro from his Sardonyx Project Management email account. The quotation included quoted prices for internal painting (\$6,100), electrical work (\$1,740) and the installation of new blinds (\$1,320). The amounts in the quotations provided by Mr Baynham were slightly less than the quotations obtained by Ms D' Alessandro (detailed above). Mr Baynham also provided quotations for other work that needed to be carried out at the property. By the end of September 2017, Sardonyx Project Management had been engaged on the project.

During a search warrant executed by Commission officers at Mr Baynham's property, a handwritten note was located with the heading "62 Mason Street, Maroubra". The content of the note is reproduced below:

|                       | R/E      | Sardonyx      |
|-----------------------|----------|---------------|
| Internal Paint        | \$ 6,138 | (5000) \$6100 |
| External Paint        |          | (3500) \$4600 |
| Kitchen               | \$ 9,100 | (6600) \$8900 |
| Floor                 | \$ 9,642 | (4940) \$8240 |
| Bath                  |          |               |
| Fly Screens           |          | (980) \$1980  |
| Benchtop              |          | (600)         |
| Patch Walls & Fit Out |          | (500)         |
| Lights                | \$ 1,760 | (1190) \$1740 |
| Blinds                | \$ 1,493 | (880) \$1320  |

The note set out Mr Baynham's calculations for providing a Sardonyx Project Management quotation for the work that undercut the quotations submitted by the other contractors. Mr Baynham told the Commission that the "R/E" column reflected the quotations provided by the real estate agent for the various works, including internal painting, electrical/lights, blinds and kitchen. Mr Baynham gave evidence that the amounts in brackets in the "Sardonyx" column reflected the amounts the contractor he engaged to do the actual work intended to charge Sardonyx Project Management for the work. The amounts next to the bracketed amounts in the "Sardonyx" column represented the Sardonyx Project Management quotations provided to the agent, being the amounts he intended to charge for each item, inclusive of his profit margin. The note shows that the amounts quoted by Sardonyx Project Management were less than the quotations obtained by Ms D' Alessandro.

Between 9 October and 13 November 2017, Mr Baynham issued four Sardonyx Project Management invoices totalling \$33,565. Between 17 October and 14 November 2017, Mr Baynham authorised payment by FACS of the invoiced amounts to Raine & Horne Maroubra. Between 24 October and 4 December 2017, payments totalling \$33,565 were made by the agency to Sardonyx Project Management.

In her statement provided to the Commission, Ms D' Alessandro said that, on 12 September 2017, she attended an inspection with Mr Baynham in order to assess the damage done to the property by the tenant. At the inspection, it was decided that she would obtain quotations, as would Mr Baynham. She stated:

*At the inspection on 12 September 2017 I said I would get quotes to do the repairs needed and Chanse [Baynham] said the Department of Housing would get quotes too. I assumed at that time the Department of Housing had their own preferred tradespeople and that they might get cheaper quotes than me because they do these sorts of repairs regularly in their business. As long as the work was done professionally given that the Department of Housing was paying for the work the owner was ok with them doing the work that was needed...*

*I don't know anything about this business [Sardonyx Project Management] but I thought perhaps they did work for the Department of Housing for repairs at the end of tenancy or that they were the Department of Housing's company. I don't remember Chanse [Baynham] mentioning this business when I met him at the property to do the inspection on 12 September 2017.*

Throughout September and October 2017, Ms D'Alessandro and Mr Baynham were in contact in relation to the repairs being undertaken at the property. She said that it was not until late September 2017, that she:

*...formed the impression that Chanse [Baynham] must have something to do with Sardonyx [Project Management] or that it might be his company. I assumed if that was the case he had some arrangement with the Department of Housing to do the repair works needed. I had heard of other private companies who were engaged by the Department of Housing to do repairs.*

Mr Baynham said Ms D'Alessandro knew about Sardonyx Project Management and about his involvement with the company. He said that she also knew that he was a headlease coordinator with FACS.

Mr Baynham accepted that Ms D'Alessandro forwarded him a number of quotations she had received, and that he forwarded these to his Sardonyx Project Management email address. He admitted that he reviewed the quotations before providing his own Sardonyx Project Management quotation. He accepted he had used the information from the quotations forwarded to him by Ms D'Alessandro to submit a Sardonyx Project Management quotation that was less than those submitted by other contractors.

It is unnecessary to make any findings concerning which version of events should be preferred.

Counsel Assisting submitted that the Commission should be satisfied that Mr Baynham misused the information provided to him in the quotations forwarded by Ms D'Alessandro on 12, 14 and 15 September 2017 to prepare the Sardonyx Project Management quotation, dated 19 September 2017, in the amount of \$53,946, including lower amounts than those quoted by other contractors for certain items. This submission was not disputed by Mr Baynham.

Counsel Assisting also submitted that Mr Baynham knew that Sardonyx Project Management would be engaged if the quotations submitted were lower than those submitted by other contractors. It was submitted for Mr Baynham that Mr Baynham could not have known that Ms D'Alessandro would engage Sardonyx Project Management.

Regardless of whether or not Mr Baynham knew Sardonyx Project Management would be engaged if he undercut the quotations provided by others, the Commission is satisfied that he intended and believed it would be engaged.

The Commission is satisfied that in relation to 62 Mason Street, Maroubra:

- Sardonyx Project Management was responsible for the project management of works carried out at 62 Mason Street, Maroubra
- Mr Baynham prepared a Sardonyx Project Management invoice, dated 9 October 2017, in the amount of \$4,185 and authorised the payment of the invoiced amount on 17 October 2017 to Raine & Horne Maroubra, with the intention that Raine & Horne Maroubra would pay this amount to Sardonyx Project Management (which it did when a payment of \$4,185 was made to Sardonyx Project Management on 24 October 2017)
- Mr Baynham prepared a Sardonyx Project Management invoice, dated 16 October 2017, in the amount of \$14,340 and authorised the payment of the invoice on 17 October 2017 to Raine & Horne Maroubra, with the intention that Raine & Horne Maroubra would pay this amount to Sardonyx Project Management (which it did when a payment of \$14,340 was made to Sardonyx Project Management on 24 October 2017)
- Mr Baynham prepared a Sardonyx Project Management invoice, dated 25 October 2017, in the amount of \$10,880 and authorised the payment of the invoiced amount on 26 October 2017 to Raine & Horne Maroubra, with the intention that Raine & Horne Maroubra would pay this amount to Sardonyx Project Management (which it did when a payment of \$10,880 was made to Sardonyx Project Management on 27 November 2017)
- Mr Baynham prepared a Sardonyx Project Management invoice, dated 13 November 2017, in the amount of \$4,160 and authorised the payment of the invoiced amount on 14 November 2017 to Raine & Horne Maroubra, with the intention that Raine & Horne Maroubra would pay this amount to Sardonyx Project Management (which it did when a payment of \$4,160 was made to Sardonyx Project Management on 4 December 2017)
- Mr Baynham misused the information provided to him in the quotations forwarded by Ms D'Alessandro on 12, 14 and 15 September 2017 to prepare a quotation that would undercut the quotations provided by other contractors. Mr Baynham believed that Sardonyx Project Management would be engaged if the quotations submitted were lower than those submitted by other contractors.

## Property 8: 976 Canterbury Road, Roselands

On 21 January 2016, the owner of 976 Canterbury Road, Roselands, entered into a Residential Tenancy Agreement with the LAHC. Jeremy Jin of Hualei Properties was the managing agent responsible for the property, although other agency staff, namely Kenny Wu and Elisa Wong, also dealt with the property from time-to-time. The tenants moved out of the premises on 6 March 2017 and the keys for the property were provided to Mr Baynham. On 20 March 2017, Mr Baynham advised Hualei Properties that FACS wanted to relinquish the tenancy and vacate the property. The termination date provided was 11 April 2017. By the end of March 2017, Mr Baynham was arranging for contractors to provide quotations for work to be carried out at the property. On 19 June 2017, he contacted Hualei Properties to arrange an inspection of the property.

Between 18 April and 20 September 2017, Sardonyx Project Management issued five invoices totalling \$51,820 for work carried out at the property. The records show that between 19 April and 21 September 2017, Mr Baynham authorised the payment of the invoices by FACS. Between 27 April and 30 October 2017, the agency made payments totalling \$51,820 to Sardonyx Project Management. After paying the contractors, Sardonyx Project Management retained approximately \$16,965.

Mr Jin provided a statement to the Commission. He said that, between 20 March 2017 and 24 March 2017, his colleague, Mr Wu, attended an inspection with someone from Housing NSW, who Mr Jin believed could have been Mr Baynham. He produced a handwritten note, which reflects his conversation with Mr Wu after the inspection:

*Outgoing photos 24 March 2017 (the case manager from LAHC took the keys after the inspect [sic] and started the repairs)*

Mr Jin also said:

*I felt in terms of the damage that had been done by the family that had been living in the property that the tenant, NSW LAHC, could choose to do the repairs as needed. In this case this is what happened ... I felt that the decision about who did the repairs was a choice for the tenant as long as the damage was fixed and the repairs were satisfactory and it could be re-let.*

Mr Jin stated that, at the time his agency received the first Sardonyx Project Management invoice, he did not know anything of the company. He stated:

*I assumed that Housing [NSW] used this company quite a lot and were happy with their work overall. I don't recall anyone from Housing talking to me about this company and I didn't check whether they were licensed or had insurance because Housing hired them to do the repairs at 976 Canterbury Rd Roselands.*

Mr Jin thought that the repairs undertaken were better than expected.

Mr Baynham accepted that he prepared the Sardonyx Project Management invoices, authorised the payment of the invoiced amounts from FACS to the agency, and that Sardonyx Project Management received payment for the work carried out. Mr Baynham said he could not recall who he dealt with at the agency but gave the following evidence about the agency's engagement of Sardonyx Project Management:

*Once again, I informed him of who Sardonyx was, I asked him whether or not he wanted the work to proceed. He, if this is the person that I met, I'm not sure if this is the person that I met, but the person that I met at the initial meeting, I informed them of everything, of who I was, what the company was and they said, 'Proceed with the work'.*

It is unnecessary for the Commission to make any findings concerning which version of events should be preferred.

The Commission is satisfied that in relation to 976 Canterbury Road, Roselands:

- Sardonyx Project Management was responsible for the project management of works carried out
- Mr Baynham prepared a Sardonyx Project Management invoice, dated 18 April 2017, in the amount of \$16,660 and authorised the payment by FACS to Hualei Properties of the invoiced amount on 19 April 2017, with the intention that Hualei Properties would pay this amount to Sardonyx Project Management, which it did when a payment of \$16,660 was made to Sardonyx Project Management on 27 April 2017
- Mr Baynham prepared a Sardonyx Project Management invoice, dated 24 May 2017, in the amount of \$18,050 and authorised the payment of the invoiced amount on 29 May 2017 to Hualei Properties, with the intention that Hualei Properties would pay this amount to Sardonyx Project Management (which happened when a payment of \$18,050 was made to Sardonyx Project Management on 7 June 2017)
- Mr Baynham prepared a Sardonyx Project Management invoice, dated 3 June 2017, in the amount of \$13,080 and authorised the payment

of the invoiced amount on 7 June 2017 to Hualei Properties, knowing that Hualei Properties would pay this amount to Sardonyx Project Management (which it did when a payment of \$13,080 was made to Sardonyx Project Management on 9 June 2017)

- Mr Baynham prepared a Sardonyx Project Management invoice, dated 19 July 2017, in the amount of \$2,520 and authorised the payment of the invoice on 20 July 2017 to Hualei Properties, with the intention that Hualei Properties would pay this amount to Sardonyx Project Management (which it did when a payment of \$2,520 was made to Sardonyx Project Management on 27 July 2017)
- Mr Baynham prepared a Sardonyx Project Management invoice, dated 20 September 2017, in the amount of \$1,510 and authorised the payment of the invoice on 21 September 2017 to Hualei Properties, with the intention that Hualei Properties would pay this amount to Sardonyx Project Management (which it did when a payment of \$1,510 was made to Sardonyx Project Management on 30 October 2017)
- Sardonyx Project Management received \$51,820 for work carried out on the property, of which approximately \$16,965 was retained by Sardonyx Project Management after paying contractors.

### Property 9: 1 First Avenue, Maroubra

On 16 February 2011, the owner of 1 First Avenue, Maroubra, and the LAHC entered a Residential Tenancy Agreement. Jack Bao of Loyal Property City was the managing agent of the property.

On 22 June 2017, Michelle Welford, another headlease coordinator employed at FACS, sent a letter to Mr Bao and provided 21 days notice of Housing NSW's intention to vacate the premises. On 7 August 2017, Mr Bao, Ms Welford and Mr Baynham visited the premises to carry out an inspection.

On 16 September 2017, Mr Bao sent an email to Ms Welford in relation to rectification work to be undertaken at the property and provided a number of quotations for the work to be undertaken. Mr Bao stated that the amount to be claimed from FACS for rectification work was around \$87,000. On 18 September 2017, Ms Welford forwarded the email and its attachments to Mr Baynham. There is no evidence that Ms Welford knew of Sardonyx Project Management, Mr Baynham's interest in the company, or that he intended to have the company project-manage the work. On the same day, Mr Baynham sent an email to Mr Bao:

*Jack,*

*Can you call me to discuss the quotes? I am now looking after this property. I was at the property with Michelle [Welford] at the handover.*

*Regards,*

*Chanse Baynham*

On 19 September 2017, Mr Baynham arranged for a number of contractors to attend the property to provide quotations for the work that was to be undertaken.

On 4 October 2017, Mr Baynham sent an email from his Sardonyx Project Management email address to Mr Bao, attaching a Sardonyx Project Management quotation dated 4 October 2017 in the amount of \$80,500.

The email stated:

*Jack,*

*Attached is a quote for the completion of the works at the above property. If you have any questions can you contact me. As discussed with you I will manage the whole job and run all trades that are required to complete the works.*

*Regards,*

*Chanse Baynham*

*Project Manager*

*E:chanse@sardonyxpm.com IMOB: [REDACTED]*

An Excel spreadsheet titled "1 First Ave, Maroubra" was located during the execution of the search warrant by the Commission at Mr Baynham's premises. It is set out below:

|                  | R/E              | Quote            | Sardonyx         |
|------------------|------------------|------------------|------------------|
| Paint            | \$ 12,100        | \$ 12,500        |                  |
| Carpet           | \$ 11,880        | \$ 8,910         | \$ 11,100        |
| Windows          |                  |                  |                  |
| Kitchen          | \$ 22,000        |                  |                  |
| Rubbish          | \$ 15,644        | \$ 9,350         |                  |
| Glazire<br>[sic] | \$ 4,312         |                  |                  |
| Blinds           | \$ 7,260         | \$ 3,700         | \$ 7,000         |
| <b>Total</b>     | <b>\$ 73,196</b> | <b>\$ 34,460</b> | <b>\$ 18,100</b> |

Mr Baynham admitted that he prepared the spreadsheet. He said the "R/E" column reflected the quotations

provided by Mr Bao (\$73,196). The “Quote” column reflected the amounts quoted by his contractors (\$34,460). The “Sardonyx” column reflected the amounts he intended to charge for some items, including his profit margin. The “Sardonyx” column was incomplete.

On 5 October 2017, Mr Bao sent an email to Mr Baynham at his Sardonyx Project Management email address:

*Hi Chanse,*

*Please go ahead with the attached quotation.*

*Regards,*

*Jack*

On 10 October 2017, Mr Bao sent an email to Mr Baynham at his FACS email address with a number of invoices for payment, including a Sardonyx Project Management invoice, dated 9 October 2017, in the amount of \$4,520. This is the only invoice issued by Sardonyx Project Management in relation to this property. Records show that Mr Baynham authorised payment by FACS of the invoice on 10 October 2017 and that payment was received by Sardonyx Project Management on 13 October 2017.

On 14 November 2017, Mr Baynham was suspended with pay from his position at FACS. After he was suspended, he continued to arrange contractors to carry out work at the property. He said he did this because he had been engaged by Mr Bao.

On 13 December 2017, Angela Walsh, then team leader for the Sydney, South East Sydney and Northern District of FACS, wrote an email to Leith Kennedy, director of housing services at FACS, and provided details of a conversation with Mr Bao of the same date. Mr Bao later confirmed the accuracy of the information provided to Ms Walsh in an interview with Commission officers. The email to Mr Kennedy contained the following:

*Jack advised this was the process:*

- The real estate provided quotes to FACS for rectification work on 16 September 2017*
- On 4 October 2017, Mr Baynham provided a quote from Sardonyx*
- Mr Baynham advised that FACS would like to use this company as they are cheaper than the quotes that the real estate had provided*
- Jack discussed with the owner and decided to use Sardonyx*
- Mr Baynham agreed to pay the rent whilst the work was completed and the [sic] is now paid until the end of November*

- The work is due to be completed by the end of the week*

In his interview with Commission investigators, Mr Bao said that Mr Baynham and Ms Welford were present when he attended the property for inspection. The house was in a terrible condition and Mr Bao described it as “trashed”. Mr Baynham was taking measurements at the property and Mr Bao asked Ms Welford whether Mr Baynham would be fixing the house:

*She goes “No, no, no. We’re not fixing the house”... But they did indicate to me, said “Look, you go get quotes, and then submit the quotes, and we’ll approve your quotes and then you can do the job”.*

On 16 September 2017, Mr Bao sent quotations to Ms Welford. He then received the email of 18 September 2017, in which Mr Baynham asked Mr Bao to call him to discuss the quotations that Mr Bao had sent to Ms Welford. Mr Bao said that, during this conversation, Mr Baynham told him he was taking over the job and commented that the quotations Mr Bao had obtained were too high:

*He said he, he [Mr Baynham] would submit a quote. And I said, well, it’s –you submit a quote, obviously it’s going to be lower than mine. But are they the same as what we intend to do? He goes, “Yes”. I’m not sure if it’s this conversation or the next one, but at some stage, we did discuss that. And I said, “How does it work”. He goes “Oh, it will be from a different company who does work, and obviously it’s a quote. If you accepted that, and then we’ll fix it for you. It’s lower than your quote”. I said, OK, that’s fine. For me it’s OK. As long as the work are same, happy to do it ... He said that it’s his company. I don’t know what company it was. And then later out turn – later on, turned out to be Sardonyx.*

Mr Bao said Mr Baynham claimed that FACS allowed him to submit quotations for jobs. Mr Bao said that he did not see a problem with the process outlined by Mr Baynham because he believed this was what FACS wanted. He understood Mr Baynham would provide a quotation that was lower than the ones he had provided to Mr Baynham. He said, “I was thinking just to get the thing fixed so I can lease it out ... it sounds funny but we didn’t think too much in details into the legality”.

Mr Bao said Mr Baynham told him he was not involved greatly with FACS and that he was spending most of his time doing project management:

*So he might be either a consultant, a contractor, or something to assist the FACS. That’s my feeling. I, I thought that because there’s – might – maybe government was short of money, they, they can’t*

*do this anymore, so they have to have some sort of arrangement.*

Mr Baynham told the Commission that he had a discussion with Mr Bao about Sardonyx Project Management and the work it did. Mr Bao indicated that he would like a quotation from Mr Baynham's company. Mr Baynham gave the following evidence about his engagement by Mr Bao: "I provided a quote to Jack [Bao]. Jack knew what work I did. Jack engaged me, yes".

He denied that he told Mr Bao that FACS would like to use Sardonyx Project Management because it was cheaper. He denied telling Mr Bao he was a subcontractor and that he was allowed to submit quotations for work.

He accepted that he provided the Sardonyx Project Management quotation dated 4 October 2017 to Mr Bao after he had been given access to the other contractors' quotations and used the other quotations to prepare a Sardonyx Project Management quotation in a lower amount.

It was submitted on Mr Baynham's behalf that Mr Baynham could not have known that Mr Bao would engage Sardonyx Project Management.

The Commission is satisfied that, whatever his knowledge, Mr Baynham intended that Mr Bao would engage Sardonyx Project Management to manage the carrying out of the works.

The Commission is also satisfied that in relation to 1 First Avenue, Maroubra:

- Sardonyx Project Management was responsible for the project management of works carried out at the property until Mr Baynham's suspension on 14 November 2017
- Mr Baynham prepared a Sardonyx Project Management invoice, dated 9 October 2017, in the amount of \$4,520 and authorised the payment of the invoice on 10 October 2017 to Loyal Property City, intending that Loyal Property City would pay this amount to Sardonyx Project Management (which it did when a payment of \$4,520 was made to Sardonyx Project Management on 13 October 2017)
- Mr Baynham misused the information provided in the quotations provided by other contractors forwarded by Mr Bao to Ms Welford on 16 September 2017 to prepare the Sardonyx Project Management quotation dated 4 October 2017 in the amount of \$80,500. Because he had access to the quotations provided by other contractors, Mr Baynham could ensure

the Sardonyx Project Management quotation was lower than those received by Mr Bao from other contractors. Mr Baynham did this intending that Sardonyx Project Management would be engaged to do the work if its quotation were lower than other quotations submitted.

### Property 10: 680 Victoria Road, Ryde

On 8 August 2003, Verdun Walsh entered into a lease with the LAHC. After the lease was terminated, Deanne Hinton, Mr Walsh's daughter and the executor of his estate, was responsible for liaising with FACS in respect of damage to the property caused by the tenants. On 12 July 2017, Ms Hinton sent an email to FACS client service officer, Angelina Chan, detailing the damage to the property caused by the tenant. On 18 August 2017, Ms Chan wrote to Ms Hinton and advised her to contact Mr Baynham. On 9 October 2017, Mr Baynham arranged to meet Ms Hinton for an inspection at the property. The inspection took place on 12 October 2017.

On 30 October 2017, Ms Hinton sent an email to a number of FACS employees, including Ms Chan and Mr Baynham. Attached to the email was a quotation dated 23 October 2017 in the amount of \$32,340.

On the same day, Mr Baynham sent an email from his FACS email address to Ms Hinton:

*Deanne,*

*I deal with this and not the other people. I will review the quote and let you know. I can be contacted on the below numbers.*

*Chanse Baynham*

On 8 November 2017, Mr Baynham sent the following email to Ms Hinton from his Sardonyx Project Management email address:

*Deanne,*

*I have a quote to repair the works required at the property. If you would like to discuss further I would be happy to discuss. I can be reached on the number below.*

*Regards,*

*Chanse Baynham*

*Project Manager*

*E: chanse@sardonyxpm.com IMOB: [REDACTED]*

There was no attachment to the email. However, records in the possession of the Commission show that a Sardonyx Project Management quotation dated

8 November 2017, in the amount of \$29,700, was prepared by Mr Baynham for work to be undertaken at the property.

On 13 November 2017, Mr Baynham sent Ms Hinton an email from his Sardonyx Project Management email address, attaching another Sardonyx Project Management quotation dated 13 November 2017 for further work to be undertaken at the property (floors and painting) in the amount of \$9,868.

Ms Hinton provided a statement to the Commission in which she said that she met Mr Baynham for the first time at an inspection of the property on 12 October 2017. She said that during the inspection she and Mr Baynham disagreed about whether damage to the property would be paid for by FACS or the estate. She said that Mr Baynham asked her to get a quotation for the work to be undertaken at the property and she obtained a quotation. She said:

*I do not recall at any time during the inspection on 12 October 2017 Chanse [Baynham] mentioning the name of any company or business that could do the repairs at the property.*

Ms Hinton stated that, when she received the email from Mr Baynham of 8 November 2017 from the Sardonyx Project Management email address, she “thought it was odd that a person I had met who represented Housing suddenly had another job”. Shortly after she received the email from Mr Baynham on 8 November 2017, she spoke to someone from Housing NSW and raised her concerns about receiving emails from Mr Baynham from both the Sardonyx Project Management email address and his FACS email address. She could not remember with whom she spoke at Housing NSW.

Ms Hinton stated that, on Sunday, 12 November 2017, she drove past the property and noticed that things had been removed from the house and someone was mowing the lawns. She had not authorised anyone to commence work at the property. On the same date, she emailed Amanda Murray of FACS to advise her that work had started at the property without her authorisation. After this time, she had no further dealings with Mr Baynham and dealt with other FACS personnel.

The Commission admitted into evidence an undated invoice purportedly from one AJ Frankfort addressed to Sardonyx Project Management for work carried out on Sunday, 12 November 2017 at the property. The invoice was in the amount of \$170 for yard work and removing furniture from the house.

Anthony Frankfort told the Commission he recalled doing work at the property around 12 November 2017.

Mr Baynham gave evidence that he met Ms Hinton at the inspection and there was a dispute between them in respect of the damage for which FACS would be responsible:

*Well, she didn't like what I had to say ... That she wanted a lot more work done by Housing [NSW] and I was saying no. Yeah. She demanded a lot more work and I was, “No, that's fair wear and tear”, and so on and she didn't like that and I agreed that Housing should do certain things and, yeah, like, she wanted more, so yeah. And we had a discussion regarding that.*

Mr Baynham said he told Ms Hinton he had a business that could provide a quotation to do the required work. Mr Baynham said that the dispute over what would be paid for by FACS was not resolved at the time of his suspension from work on 14 November 2017. On 14 November 2017, Mr Baynham sent a text message to a contractor saved in his telephone as “Handyman John”, which read, “Putva [sic] hold on the ryde job. Don't start it.”

When asked about whether he organised contractors to carry out work at the property on Sunday, 12 November 2017, Mr Baynham said “I [sic] sound like I may have, yes”. When shown the AJ Frankfort invoice for work carried out at the property on Sunday, 12 November 2017, he said he could not recall instructing Mr Frankfort to do the work but assumed he had paid him for the work.

No Sardonyx Project Management invoices were issued in relation to this property and Mr Baynham did not authorise any payments by FACS. Mr Baynham was suspended before any Sardonyx Project Management invoices were issued or payments were authorised by him.

## Property 11: 76 Lord Street, Newtown

Records obtained by the Commission demonstrate that, on 18 August 2015, Sardonyx Project Management issued an invoice to Joseph Georges (referred to in the invoice as “Joe Georges”), who is associated with the company, BR&J Georges Pty Ltd. The invoice was in the amount of \$27,000 for work (internal paint, carpet replacement and kitchen work) carried out at 76 Lord Street, Newtown.

On or about 10 September 2015, Mr Baynham authorised the payment of \$27,000 to the owner, BR&J Georges. On 17 September 2015, a cheque from BR&J Georges for \$27,000 was deposited into Mr Baynham's bank account. On or about 12 November 2015, Sardonyx Project Management provided a further invoice in the amount of \$15,000 to Joe Georges for repairs to the property. The work was said to be for tenant damage. On the same day, Mr Baynham authorised the payment of \$15,000 to

the owner. On 19 November 2015, a cheque from BR&J Georges for \$15,000 was deposited into Mr Baynham's bank account.

The property located at 76 Lord Street, Newtown, is addressed in chapter 4. Mr Baynham's dealings with that property became the subject of an "investigation" of sorts by FACS, which, through sheer ineptitude, unearthed nothing of significance to FACS.

## Corrupt conduct

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

First, the Commission makes findings of relevant facts based on the balance of probabilities. The Commission then determines whether those facts come within the terms of s 8(1), s 8(2) or s 8(2A) of the ICAC Act. If they do, the Commission then considers s 9 of the ICAC Act and the jurisdictional requirements of s 13(3A). In the case of subsection 9(1)(a), the Commission considers whether, if the facts as found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, there would be grounds on which such a tribunal would find that the person has committed a criminal offence.

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

### Chanse Baynham

The Commission is satisfied that, between August 2015 and February 2018, Mr Baynham improperly exercised his public official functions as a headlease coordinator at FACS to obtain \$1,673,330 for his company, Sardonyx Project Management, by authorising payments himself or arranging for the authorisation of payments to real estate agents/owners for work on properties leased by the LAHC, knowing that the real estate agents/owners would then pay Sardonyx Project Management.

This conduct was corrupt conduct for the purposes of s 8(1)(b) of the ICAC Act. It involved the dishonest and partial exercise of his official functions.

In considering s 9(1)(a) of the ICAC Act, it is relevant to have regard to the common law offence of misconduct in public office. The elements of this offence have been addressed in *R v Quach* (2010) 201 A Crim R 522 at 535, a decision which was approved by the NSW Court of Criminal Appeal in *Obeid v R* [2015] NSW CCA 309 at 133. The Court confirmed that the elements of the offence are:

*A public official;*

- (1) *in the course of or connected to his public office;*
- (2) *wilfully misconducts himself; by act or omission, for example, by wilfully neglecting or failing to perform his duty;*
- (3) *without reasonable excuse or justification, and;*
- (4) *where such misconduct is serious and meriting criminal punishment having regard to the responsibilities of the office and the officeholder, the importance of the public objects which they serve and the nature and extent of the departure from those objects.*

The offence is made out if the public official is reckless as to whether the conduct was a breach of his or her duties as a public official or whether the public official knows the conduct was such a breach (see *R v Obeid* (No. 11) [2016] NSWSC 974).

In *Macdonald v R* [2019] NSW CCA 32 at 72, the Court of Criminal Appeal stated that for the mental element of the offence of misconduct in public office to be made out, the prosecution must also prove beyond reasonable doubt that the transaction in question would not have been undertaken but for the improper purpose.

The Commission is satisfied for the purpose of s 9(1)(a) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the criminal standard of proof and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Baynham committed the common law offence of misconduct in public office. Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

The Commission is also satisfied for the purposes of s 74BA of the ICAC Act that Mr Baynham's conduct is serious corrupt conduct. The conduct took place over a significant period of time; namely, between August 2015 and February 2018. Mr Baynham held a position of trust within FACS and his conduct involved a significant breach of trust. His conduct could have impaired public confidence in public administration, given his position and the substantial quantum of public funds obtained. His company, Sardonyx Project Management, obtained the sum of \$1,673,330. The conduct was deliberate, deceitful and motivated by self-interest.

The Commission is also satisfied that, in relation to properties 7 (62 Mason Street, Maroubra) and 9 (1 First Avenue, Maroubra), Mr Baynham misused information or material he acquired in the course of his official functions. More particularly, he was the recipient of quotations of other contractors provided by agents/owners. The information contained in these quotations was used

by Mr Baynham to formulate quotations that undercut other contractors who were competing for the work. He misused the information with the intention of securing the engagement of Sardonyx Project Management and obtaining a financial benefit. This conduct falls squarely within s 8(1)(d) of the ICAC Act.

Such conduct also comes within s 9(1)(a) of the ICAC Act. The Commission is satisfied that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Baynham committed the criminal offence of misconduct in public office.

Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

The Commission is also satisfied for the purposes of s 74BA of the ICAC Act that Mr Baynham's conduct is serious corrupt conduct. The conduct is serious because Mr Baynham held a position of trust within FACS and his conduct involved a significant breach of trust. Further, Mr Baynham's conduct could have impaired public confidence in public administration given Mr Baynham was an experienced public official. His conduct was also deliberate, motivated by self-interest and greed. Finally, his conduct could involve the common law offence of misconduct in public office and the penalty for this offence is at large.

## Section 74A(2) statements

In making a public report, the Commission is required by the provisions of s 74A(2) of the ICAC Act to include, in respect of each "affected" person, a statement as to whether or not in all the circumstances the Commission is of the opinion that consideration should be given to the following:

- a) obtaining the advice of the Director of Public Prosecutions (DPP) with respect to the prosecution of the person for a specified criminal offence
- b) the taking of action against the person for a specified disciplinary offence
- c) the taking of action against the person as a public official on specified grounds, with a view to dismissing, dispensing with the services of or otherwise terminating the services of the public official.

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

The Commission is satisfied that Mr Baynham is an affected person for the purposes of s 74A(2) of the ICAC Act.

## Mr Baynham

The evidence Mr Baynham gave was the subject of a declaration made pursuant to s 38 of the ICAC Act. Accordingly, his evidence cannot be used against him in criminal proceedings, except in respect of offences under the ICAC Act. There is, however, other admissible evidence that would be available, including FACS records, the evidence of the real estate agents/owners and financial records of Mr Baynham and Sardonyx Project Management.

The Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Baynham for the common law offence of misconduct in public office in relation to his involvement in the works carried out on headleased properties, including the authorisation of payments totalling \$1,673,330 ultimately received by Sardonyx Project Management, and the misuse of information or material he acquired in the course of his official functions.

As previously noted, Mr Baynham's employment was terminated on 23 January 2019. Accordingly, the question of whether consideration should be given to the taking of action against him for a disciplinary offence or the taking of action with a view to his dismissal, does not arise.

## Chapter 4: What did Mr Baynham's work colleagues know?

This chapter examines the evidence of Mr Modder, Mr Baynham's former supervisor, and Ms Hayek, Mr Baynham's colleague and fellow headlease coordinator, in respect of their knowledge of Mr Baynham's private employment.

It also examines whether Mr Baynham deliberately hid Sardonyx Project Management's involvement in, and work on, headleased properties from colleagues at FACS and, in particular, his supervisor, Mr Modder.

### What did Mr Modder know?

In early 2016, Mr Modder said he learned of Mr Baynham's private employment when a staff member spoke to him about it and showed him a business card with the name "Sardonyx" on it. He could not remember the identity of the staff member who raised the issue with him. He then spoke to Mr Baynham about his private employment. During this conversation, Mr Baynham told him that he had a company with his brother that provided decking services at private homes around the Central Coast on weekends. He also told Mr Modder that the work had been declared to and authorised by their director, Mr Louat.

According to Mr Modder, he spoke to Mr Louat, who confirmed Mr Baynham's private employment involved Mr Baynham and his brother providing decking services. Mr Modder told the Commission that he understood that private employment had to be reviewed on an annual basis but that this was Mr Louat's responsibility.

As was noted in chapter 2, Mr Baynham applied for secondary employment/business approval to work with Sardonyx Australia (as distinct from Sardonyx Project Management). The application stated that his duties would be administrative duties to be performed after hours and on weekends. The application also stated that the work did not arise from, or interfere with, his official duties, the work would be undertaken outside working

hours and that he understood Housing NSW's Code of Conduct and Ethics and, in particular, his obligations relating to secondary employment/business and conflicts of interest. That application was approved by Mr Louat on 12 February 2013.

Shortly thereafter, Mr Baynham sought to have Sardonyx Australia included on the tender list for building works with the LAHC. On 6 March 2013, the general manager of projects at the LAHC, Mr Carter, wrote to Mr Baynham refusing the application on the basis that Mr Baynham's proposal involved a "high level conflict of interest". As has been noted, Sardonyx Australia never carried on business and was deregistered on 12 February 2015.

Mr Modder denied that Mr Baynham told him he did work for real estate agents and carried out project management of repairs on headleased properties. Mr Modder said he was "flabbergasted" by the allegations made in respect of Mr Baynham that were the subject of the Commission's investigation:

*Chanse seemed like a very honest person. He's very forthright. He's, I know he's a family man, with two children, that he's paid a, very rewarding wage for the work he does, and, yeah, I just would never have suspected it from him.*

Mr Baynham gave evidence that Mr Modder knew that he had a company called Sardonyx Project Management. He said that he was called into Mr Modder's office one afternoon, at which time Mr Modder produced a Sardonyx Project Management business card, and asked him about it. Mr Baynham claimed he told Mr Modder that Sardonyx Project Management did work for real estate agents and the project management of maintenance upgrades. He did not tell Mr Modder that his company was involved in managing work on headleased properties. According to Mr Baynham, Mr Modder told him that, as long as his private employment did not impact on his work

performance, he was not worried about it. He could not recall when the conversation took place.

In the Commission’s view, Mr Modder was a credible witness, who gave consistent and clear evidence. The Commission is satisfied that Mr Modder gave truthful evidence to the best of his recollection. In areas of conflict between the evidence of Mr Modder and the evidence of Mr Baynham, Mr Modder’s evidence is to be preferred. Mr Baynham’s scheme was designed so as to conceal the truth from his employer. The Commission does not accept that Mr Baynham made disclosure to his then supervisor, Mr Modder. Most importantly, it is common ground that Mr Baynham never disclosed to Mr Modder that he was carrying on a business that engaged in the project management of repairs to headleased properties.

The Commission is satisfied that Mr Modder:

- was aware that Mr Baynham had a company called “Sardonyx”.
- believed that the company operated a business on behalf of Mr Baynham and with his brother that involved no more than the provision of decking services at private homes around the Central Coast on weekends.

### What did Ms Hayek know?

Around the end of 2014, Ms Hayek became a headlease coordinator. She was largely responsible for the office-based, administrative duties, while Mr Baynham worked in the field, assessing property damage and arranging the handback of headleased properties.

Mr Baynham gave evidence that Ms Hayek knew of his company, Sardonyx Project Management. He said that he told her that Sardonyx Project Management did project management work on headleased properties. He could not recall if he told Ms Hayek not to mention to anyone else that his company was project managing work on

headleased properties. His evidence was that she was the one person within FACS who knew about Sardonyx Project Management’s work on headleased properties.

On 16 June 2019, Ms Hayek participated in an interview with Commission investigators and was warned that it was an offence to wilfully make any false statement to or to mislead or attempt to mislead an officer of the Commission. She denied knowledge of Mr Baynham’s company or of any company associated with him doing maintenance or repair work on headleased properties:

*[Commission investigator]: Have you ever heard of a company or a business being mentioned by him or anyone else called Sardonyx Australia Pty Ltd?*

*[Ms Hayek]: Never heard of it.*

*[Q]: Are you aware whether Mr Baynham ever put forward a request or a tender to perform works on public housing properties managed by Land and Housing Corporation?*

*[A]: No.*

*[Q]: Okay, have you ever heard of a company called Sardonyx Project Management Pty Ltd?*

*[A]: No.*

*[Q]: Okay so you don’t know ... if Mr Baynham had any connection to that business or not?*

*[A]: No idea.*

[Q]: *Okay are you aware whether at any stage Mr Baynham did maintenance or repair work on properties that were headlease properties?*

[A]: *No. The only time I heard from Chanse was when he was let go or stepped down or told to leave. I was – had my baby, it was a few months into it. He called me, said that they've let me go and I'm like what are you talking about, and he said, you know, they haven't given me the information as to why but they've let me go and it's under investigation. It's the first and last time. No idea.*

When Ms Hayek attended a compulsory examination on 6 September 2019, she changed her evidence. She gave evidence that she was aware that Mr Baynham had his own company and she was aware that he was carrying out work on headleased properties but believed he was authorised to do so:

*He basically told me that he does project management and that he was doing work on the [headleased] properties and I said, "Okay, do Housing know that you've got a business?" And he said, "Yeah, I've always been upfront about my project management business".*

She gave evidence that she authorised payments for repairs on headleased properties knowing that the real estate agent/owner would pay the money to Sardonyx Project Management.

During their compulsory examinations, Mr Baynham and Ms Hayek were taken to two text message exchanges between them. The text message exchange took place between Mr Baynham and Ms Hayek on 14 April 2016, as follows.

[Mr Baynham]: *Are you at work today, if so are you able to look 2/29 St Clair St and tell me if it has been paid*

[Ms Hayek]: *Hey Chanse, yes it has been paid. Would have been in the account on the 7th April*

[Ms Hayek]: *I spoke to Eddie Saab [owner] yesterday and he wasn't sure what to do and said that he wasn't sure if he was paid by housing*

[Ms Hayek]: *Looks like we have paid him*

[Ms Hayek]: *You'll have to get him to check his account and get him to pay you [Sardonyx Project Management]*

[Mr Baynham]: *Thank you for that. Eddie hasn't paid me yet. I will call him today. I have invoiced him*

Mr Baynham gave evidence that, on occasion, he would ask Ms Hayek to make enquiries on his behalf in his capacity as a director of Sardonyx Project Management. On this occasion, he asked Ms Hayek to check whether a payment by FACS had been made to the owner of a property on which Sardonyx Project Management had carried out work. Ms Hayek confirmed that the payment had been made to the owner and suggested that Mr Baynham contact the owner and ask him to check his bank account and pay Sardonyx Project Management.

In her evidence, Ms Hayek explained that Mr Baynham asked her to make an enquiry on his behalf and she advised Mr Baynham that the money had been paid to the owner and suggested he contact the owner in order to ensure that Sardonyx Project Management was paid.

On 9 May 2017, another text message exchange took place between Mr Baynham and Ms Hayek, as follows.

[Mr Baynham]: *There is an email from Andrew Arcuri about a bin payment. Leave it as I will take care of it. Don't let Julie [Hughes] see it as it has my name on it. Just delete the email.*

[Ms Hayek]: *Ok*

Ms Hayek told the Commission she did not remember this text message exchange. She did not remember Mr Arcuri and she did not know what was meant by "bin payment". She did not know why Mr Baynham instructed her to not allow Julie Hughes, another FACS employee, to view the email and to delete the email. She agreed that Mr Baynham was asking her to delete a departmental record. She agreed that the text message exchange suggested that Mr Baynham was attempting to hide his involvement with Sardonyx Project Management from Ms Hughes and agreed that he would do this only in circumstances in which he did not have FACS approval for what he was doing. She said that she could not remember whether she did delete the email but accepted that the SMS message response "OK" suggests that she agreed to delete the email. She could not explain why Mr Baynham asked her to delete an email if he had approval to carry out the work he was doing on headleased properties: "I don't remember and I don't know why". She maintained that she believed Mr Baynham had

approval for the work his company was carrying out on headleased properties.

Mr Baynham told the Commission that the text message represented an instruction to Ms Hayek to delete the Andrew Arcuri “bin payment” email. He said he wanted Ms Hayek to delete the email so that Ms Hughes did not see it as it referred to Sardonyx Project Management. He did not want others in the office to know about Sardonyx Project Management’s involvement with headleased properties.

Ms Hayek submitted that the evidence supported a finding that, while Ms Hayek was aware of Sardonyx Project Management’s work on headleased properties, she believed that Mr Baynham had received approval from senior management. It was submitted that this was because:

- the evidence showed that Mr Baynham had undertaken efforts of his own accord to hide the dealings from other staff members, including Ms Hayek (outlined later in this chapter)
- Ms Hayek’s evidence was that Mr Baynham could not have avoided disclosing Sardonyx Project Management’s work on headleased properties to Ms Hayek because of her administrative functions as a headlease coordinator, approving payments of invoices and rent
- there was evidence from Mr Modder that Mr Baynham did obtain approval for a company to perform decking work with his brother. It was contended that the existence of this disclosure to FACS management leaves open an inference that Ms Hayek knew approval had been given for the company but not the exact terms of the approval and it should not be assumed she should have enquired further
- Mr Baynham concealed his involvement with Sardonyx Project Management from the majority of the headleasing team at FACS and therefore his disclosure to Ms Hayek that his company had approval is consistent with a pattern of conduct that suggests that Ms Hayek was an unwitting participant in Mr Baynham’s scheme.

The only significant issue in dispute is whether Ms Hayek believed that Mr Baynham had authorisation for Sardonyx Project Management to carry out work on headleased properties. Ms Hayek’s evidence should generally be treated with caution in light of her initial denials to Commission investigators of any knowledge of Mr Baynham’s company and its involvement in work on headleased properties. Her evidence in relation to the text message concerning Mr Arcuri was particularly

unconvincing. The contents of the text message cannot be reconciled with an understanding on Ms Hayek’s part that FACS had given approval to Mr Baynham to have Sardonyx Project Management manage repairs to headleased properties. Indeed, as she conceded, the text message exchange suggested Mr Baynham was attempting to hide his involvement with Sardonyx Project Management from Ms Hughes and that he would do this only in circumstances in which he did not have FACS approval.

The Commission is satisfied that Ms Hayek:

- was aware that Mr Baynham’s company, Sardonyx Project Management, was involved in work on headleased properties
- authorised payments to agents/owners on behalf of Sardonyx Project Management, knowing that the real estate agent/owner would then pay Sardonyx Project Management
- did not believe that Mr Baynham had approval from FACS for Sardonyx Project Management to carry out work on headleased properties
- suspected, at the very least, that Mr Baynham was working on headleased properties without FACS approval.

## The “investigation” of the 2016 allegation – 76 Lord Street, Newtown

It should be noted that this is one of the 11 properties referred to in chapter 3 of this report.

On 13 September 2016, Grant McClafferty, senior conduct officer of FACS’s Professional Conduct, Ethics and Performance Unit (“the PCEP unit”), sent an email to Mr Modder with the subject heading “Issues raised by S Duffus”. The email attached a document prepared by Scott Duffus.

The document prepared by Mr Duffus was styled “Possible fraudulent behaviour by FACS staff. Matters involving headlease properties”. Mr Duffus had recently acted in Mr Modder’s position as manager of operational support at the Burwood office for a period of about five weeks. His substantive role was as a team leader in the Tenant Fraud Unit. In the document, Mr Duffus outlined allegations about Mr Baynham:

*I recently spent five weeks acting as the Manager of Operation [sic] Support in the South East District. While there a staff member brought to my attention a couple of anomalies that appeared amongst their payment for headleased properties.*

*Both of these cases involve a staff member from the Sydney District, Chanse Baynham who is the Headlease Coordinator for the Sydney District based in Burwood. As both South East Sydney and Sydney Districts share a geographical border it is not uncommon for staff from either district to obtain suitable headlease properties within the other's boundaries.*

Mr Duffus noted issues in respect of two properties; namely, 76 Lord Street, Newtown, and 53/500 Elizabeth Street, Redfern. For the purpose of examining whether Mr Baynham concealed Sardonyx Project Management's involvement in the repair of headleased properties, it is relevant to consider the property located at 76 Lord Street, Newtown. It is common ground that Sardonyx Project Management carried out rectification works at that address.

Mr Duffus noted that two payments were made for tenant damage in respect of 76 Lord Street, Newtown, on:

- 10 September 2015, with a payment of \$27,000
- 12 November 2015, with a payment of \$15,000.

However, Mr Duffus' review of the property file and the tenant file showed no reference to tenant damage or any other property damage in relation to 76 Lord Street, Newtown. In his view, payments totalling \$42,000 for tenant damage required extensive notes and documentation, of which there were none on the relevant files.

On 7 October 2016, Mr Modder wrote an email to Nancy Carl, PCEP manager, in which he stated that he was in the process of assessing the allegations made in respect of Mr Baynham. He stated he could not find any documentation justifying the payments.

On 20 October 2016, Ms Carl wrote to Mr Modder and recommended that a "complete audit" be carried out. On the same date, Mr Modder sought and received the approval of Gary Groves, SSESNS executive district director, to conduct an investigation directly with Mr Baynham.

On 2 November 2016, Mr Modder wrote an email to Mr Baynham in which he raised general issues about Mr Baynham's poor recordkeeping. He also raised specific issues relating to the lack of documentation for the two properties mentioned in Mr Duffus' complaint, as follows.

*On a more serious note, concerns have been raised about the documentation for the following two items:*

- *Expenses totalling \$47,000 [sic] for restorative work at 76 Lord Street, Newtown*

- *Dual payments for rental at 53/500 Elizabeth Street, Redfern for October, November and December 2015*

*Please advise where records for the above two issues are located to document how these payments were justified.*

On 14 December 2016, Mr Modder again wrote an email to Mr Baynham and requested that Mr Baynham submit documentation relating to the two properties referred to in his email of 2 November 2016, including documentation relating to repair costs of \$47,000 carried out at 76 Lord Street, Newtown (the repair costs were in fact \$42,000). He requested that the documentation be provided to him before the end of the year.

On 23 December 2016, Mr Baynham wrote an email to Mr Modder and told him that the owner at the 76 Lord Street, Newtown, property would send him the documentation relating to works completed at the property within the next week.

On the same day, Mr Modder wrote to Mr Louat, then director of housing services Sydney District at FACS, and forwarded Mr Baynham's email of 23 December 2016 to him. He stated that he believed that Mr Baynham had provided a suitable response but would provide further information if required.

On 2 February 2017, Mr Modder submitted a report to Mr Louat about the issues raised by Mr Duffus.

In his email to Mr Louat, Mr Modder stated that he had interviewed Mr Baynham in December 2016. The report dealt with 76 Lord Street, Newtown, and noted Mr Baynham's failure to accurately document maintenance costs totalling \$42,000. The report also noted Mr Baynham had lodged photos of the damaged properties on the shared drive and that Mr Baynham, when interviewed in December 2016, undertook to request documentation relating to the expenditure but this had not been provided to Mr Modder. He concluded that no deliberate fraudulent activity had occurred and he recommended that no further action be taken in relation to the allegations. The copy of the report in the possession of the Commission is unsigned. However, the evidence establishes that no further enquiries were made in respect of the issue first raised by Mr Duffus.

Invoices obtained by the Commission and tendered in evidence demonstrate that Sardonyx Project Management carried out work in the amount totalling \$42,000 in relation to the property at 76 Lord Street, Newtown.

A Sardonyx Project Management invoice, dated 18 August 2015, in the amount of \$27,000 with a

notation, "Make all checks [sic] payable to Chanse Baynham SPM", was sent to the agent by FACS on 11 September 2015, after Mr Baynham had authorised payment by FACS of the invoice on 10 September 2015. On 17 September 2015, a cheque from the agency for \$27,000 was paid to Sardonyx Project Management.

A Sardonyx Project Management invoice, dated 12 November 2015, in the amount of \$15,000, with a notation that "Make all checks [sic] payable to Chanse Baynham SPM", was sent to the agent by FACS on 13 November 2015, after Mr Baynham had authorised payment of the invoice on 12 November 2015. On 19 November 2015, a cheque from the agency for \$15,000 was deposited into Mr Baynham's bank account.

The Sardonyx Project Management invoices were not retained by FACS.

Mr Modder gave the following evidence to the Commission concerning his "investigation":

*So I interviewed Chanse, and I asked him about documentation for both of those concerns [the two headleased properties mentioned in Mr Duffus' allegation], for both the overpayments and the end of that tenancy ... It was, I had to repeatedly ask Chanse for documentation, and then he finally said, "I couldn't provide documentation for the end of the tenancy and the repair work at Lord Street."*

Mr Modder said he did not conduct a "complete audit", as recommended by Ms Carl in her email of 20 October 2016. Mr Modder accepted that it was irregular not to have any records on file supporting payments totalling \$42,000. He accepted that, in hindsight, his response to the allegations made by Mr Duffus was inadequate.

Mr Modder was shown copies of the two Sardonyx Project Management invoices and acknowledged that, if he had seen the invoices, he would have been able to work out Mr Baynham's company was involved in work on headleased properties and that FACS was paying for it. He also acknowledged that it was a failing on his part to not seek a copy of the invoices from the agent/owner directly. The invoices themselves mentioned Mr Baynham by name but Mr Modder accepted he also knew that Mr Baynham had a company called "Sardonyx".

Mr Baynham was questioned in relation to the 76 Lord Street, Newtown, property on the first occasion that he gave evidence to the Commission on 1 August 2019. On this occasion, he agreed that he had provided the Sardonyx Project Management invoices dated 18 August 2015 and 12 November 2015 to the agent and that they were readily available to him when Mr Modder asked for them in December 2016. He also admitted he chose not to provide the invoices in order to hide his involvement

with Sardonyx Project Management. He agreed he had authorised payments to the agent, who then paid Sardonyx Project Management.

Mr Baynham gave evidence again on 6 September 2019 and, on this occasion, he claimed he believed that he had uploaded the Sardonyx Project Management invoices to the FACS TRIM recordkeeping system. He also claimed he could not recall sitting down with Mr Modder and having a discussion with him about 76 Lord Street, Newtown. A review of FACS TRIM records reveals no Sardonyx Project Management invoices were ever uploaded.

The Commission does not accept the evidence given by Mr Baynham on 6 September 2019. It is satisfied Mr Baynham took steps to hide the involvement of Sardonyx Project Management and his own involvement in the repairs carried out at 76 Lord Street, Newtown, from FACS and subsequently Mr Modder. The Commission is also satisfied that the invoices were not uploaded to the FACS TRIM system by Mr Baynham, as his involvement in repairs to headleased properties and his intention to receive the invoiced amounts would have been exposed.

The Commission is also satisfied that Mr Modder's investigation was utterly deficient. He did no more than rely on Mr Baynham's word that the records would be obtained, ignoring the recommendation of Ms Carl to conduct a full audit. He failed to follow up when no records were produced by Mr Baynham. Had he done so, it is possible that Mr Baynham's corrupt conduct would have been exposed earlier.

## 23 Centennial Street, Marrickville

On 17 February 2017, Peter Kyriacou, a LAHC employee, sent an email to Mr Modder. In the email, he raised concerns in respect of a headleased property at 23 Centennial Street, Marrickville. Mr Kyriacou questioned why the property had not been closed in FACS's HOMES system and the payment of rent had not ceased, in circumstances in which the property had been handed back to the owner and \$14,000 in compensation for repairs to the property had been paid. Mr Baynham was the headlease coordinator responsible for the property.

On 16 March 2017, Mr Baynham sent an email from his FACS email address to the agent responsible for the property, attaching two invoices and requested that the agent pay the invoices. The two invoices were in the name of a contractor, "AJ Frankfort". One invoice was dated 2 February 2017 in the amount of \$14,000.80 and the other was dated 10 March 2017 in the amount of \$2,970. The bank details on both the invoices were those of Sardonyx Project Management. Mr Baynham authorised the payment of \$14,000 (being 80 cents less

than the invoiced amount of \$14,000.80) and \$2,970 by FACS to the agent on 3 February 2017 and 15 March 2017 respectively. On 13 April 2017, \$14,000 and \$2,970 were paid into Sardonyx Project Management's bank account.

A Sardonyx Project Management invoice, dated 2 February 2017 in the amount of \$14,000, was located on Mr Baynham's computer after a search warrant was executed by Commission officers at Mr Baynham's premises.

In his evidence to the Commission, Mr Baynham admitted he prepared the AJ Frankfort invoices dated 2 February and 10 March 2017. He also admitted he prepared the invoices in order to conceal Sardonyx Project Management's involvement with the property. He said that "AJ Frankfort" was Anthony Frankfort, a contractor he used frequently. He acknowledged that Mr Frankfort did not know anything about the two invoices and said he included Sardonyx Project Management's bank account details on the invoices in order to be paid.

While Mr Baynham admitted to preparing and submitting the AJ Frankfort invoices, he claimed he could not explain his conduct, stating:

*I don't know why I did it. I really don't know why I did it. I didn't know the Department [FACS] was asking questions. I had no idea.*

He denied he was aware that Mr Modder had been asked about 23 Centennial Street, Marrickville, by Mr Kyriacou. Nevertheless, Mr Baynham admitted that, on other occasions, he had prepared false invoices in the name of Mr Frankfort and another contractor and he did so without their knowledge. He engaged in this conduct in order to hide the involvement of Sardonyx Project Management from those within FACS. Mr Baynham admitted that he did not submit the Sardonyx Project Management invoice, dated 2 February 2017, in the amount of \$14,000.

Mr Modder could not specifically recall the property or any discussions with Mr Kyriacou about it. He stated that, when he received an enquiry about a headleased property, it was his general practice to discuss it with the headlease coordinator responsible for the property. He believed he would have done so on this occasion.

Mr Frankfort participated in an interview with Commission investigators and was shown copies of both AJ Frankfort invoices issued for work on 23 Centennial Street, Marrickville. He stated that both invoices used his invoice template but were not prepared by him and the account number on the invoice was not his own. He did not believe he carried out work at the property and knew nothing about the two invoices. The Commission accepts his evidence.

The Commission is satisfied that Mr Baynham authorised the payment by FACS of two invoices, dated 2 February 2017 and 10 March 2017, purportedly from contractor AJ Frankfort for work carried out at 23 Centennial Street, Marrickville, which he knew to be false in order to obtain the invoiced amounts totalling \$16,970.80 for the benefit of his company, Sardonyx Project Management.

The Commission is satisfied Mr Baynham took steps to conceal his company's involvement in, and work on, 23 Centennial Street, Marrickville, by falsifying invoices in the name of contractor, AJ Frankfort, in order to conceal Sardonyx Project Management's involvement in the project from his colleagues at FACS, including Mr Modder. It is likely he used the name of Mr Frankfort because he knew questions had been asked by Mr Kyriacou or Mr Modder in respect this property.

## The text messages

A number of text messages were located on Mr Baynham's mobile telephones, which reveal his efforts to hide Sardonyx Project Management's involvement in work on headleased properties from FACS staff.

On 10 August 2016, the following text message exchange took place between a real estate agent and Mr Baynham.

*[Real estate agent]: I love you bro extra for Mr Carpet Cleaning. Nice doing business. Im [sic] goin [sic] to go through all your tenants and find you work. Out of curiosity what does Sardonyx pocket.*

*[Mr Baynham]: My mistake \$6930 is me. I make enough. Thanks for asking.*

*[Real estate agent]: ll [sic] send you invoice tomorrow.*

*[Mr Baynham]: Just me.*

*[Real estate agent]: I was thinking to send to Sandra [Hayek], Sashee, Michelle [Welford]. Of course just you.*

Mr Baynham admitted he was asking the agent to send the invoice to him but not to others in his office, including Ms Hayek and Ms Welford, who were both headlease coordinators. Mr Baynham acknowledged the exchange reflected his desire that he did not want the involvement of Sardonyx Project Management in headleased properties to be exposed to others in the office.

The Commission is satisfied that he engaged in this dishonest conduct because he knew his involvement and that of Sardonyx Project Management in headleased properties would have been unacceptable to FACS.

In a text message exchange between Mr Frankfort and Mr Baynham of 12 August 2017, Mr Baynham again took steps to conceal his involvement and that of Sardonyx Project Management's in work on another headleased property:

*[Mr Frankfort]: I was going to put some photos of Ryde on FB [Facebook] and mention sardonyx property management. Is that all right?*

*[Mr Baynham]: Don't mention address*

*[Mr Baynham]: If you are tagging me that is*

*[Mr Frankfort]: No just going to show job from start to finish and mention sardonyx to give the company a little plug and thanks*

*[Mr Baynham]: That's fine*

*[Mr Baynham]: Thanks for the plug*

Mr Baynham accepted that he was asking Mr Frankfort not to mention the address of the property on Facebook because he had Facebook connections with FACS colleagues and the address of the property could have alerted those colleagues to the fact that Sardonyx Project Management was involved in work on headleased properties.

Mr Frankfort told Commission investigators that he did not really think about why Mr Baynham did not want him to mention the address of the property in his proposed Facebook post.

## The TRIM records

Mr Baynham gave evidence that he uploaded Sardonyx Project Management invoices to the FACS TRIM recordkeeping system. TRIM records were obtained from FACS, which confirmed that, more often than not, Mr Baynham did upload a number of Sardonyx Project Management invoices to TRIM.

It should be noted, however, that Mr Baynham had an incentive to upload the invoices. As was the case in relation to the property located at 76 Lord Street, Newtown, a failure to document repairs could lead to trouble. What was important was that the invoices uploaded to TRIM did not show any connection to Mr Baynham. The invoices in respect of the property at 76 Lord Street, Newtown, would never have been uploaded to TRIM. They contained a written direction to the agent that Mr Baynham – rather than Sardonyx Project Management – should be paid the invoiced amount.

A summary of the percentage of invoices uploaded to TRIM for 10 of the 11 properties analysed in chapter 3 is set out below:

| Property                         | Invoices uploaded versus total invoices | Percentage of invoices uploaded by Mr Baynham to TRIM |
|----------------------------------|---|---|
| 3/39 York St, Belmore            | 0/2                                     | 0%  |
| units 1-8/21 Burdett St, Hornsby | 10/16                                   | 62.5%   |
| 16 Alfred St, Leichhardt         | 2/2                                     | 100%  |
| 21/29 King St, Enfield           | 2/2                                     | 100%  |
| 60 Fawcett St, Ryde              | 5/5                                     | 100%  |
| 3/495 Great North Rd, Abbotsford | 1/1                                     | 100%  |
| 62 Mason St, Maroubra            | 4/4                                     | 100%  |
| 976 Canterbury Rd, Roselands     | 5/5                                     | 100%  |
| 1 First Ave, Maroubra            | 1/1                                     | 100%  |
| 680 Victoria Rd, Ryde            | N/A                                     | N/A   |
| <b>TOTAL</b>                     | <b>30/38</b>                            | <b>79%</b><br>(rounded up to a full number)           |

As previously noted, Mr Modder knew that Mr Baynham had an interest in a company called “Sardonyx”. A search on TRIM would have revealed to Mr Modder a number of Sardonyx Project Management invoices. It would not have revealed anything to anyone who did not know of Mr Baynham’s connection with that company.

## Corrupt conduct

### Chanse Baynham

As has been noted, the Commission is satisfied that Mr Baynham authorised the payment by FACS of two invoices, dated 2 February 2017 and 10 March 2017, purportedly from contractor AJ Frankfort for work carried out at 23 Centennial Street, Marrickville, which he knew to be false in order to obtain the invoiced amounts totalling \$16,970.80 for the benefit of his company, Sardonyx Project Management.

This conduct on the part of Mr Baynham is corrupt conduct for the purposes of s 8(1)(b) of the ICAC Act because it is conduct that constitutes or involves the dishonest and partial exercise of his official functions.

In considering s 9(1)(a) of the ICAC Act, it is relevant to consider s 192E of the *Crimes Act 1900* (“the Crimes Act”):

- (1) *A person who, by any deception, dishonestly:*
- (a) *obtains property belonging to another, or*
  - (b) *obtains any financial advantage or causes any financial disadvantage,*

*is guilty of the offence of fraud.*

*Maximum penalty: Imprisonment for 10 years.*

Mr Baynham’s conduct also comes within s 9(1)(a) of the ICAC Act. The Commission is satisfied that, if the facts it has found were to be proved on admissible

evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Baynham committed a criminal offence of fraud pursuant to s 192E of the Crimes Act.

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

The Commission is also satisfied for the purposes of s 74BA of the ICAC Act that Mr Baynham’s conduct is serious corrupt conduct. The conduct is serious because Mr Baynham held a position of trust within FACS and his conduct involved a significant breach of trust. Further, the conduct could have impaired public confidence in public administration given Mr Baynham was an experienced public official. His conduct was also deliberate and motivated by self-interest. His conduct could involve a criminal offence of fraud pursuant to s 192E of the Crimes Act, which has a maximum penalty of 10 years imprisonment.

## Section 74A(2) statement

### Mr Baynham

The evidence Mr Baynham gave was the subject of a declaration made pursuant to s 38 of the ICAC Act. Accordingly, his evidence cannot be used against him in criminal proceedings, except in respect of offences under the ICAC Act. There is, however, other admissible evidence that would be available, including the evidence of Mr Frankfort, FACS records and financial records.

The Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect of the prosecution of Mr Baynham for an offence of fraud pursuant to s 192E of the Crimes Act in relation to obtaining a financial benefit through the creation of two invoices dated 2 February 2017 and 10 March 2017 purportedly from contractor AJ Frankfort, which he knew to be false.

## Chapter 5: Private work undertaken at Mr Baynham's home

This chapter examines whether Mr Baynham used his position as a headlease coordinator at FACS to authorise the payment of public funds for work undertaken at his private residence.

A number of text messages located on Mr Baynham's telephone, indicated he had asked contractors who had carried out work at his private residence to provide him with invoices for that work but with the addresses of headleased properties rather than that of his residence. The Commission examined Mr Baynham's motivation for providing these instructions and whether FACS had in fact paid for the work undertaken at his private residence.

The addresses of the headleased properties were:

- a) 5A Taylor Street, Five Dock
- b) 10 Hospital Road, Concord West
- c) 3 William Street, Leichhardt
- d) 55 Bridge Road, North Ryde
- e) 4/147 Regent Street, Chippendale
- f) 60 Fawcett Street, Ryde

Records obtained by the Commission showed that Sardonyx Project Management had carried out work at each of these addresses.

### Mr Baynham's evidence

Mr Baynham gave evidence about this allegation on two occasions: 4 September and 12 September 2019. On both occasions, Mr Baynham accepted he had carried out alterations or additions to his private residence and that a number of contractors carried out that work. He agreed that he asked the contractors to submit invoices with the names of headleased properties on which Sardonyx Project Management had carried out work, knowing that the work had been carried out at his private residences and not on the headleased properties. His evidence was,

in these respects, consistent with the text messages in evidence before the Commission.

His evidence in respect of the reasons why he instructed contractors to alter their invoices changed during the course of his evidence. On 4 September 2019, when asked whether FACS had paid for work carried out at his property, he stated:

*I, I really don't know but I'll say yes, because I don't recall if I actually, I know I asked for them to be put against properties for tax purposes but did I – I'm not 100 per cent certain of that ... I'll say yes so I'm not lying. I don't, I honestly don't remember if I did do that but I'll say yes, because I'm not going to be charged with lying.*

On the same occasion, Mr Baynham also admitted that FACS had paid for the work undertaken at his property but attributed to work carried out at properties (a), (b), (c) and (e). He also claimed that he did this for:

*...tax purposes, so I could write it off, so it's an expense against the job. So when tax is done, I can claim it as a deduction but not pay for it.*

It seems what Mr Baynham had in mind was that Sardonyx Project Management would treat the contractors' invoices, raised against the headleased properties in respect of work in fact carried out at his residence, as evidence that Sardonyx Property Management had incurred a liability to pay those contractors, had done so, and was entitled to deduct those amounts from the amount it had received in respect of works it had managed at the properties when calculating its taxable income. If FACS, through the agent/owner, had paid Sardonyx Property Management for its liability to the contractors and Sardonyx Project Management reduced its taxable income to the extent of that liability, the works carried out at his residence were carried out at no cost to him.

On 12 September 2019, when Mr Baynham was further questioned about this allegation, he sought to retract all admissions made on 4 September 2019. His evidence was essentially that the Commission could not demonstrate that FACS had paid the relevant invoices for works carried out at Mr Baynham's residence.

The Commission is satisfied that Mr Baynham instructed each contractor to include the addresses of headleased properties on which Sardonyx Project Management had carried out work on their invoices for work that took place at Mr Baynham's private residence. Whether FACS paid for the work carried out at Mr Baynham's residence is addressed below.

## The properties

### (a) 5A Taylor Street, Five Dock, and (b) 10 Hospital Road, Concord West

On 20 September 2016, the following text message exchange took place between Mr Baynham and Mr Frankfort:

- [Mr Frankfort]: *Do you want to give me a couple of addresses to put these invoices against for your place*
- [Mr Baynham]: *Yes I will send some tonight*
- [Mr Frankfort]: *Addresses please. 1 or 2 to start will be fine. And just let me know how many hours to put against each.*
- [Mr Baynham]: *5a Taylor St, Five Dock – 10 Hospital Rd, Concord West*
- [Mr Frankfort]: *Do you want me to put all all [sic] hours to these 2 jobs or only half.*
- [Mr Baynham]: *Split it between them.*
- [Mr Frankfort]: *Will do.*

In evidence before the Commission was an undated AJ Frankfort invoice addressed to Sardonyx Project Management in the amount of \$570 for work purportedly carried out at 5A Taylor Street, Five Dock, for two days of "yard work". An email from Mr Frankfort to Mr Baynham shows that this invoice was sent to Mr Baynham on 20 September 2016, after the exchange of text messages.

Also in evidence was another undated AJ Frankfort invoice in the amount of \$660 addressed to Sardonyx Project Management for work purportedly carried out at 10 Hospital Road, Concord West, for three days of "yard work" at the property. An email from Mr Frankfort

to Mr Baynham shows that this invoice was sent to Mr Baynham on 20 September 2016, also after the exchange of text messages.

Mr Frankfort participated in an interview with Commission investigators and explained that he did work at Mr Baynham's private residence. Some of the work was done as a "favour" and, on other occasions, the work was invoiced to other properties. Mr Frankfort assumed that Mr Baynham asked him to do this for tax purposes. He said it was Mr Baynham's idea and he was only concerned about receiving payment for the work done.

Mr Frankfort said that he did carry out work at 5A Taylor Street, Five Dock, but some of the amount included on the invoice for \$570 related to work carried out at Mr Baynham's residence; although he was not able to indicate how much related to work at Mr Baynham's residence.

Mr Frankfort said that, in relation to 10 Hospital Road, Concord West, he only carried out one day of "yard work" at the property and the other two days of "yard work" related to work carried out at Mr Baynham's premises.

Mr Baynham accepted that both 5A Taylor Street, Five Dock, and 10 Hospital Road, Concord West, were headleased properties on which Sardonyx Project Management project managed rectification work. On 4 September 2016, Mr Baynham initially stated that he instructed Mr Frankfort to add work done at his premises to the AJ Frankfort invoice for 5A Taylor Street, Five Dock "so I didn't have to pay for it". He also gave the same evidence in respect of the AJ Frankfort invoice for 10 Hospital Road, Concord West.

On 12 September 2019, however, he sought to withdraw his admissions in relation to both properties and said that he believed that FACS had not paid for the AJ Frankfort invoices. He said he formed this belief because the two invoices Sardonyx Project Management rendered for 5A Taylor Street, Five Dock, were paid before 20 September 2016 (the date on which he received the AJ Frankfort invoice for 5A Taylor Street, Five Dock).

The two Sardonyx Project Management invoices in evidence before the Commission for 5A Taylor Street, Five Dock, are dated 18 May 2016 for \$2,500 (yard work and miscellaneous work) and 6 September 2016 for \$1,170 (cleaning and locks). Mr Baynham authorised payment of the Sardonyx Project Management invoices on 19 May 2016 and 7 September 2016 respectively, prior to receiving the AJ Frankfort invoice for \$550 on 20 September 2016. The two Sardonyx Project Management invoices did not identify the contractors who had carried out work, including the yard work, miscellaneous work or the cleaning and locks. However, Mr Frankfort admitted he was paid for the work he carried out at Mr Baynham's residence.

Mr Baynham also sought to withdraw his admission that the AJ Frankfort invoice for 10 Hospital Road, Concord West, was paid by FACS. He believed that the AJ Frankfort invoice was sent on 20 September 2016 and the Sardonyx Project Management invoice in evidence for 10 Hospital Road, Concord West, was paid prior to that date. A Sardonyx Project Management invoice, dated 25 August 2016, in the amount of \$1,840 (locks, cleaning, rubbish) was authorised for payment by Mr Baynham on 26 August 2016. Again, the Sardonyx Project Management invoice did not identify the contractor(s) who had carried out the locks, cleaning and rubbish work.

The Commission accepts that, absent Mr Baynham's admissions, the evidence in relation to 5A Taylor Street, Five Dock, and 10 Hospital Road, Concord West, is insufficient to establish that FACS, through the payment of Sardonyx Project Management invoices, paid for the amounts reflected in the AJ Frankfort invoices received by Mr Baynham on 20 September 2016. All Sardonyx Project Management invoices in evidence were paid before 20 September 2016. As has been noted, Mr Baynham sought to withdraw his admissions.

In the circumstances, the Commission is not comfortably satisfied that Mr Baynham used his position as headlease coordinator to authorise the payment of public funds in respect of 5A Taylor Street, Five Dock, and 10 Hospital Road, Concord West, for private work undertaken at his residence. The Commission is, however, satisfied that, at the time he instructed Mr Frankfort as to identification of the properties on his invoices, Mr Baynham intended that FACS would pay for the work recorded in them being work carried out at his private residence.

### (c) 3 William Street, Leichhardt

On 25 August, 8 September and 9 September 2016, the following text message exchanges took place between Mr Baynham and Omar Darwich of A&A Above the Rest Tree Lopping.

[Mr Baynham]: [Mr Baynham's private address] – Chanse

[Mr Darwich]: Hi chance [sic] tomorrow 9 c [sic] thanks Omar

[Mr Baynham]: Would you be able to cut the dead branch off on the other tree hanging over the play equipment. Is that possible for you

[Mr Darwich]: No problem

[Mr Baynham]: Sorry for not getting back to you. Can you send me an invoice for the work with your bank details.

*I will be able to transfer the money to you then. I will be keeping your details for when I need a tree removal in my business. Send email to chanse@sardonyxpm.com can you put down job address as 3 William St, Leichhardt*

[Mr Darwich]: Hi Chanse

*Hope you and the family are well*

*Just need to confirm that the price that was quoted originally for that tree removal at your house was a cash price. If you need a [sic] invoice I have charge [sic] gst*

*Which will make the total \$2000*

*Could you please get back to me and not sure about address change in the invoice??*

The Commission identified an invoice, dated 22 September 2016, issued by A&A Above the Rest Tree Lopping (Mr Darwich's business) addressed to Sardonyx Project Management in the amount of \$2,000 for "All tree work" and "All rubbish removal", purportedly carried out at 3 William Street, Leichhardt. On 6 October 2016, Mr Baynham transferred \$2,000 from the Sardonyx Project Management bank account to A&A Above the Rest Tree Lopping.

On 25 August 2016, a Sardonyx Project Management invoice in the amount of \$11,200 was issued (waterproofing, skips, rubbish, miscellaneous and kitchen) to the owner/agent of 3 William Street, Leichhardt. On 26 August 2016, Mr Baynham authorised payment of the invoice by FACS. The Sardonyx Project Management invoice did not identify any particular contractors who had performed the work, including A&A Above the Rest Tree Lopping.

On 4 September 2019, Mr Baynham gave evidence to the Commission that Mr Darwich had carried out work at his residential property. He accepted that he asked Mr Darwich to put down 3 William Street, Leichhardt, as the address on the invoice and said he did this because he did not want to pay for the work undertaken at his house.

During his evidence on 12 September 2019, however, Mr Baynham once more sought to retract his admission and claimed that FACS did not pay the invoice dated 22 September 2016. He said he asked Mr Darwich to put the 3 William Street, Leichhardt, address on the invoice for "tax purposes"; namely, to reduce Sardonyx Project Management's taxable income. His evidence was, in

effect, that the Commission could not demonstrate that FACS funds had been paid in relation to the A&A Above the Rest Tree Lopping invoice dated 22 September 2016.

The Commission accepts that, absent Mr Baynham's admissions, the evidence in relation to 3 William Street, Leichhardt, is insufficient to establish that FACS, through the payment of Sardonyx Project Management invoices, paid for the amounts reflected in the invoice of A&A Above the Rest Tree Lopping received by Mr Baynham on 20 September 2016. All Sardonyx Project Management invoices in evidence were paid before 22 September 2016. Mr Baynham sought to withdraw his admissions.

In the circumstances, the Commission is not comfortably satisfied that Mr Baynham used his position as headlease coordinator to authorise the payment of public funds in respect of 3 William Street, Leichhardt, for private work undertaken at his residence. The Commission is, however, satisfied that Mr Baynham intended that FACS would pay for the work recorded in the invoice of A&A Above the Rest Tree Lopping for 3 William Street, Leichhardt, being work in fact carried out at his private residence.

#### (d) 55 Bridge Road, North Ryde

On 7 October 2016, the following text message exchange took place between Mr Baynham and a contractor, Brett Smith.

[Mr Baynham]: *I need you to invoice me for 55 Bridge Rd, North Ryde. That is for half the money you need for my place.*

[Mr Smith]: *OK, write it up as a deck? Or other work. Just tell us what you want on it, I'll get old duck to email it through.*

[Mr Baynham]: *Deck will be fine*

Mr Smith did not produce any relevant invoice to the Commission.

A Sardonyx Project Management invoice, dated 15 October 2016, in the amount of \$15,507 (cleaning, skip bins, paint, locks and miscellaneous) for 55 Bridge Road, North Ryde, was authorised for payment by Mr Baynham on 18 October 2016 in his capacity as a headlease coordinator.

During his evidence to the Commission on 4 September 2019, Mr Baynham accepted that he asked Mr Smith to write 55 Bridge Road, North Ryde, on his invoice so he did not have to pay for the work carried out at his private residence. However, he then asked the Commissioner to give him further time to consider his answer as he was not sure whether the evidence he had given on this issue was accurate.

During his evidence on 12 September 2019, Mr Baynham stated that FACS did not pay for the invoice submitted by Mr Smith. He formed this view because there was no claim for "decking" on the Sardonyx Project Management invoice dated 15 October 2016.

There is a lack of documentary evidence in relation to whether Mr Smith was paid for work carried out at Mr Baynham's private residence by reference to works carried out on behalf of Sardonyx Project Management at 55 Bridge Road, North Ryde. Further, there is no evidence that the amount owing to Mr Smith was included in the Sardonyx Project Management invoice dated 15 October 2016.

In the circumstances, the Commission is not comfortably satisfied that there is sufficient evidence to support a finding that Mr Baynham used his position as headlease coordinator to authorise the payment of public funds in respect of the headleased property located at 55 Bridge Road, North Ryde, for private work undertaken at his residence.

#### (e) 4/147 Regent Street, Chippendale

On 10 December 2016, the following text message exchange took place between Mr Frankfort and Mr Baynham.

[Mr Frankfort]: *Have you got an address to invoice you for work*

[Mr Baynham]: *4/147 Regent Street, Chippendale*

An undated invoice, numbered 10030, was issued to Sardonyx Project Management by AJ Frankfort for rubbish removal in the amount of \$435. A Sardonyx Project Management invoice, dated 9 January 2017, was issued to the real estate agent for work carried out on 4/147 Regent Street, Chippendale, in the amount of \$6,563. The invoice included the amount for rubbish removal for \$435. On 11 January 2017, Mr Baynham authorised payment by FACS of the Sardonyx Project Management invoice for \$6,563.

In his evidence to the Commission on 4 September 2019, Mr Baynham accepted that the AJ Frankfort invoice represented work carried out at his private residence and Mr Frankfort never carried out any work at 4/147 Regent Street, Chippendale. He also accepted that 4/147 Regent Street, Chippendale, was a headleased property. In his evidence on 12 September 2019, Mr Baynham claimed that he did this "inadvertently". He said it was inadvertent because "I didn't mean to put it on there. It wasn't meant to be put there".

Mr Frankfort said that he did not think that he carried out any work at 4/147 Regent Street, Chippendale,

and that he added this address on Mr Baynham's instructions after carrying out work at Mr Baynham's residence. The Commission accepts this evidence. That Mr Frankfort did not carry out work at 4/147 Regent Street, Chippendale, was accepted by Mr Baynham.

The Commission rejects Mr Baynham's claim that the addition of the \$435 to the Sardonyx Project Management invoice, dated 9 January 2017, was "inadvertent". The text message demonstrates it was calculated conduct designed and intended to ensure that FACS paid for work at his private residence.

### **(f) 60 Fawcett Street, Ryde**

It should be noted this is one of the 11 properties examined in chapter 3 of this report.

On 17 August and 30 August 2017, the following text message exchanges took place between a contractor, Craig Carey, and Mr Baynham:

*[Mr Carey]: Hey Brumby [nickname for Mr Baynham]. Im [sic] sorry mate I forgot about your place. I am in Sydney at the moment as my mum isn't well. I will be here for at least tomorrow too. Have to get to you next week if that's ok.*

*[Mr Baynham]: Sardonyx Project Management – chance@sardonyxpm.com – job address is 60 Fawcett St, Ryde*

On 9 September 2017, Mr Carey sent an email to Mr Baynham's Sardonyx Project Management email address, attaching an invoice, dated 9 September 2017, addressed to Sardonyx Project Management in the amount of \$242.96, for the installation of five ceiling fans, replacement of front door sensor light and installation of a smoke detector at 60 Fawcett Street, Ryde. On the same day, an email was sent from Mr Baynham's Sardonyx Project Management email account to Mr Carey dated 9 September 2017 stating "paid today".

There are no FACS records to indicate that Mr Baynham paid this invoice from FACS funds.

More particularly, none of the Sardonyx Project Management invoices issued for this property incorporated charges for the installation of five ceiling fans, replacement of front door sensor light and installation of a smoke detector. All of the Sardonyx Project Management invoices were issued before Mr Baynham received Mr Carey's invoice dated 9 September 2017. The last Sardonyx Project Management invoice issued for this property was dated 6 September 2017.

On 4 September 2019, Mr Baynham told the Commission that Mr Carey was a contractor he used. He confirmed that Mr Carey did not do any work at 60 Fawcett Street, Ryde, but that the work actually took place at his home. Mr Baynham gave no further evidence about Mr Carey's invoice.

In the circumstances, the Commission is not comfortably satisfied that Mr Baynham used his position as headlease coordinator to authorise the payment of public funds in respect of 60 Fawcett Street, Ryde, for private work undertaken at his residence.

## **Corrupt conduct**

### **Chanse Baynham**

Mr Baynham authorised the payment by FACS of a Sardonyx Project Management invoice, dated 9 January 2017, in the amount of \$6,563 for work purportedly carried out at 4/147 Regent Street, Chippendale, when he knew that the work relating to "rubbish removal" for \$435 was work carried out by Mr Frankfort at his private residence.

This conduct on the part of Mr Baynham comes within s 8(1)(b) of the ICAC Act because it is conduct that involves the dishonest exercise of Mr Baynham's official functions.

Mr Baynham's conduct also comes within s 9(1)(a) of the ICAC Act as it could constitute or involve a criminal offence of fraud under s 192E of the Crimes Act.

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

It is the Commission's view, however, that because of the small amount of money involved, being \$435, it is not conduct that is sufficiently serious to warrant a finding of corrupt conduct.

### **Anthony Frankfort**

Mr Frankfort prepared an invoice for 4/147 Regent Street, Chippendale for "rubbish removal" in the amount of \$435 for payment by FACS, knowing that it was false and that he had not carried out work at 4/147 Regent Street, Chippendale, but had in fact carried out the work at Mr Baynham's private residence.

This conduct on the part of Mr Frankfort comes within s 8(1)(a) of the ICAC Act because it is conduct that adversely affected the honest exercise of Mr Baynham's official functions.

Mr Frankfort's conduct also comes within s 9(1)(a) of the ICAC Act as it could constitute or involve a criminal offence of fraud under s 192E of the Crimes Act.

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It is the Commission's view, however, that because of the small amount of money involved, being \$435, it is not conduct that is sufficiently serious to warrant a finding of corrupt conduct.

### **Section 74A(2) statements**

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

#### **Mr Baynham**

The evidence Mr Baynham gave was the subject of a declaration made pursuant to s 38 of the ICAC Act. Accordingly, his evidence cannot be used against him in criminal proceedings, except in respect of offences under the ICAC Act. There is, however, other admissible evidence that would be available, including the evidence of Mr Frankfort, FACS records and financial records.

In the circumstances, the Commission is of the opinion that it is not in the public interest to seek the advice of the DPP in relation to the prosecution of Mr Baynham because of the small amount of money involved.

#### **Mr Frankfort**

The Commission is satisfied Mr Frankfort gave a full and frank account to Commission investigators, even though the AJ Frankfort invoice for 4/147 Regent Street, Chippendale, implicated him in potential criminal conduct. However, in the circumstances, the Commission is of the opinion that it is not in the public interest to seek the advice of the DPP in relation to the prosecution of Mr Frankfort because of the small amount of money involved.

## Chapter 6: Corruption prevention

### Introduction

The Commission's investigation identified numerous control failures across operational, financial and human resource processes and procedures. This chapter deals with these control failures and contains 14 recommendations to reduce further opportunities for corrupt conduct.

### Setting the scene

The nature of the headleasing scheme created significant corruption risks. With owners incentivised to maximise the condition of their properties, and therefore the amount they were paid by FACS for the repairs, there was an inherent risk of over-servicing arising from the "gold plating" of jobs due to the inclusion of unnecessary and costly enhancements. Real estate agents/owners were also not incentivised to minimise costs, given that FACS paid for the repairs.

The headleasing scheme operated in a unique environment subject to public sector processes, private sector practices and residential tenancy obligations. FACS's hybrid public/private sector operational model included the following features:

- under residential tenancy laws, properties were required to be repatriated to a higher private sector standard than would be expected of its public housing stock
- FACS relied on private sector agents/owners to obtain quotations for repair work consistent with practices in the private rental market
- public funds were used to pay for repair work, although it was sometimes possible to recoup costs from tenants.

Mr Baynham's corrupt conduct was facilitated by FACS's failure to recognise its unique operating environment and

to introduce an adequate control framework to deal with its challenges.

While the adoption of a scheme that incorporates both public and private sector elements represents an unusual approach for some public authorities, other aspects of this investigation concern problems that are common across the government sector. Accordingly, this investigation contains relevant lessons for every agency, such as the:

- value of maintaining tight operational and budget controls
- need to proactively manage conflicts of interest
- importance of properly investigating allegations of misconduct.

### The headleasing environment

Headlease coordinators operated with substantial autonomy. They were frequently in the field identifying and inspecting properties, and coordinating the handback of properties. Mr Baynham, in particular, was able to determine his own work patterns. Often working alone, he was not required to account for his whereabouts.

Mr Baynham's ability to assemble for himself the majority of end-of-lease inspections and repair work was due in part to his autonomy, but also to his understanding of building project management and the knowledge he obtained in his previous role at the LAHC. This was experience and confidence that other headlease coordinators lacked.

The handback of properties involved an assessment by headlease coordinators about owners' responsibility for "fair wear and tear" and the tenant damage FACS would recompense. In the Sydney office, headlease officers had unfettered control over all key stages of this handback and compensation process. At the same time, loose policies and procedures failed to address basic aspects of the function.

FACS had in place conflict of interest and private work policies and procedures. FACS officers were required to declare a conflict of interest as soon as it arose and an application was required for any private or secondary work undertaken. Unsurprisingly, Mr Baynham ignored these requirements. When his private work was discovered, Mr Baynham misrepresented the extent and nature of this work to his manager, Mr Modder, and misled him into believing that he had approval.

Beyond this, the effective operation of the headleasing function was compromised by a lack of skill and knowledge amongst staff, poorly defined relationships and accountabilities, and haphazard coordination. Headlease staff lacked the requisite skills and received no training. Neither headlease coordinators nor their managers knew the limit of their financial delegations. There was also limited guidance provided to agents/owners about their roles and responsibilities. Additionally, FACS had inadequate visibility over the repair work, a lack of reasonable cost estimate knowledge, and poor procedures for monitoring and reporting expenditure.

The DCJ has acknowledged the systemic issues that existed and supports the Commission's recommendations, and has considerably progressed improvements in many areas. However, the full implementation of some of the Commission's recommendations is dependent on the implementation of a software system, further policy reviews, or will take time to roll out. Consequently, the Commission still finds it necessary to make recommendations in this report.

The Commission's recommendations are focused on the existing system. An alternative approach would be for the DCJ to undertake a more fundamental redesign of the system to address corruption risks, such as the reliance on agents/owners in coordinating and expending public monies for repair work.

Ultimately, the choice of which system to adopt is a matter for the DCJ. This decision, however, should be based on an assessment of the costs/benefits and corruption risks associated with each option. It is also the case that many of the control weaknesses, knowledge gaps and capability deficiencies identified by the Commission would still need to be addressed, regardless of which system is adopted.

## FACS's limited operational controls

### Mr Baynham's end-to-end authority

Chapter 1 details a headlease officer's functional responsibilities. The only component of those responsibilities requiring secondary approval or review by a team leader or manager was the initial acquisition

of a property for headlease. All other tasks could be completed by a headlease coordinator alone. After a tenant vacated a property, Mr Baynham defined the scope of works for which FACS was responsible, determined the value of FACS's financial liability, accepted quotations to undertake the work, authorised payments to agents/owners for the work, and extended leases and rental payments to cover the repair period without notifying a team leader or manager.

Mr Baynham's extensive control over the repairs process afforded him the opportunity to directly negotiate with agents/owners to undertake extensive repairs, arrange for Sardonyx Project Management to perform the works, then authorise payment to agents/owners so they could then pay his company. Through the process of receiving quotations, he was also able to inform himself of what other providers were charging and ensure Sardonyx Project Management was engaged as the cheapest provider. Mr Baynham could also extend leases, sometimes for months, at FACS's expense, which afforded him greater time to perform repairs. At no point in this process was anyone other than Mr Baynham required to verify that FACS's expenditures were justified or reasonable.

Segregating key tasks within processes is a basic but essential means of reducing corruption risks. By separating responsibility for key tasks, it becomes difficult for one individual to control the process as well as providing a degree of counter-check for important decisions, particularly when discretion is required. In order to avoid one individual being able to control the entire headlease repairs process, responsibilities for scoping repair work, approving quotations for the work, authorising payments, and extending leases should be segregated. Management review of key activities is also an important control mechanism to reduce and detect improper conduct.

## RECOMMENDATION 1

**That the DCJ reviews the design of its headleasing repairs process so that responsibilities for key activities are clarified and sufficiently segregated.**

### Lack of basic policies and procedures

The absence of basic policies and procedures for key operational activities governing headlease repairs meant the process was ad hoc, differed significantly between headlease coordinators, and contained limited checks and balances. This looseness and variability granted Mr Baynham freedom to perform his role as he saw fit and impeded FACS from identifying any possible deviations or red-flag behaviour. The lack of established processes for key activities is outlined below.

## Assessing and negotiating scope of repairs work

Determining the cause of damage (either as a result of “fair wear and tear” or unreasonable tenant behaviour) or whether there has been damage at all (which can be difficult to determine due to poor housekeeping) is a critical determinant of government liability. It can also be a source of contention between owner and tenant.

Headlease coordinators and agents/owners typically negotiated liability by comparing incoming with outgoing property inspection reports. Both included supporting photographs. Headlease coordinators had no guidelines or requirement to consider, for example, the age or condition of fixtures and fittings, the number of allowable occupants, or the length of a tenancy to determine the scope of liability. Further, with no formal guidance for determining repairs liability, Mr Baynham had broad discretion to determine the government’s legal responsibility for repair work and potentially inflate these scopes of works to maximise Sardonyx Project Management’s profits.

## Recordkeeping

FACS had no requirements, or even standard practice, governing recordkeeping during the repair negotiation process. Consequently, it had reduced ability to determine whether negotiations had been conducted appropriately and whether the agreed repair work was reasonable.

## Obtaining quotations

FACS had no written policies or formal guidance in place regarding the role of headlease coordinators in obtaining quotations sourced by agents/owners for repair work. In fact, there was not even a written requirement for headlease coordinators to request quotations from agents/owners. There was also no guidance concerning:

- whether, and under what circumstances, multiple quotations should be obtained
- acceptable labour and project management fees
- the form quotations should take
- the level of detail required
- the timeframe in which quotations were to be received
- whether quotations could be submitted as issues arose or whether a “one-off settlement” was preferred
- whether the dollar threshold of the expected liability required the process to be varied.

As a result of the lack of guidance, the process of obtaining and approving quotations varied significantly between headlease coordinators.

For example, Mr Lavdeos, as team leader, believed that as contractors were sourced by agents/owners, thresholds for obtaining multiple quotations did not apply.

## Assessing quotations

FACS lacked procedures or guidance for assessing quotations submitted by agents/owners. This meant FACS relied on the discretion of headlease coordinators to ensure that the quotations provided by agents/owners were legitimate, reasonable, and represented value for money. This was particularly concerning as headlease coordinators could approve expenditure based on one quotation.

## Extension of rental payments

FACS had no formal guidance for staff on what constituted a reasonable timeframe for headlease properties to be handed back to agents/owners after tenants had vacated. This included any guidance on what was a reasonable period for rental payments to continue while repairs were being undertaken. FACS also had no formal guidance, policy or process for authorising rental payments during the repairs period. Consequently, a decision to extend rental payments during the repair period was entirely at the discretion of headlease coordinators.

## RECOMMENDATION 2

**That the DCJ develops and enforces a clear and comprehensive set of policies and procedures governing the headleasing process. The policies and procedures should include:**

- **assessing and negotiating the scope of repair work**
- **recordkeeping requirements**
- **sourcing and assessing quotations**
- **extending rental payments.**

## Limited line management supervision

Exacerbating the risks associated with a headlease coordinator’s end-to-end authority and FACS’s loose processes was a general lack of line management supervision.

There was a heightened need for active oversight mechanisms to ensure headlease coordinators’ decisions were appropriate given the loose environment in which they operated and that many of their decisions were made out of the office and away from the close scrutiny of managers. Instead, when Mr Baynham should have been working for FACS, he was working for Sardonyx Project Management; for example, by preparing quotations and coordinating repair work on behalf of his company.

The implementation of recommendations 1 and 2 will clarify the level of supervision required from managers.

### Limited guidance provided to agents/owners about headleasing roles and responsibilities

Agents/owners play an important role in the headlease system. Yet, their role in the headlease repair process was based on common practice rather than written instructions. The informal nature of FACS's headlease repairs process meant it was difficult for agents/owners to understand how it was meant to work and to question the circuitous nature of the payments to Sardonyx Project Management.

It was the practice of Sydney District headlease coordinators to require agents/owners to coordinate repair work. Payment for repairs was then made directly to the agents/owners based on quotations they provided to the headlease coordinator. Mr Baynham was able to circumvent this process for his own benefit. For example, Mr Bao, the property manager for 1 First Avenue, Maroubra, told the Commission that Mr Baynham implemented the following process:

*And I asked him [Mr Baynham] "how does it work? So you just invoice FACS, because you're FACS?" He goes, "No, no we [Sardonyx Project Management] give you the quotations. You accept the quotation. And we do the work, invoice you. You invoice back to FACS. And FACS will pay you. You pay us." That's how he explained it. So I said, "OK. That's fine. If, if that's the way to do it then we do it."*

As a headlease coordinator, Mr Baynham was the primary, and often only, FACS contact for agents/owners concerning tenant damage. As such, they were entirely reliant on Mr Baynham for information. This made it easy for Mr Baynham to misinform agents/owners so they simply accepted repair work being undertaken by Sardonyx Project Management.

Despite Mr Baynham's assurances to agents/owners that Sardonyx Project Management was undertaking repair work on behalf of FACS, some witnesses told the Commission that they had suspicions about the integrity of Mr Baynham's conduct. For example, Mr Jin, a senior property manager for the headleased property at 976 Canterbury Road, Roselands, told the Commission:

*I asked Elisa [Wong, another agency staff member] why we had received money from Housing [NSW] to then pay money for work organised by Housing. I thought this was a very unusual arrangement because Housing could directly pay the person or company*

*they hired. I remember Elisa explained this was what we had been told to do.*

Although some agents/owners held concerns about Mr Baynham's conduct, none reported their apprehensions to FACS.

FACS had a Statement of Business Ethics ("the Statement") that provided guidance to its commercial partners on the standards of behaviour expected from both public officials and suppliers. The Statement included requirements for external parties to comply with a set of business principles and values, and contained information on how to report corrupt conduct. Despite the Statement's relevance to the external parties involved in the headleasing process, it was not provided to agents/owners.

### RECOMMENDATION 3

**That the DCJ develops and provides guidelines to real estate agents/owners of headlease properties concerning the headleasing process, including information about each party's responsibilities regarding the repair process.**

### RECOMMENDATION 4

**That the DCJ provides real estate agents/owners with a copy of its statement of business ethics.**

## FACS's weak financial controls and loose budgetary management practices

### No benchmarks and lack of cost knowledge

The Commission was unable to determine whether the services provided by Sardonyx Project Management achieved value for money for FACS. While market competition is a typical way for agencies to "discover" reasonable prices, it would be administratively burdensome to require multiple quotations for small expenditure amounts. Even when multiple quotations are obtained, agencies should still have their own realistic estimate of how much a good or service ought to cost.

Headlease coordinators found estimating reasonable costs for repair work difficult due to their lack of experience in this area, which is discussed in more detail below. Headlease coordinators also did not receive guidance on what constituted reasonable costs or instructions on how to incorporate depreciation in cost estimates.

The LAHC was a potential source of expertise concerning reasonable prices for repair work because of its responsibility for the maintenance of the NSW

Government's public housing stock. The LAHC's involvement in the headlease process may have provided a measure of control over the scope of repair work and costs.

The DCJ advised the Commission that, in general practice, if repair quotations were over \$30,000, headlease coordinators would refer to the LAHC for a second opinion. However, the only formal guidance FACS provided to headlease coordinators about utilising the expertise that existed within the LAHC was to suggest that a property inspection was "best done with a LAHC officer as they can ascertain costs if there is any disagreement about repairs, otherwise a headleasing officer is appropriate". While this guidance lacked precision, it did afford headlease coordinators discretion over whether to involve the LAHC in property inspections and repair negotiations.

At no time, to the Commission's knowledge, did Mr Baynham involve the LAHC officers in his property inspections or the approval of quotations, even for high-cost repair work. Similarly, as far as the Commission is aware, staff from the Sydney District/SSESNS did not refer repair quotations over \$30,000 to the LAHC. The Commission was also advised by the LAHC that it was seldom referred to in respect of advising on cost-estimate information.

The absence of any formal requirement to refer headlease matters to the LAHC also created confusion about when and whether the LAHC should become involved. The evidence provided by staff to the Commission, listed below, highlights this confusion:

- Mr Modder advised the Commission that, if repair expenses exceeded \$50,000, they would have been approved by the LAHC. Mr Modder also advised the Commission that the LAHC had to be involved in property inspections and approving quotations to "provide a reality check [on] what works are required and the expenses of those works".
- Mr Lavdeos believed that referrals could be made to the LAHC to review quotations or to provide comparison quotations from its contractors, but this was not mandatory. Mr Lavedos held the position of team leader and supervised Mr Baynham or a period of time.
- Lafo Titmuss advised she was unaware of any policy or procedure for referring quotations to the LAHC. Nor was she aware of any policy or procedure that required the LAHC to assist in assessing liability for damage or counter-approve quotations. Ms Titmuss held the position of acting manager of operational services, a position just above that of Mr Lavdeos.

- Ms Hayek could not recall any instance during her time as a headlease coordinator where the LAHC attended an inspection or was referred a matter to resolve.
- In his compulsory examination, Mr Baynham informed the Commission that he would involve the LAHC when there was a dispute between him and the agent/owner over which repairs were FACS's responsibility as opposed to those of the owner. It was his belief that he was not required to obtain any approval from the LAHC for the works to be carried out or that the LAHC had any role in approving payments made by him in relation to the repairs process.

Recommendation 7 addresses the issue of reasonable cost-estimate knowledge. In addition, the DCJ has advised the Commission that it has clarified the roles of the entities involved in the headleasing process, which will help ensure the LAHC is involved in providing cost-estimate information.

### Limited knowledge about performance of works and actual costs

To control and analyse headlease repair expenditure, it is necessary to understand who is undertaking the works, at what cost, for which property and whether the work was performed.

Headlease officers authorised and processed all headlease scheduled and ad hoc payments through FACS's HOMES system. These payments included rent, water, repairs and other miscellaneous charges. The HOMES system recorded vendor details, namely those of agents/owners, who were registered on FACS's Vendor Master File (VMF). The VMF was managed by FACS Finance. FACS's financial accounting system, SAP, interfaced with the HOMES systems so that payments could be made to registered vendors.

Since FACS paid agents/owners directly for repairs, contractors, such as Sardonyx Project Management, were not recorded in HOMES or the VMF. FACS did, however, require headlease coordinators to retain the quotations supplied by agents/owners in TRIM. There was, however, confusion about whether headlease coordinators were required to retain invoices for repair work and, if so, where they should be captured.

The lack of key information retained by FACS, due to the design of its system and a failure to clarify requirements, reduced transparency over headlease repairs expenditure. For example, Ms Walsh advised the Commission:

*We [FACS] would not be aware whether the repairs had occurred or who had been engaged unless we made*

*those inquiries with the person who was responsible for providing those repairs or with one of the parties to those agreements. Any contractors who have been engaged to rectify a property for tenant damage would never be paid directly from our HOMES system.*

The lack of transparency over headlease repair expenditure enabled Sardonyx Project Management's involvement in the supply of services to go undetected.

## RECOMMENDATION 5

**That the DCJ changes its system for repair work to provide visibility over who is undertaking repair work, at what cost, for what property, and whether the work was performed.**

### Financial reporting

The LAHC controlled the headlease budget and provided FACS with some broad categories of financial information, such as expenditure on rents, bonds, utility charges and repairs. FACS head office then provided its districts with broad lump sum data on expenditure, budget and forecast payments. Expenditure on headlease repairs was not specifically isolated within this data. As the districts did not receive indepth financial reports or data they could interrogate, they were unaware of spending trends and possible red flags that required further examination. Red flags could have included suspiciously high amounts of expenditure on repairs authorised by a particular headlease coordinator to a contractor or excessive rental payments related to expired leases. The limited data on headlease expenditure also made it difficult to develop cost and time benchmarks for repairs.

The DCJ advised the Commission that it has improved its financial and business reports to provide better insights into headlease expenditure and help ensure the effective delivery of its headlease program. The DCJ also advised that it has developed business requirements for an improved IT system to support headleasing and is awaiting budgetary approval for its implementation. The Commission supports these initiatives but notes that they have not yet been fully implemented.

In response to the Commission's submissions, the DCJ raised concerns about implementing cost benchmarks for repair items as cost variations exist across different regions of NSW. Instead, the DCJ has adopted an approach that utilises the LAHC technical staff to review and provide feedback on quotations over a set value. The Commission acknowledges the DCJ's concerns but believes benchmarks should still be developed as a valuable tool to assist in the evaluation of costs and timeframes. The Commission also supports the approach of using LAHC staff to review quotations over a set amount.

## RECOMMENDATION 6

**That the DCJ develops systems to record, monitor and analyse expenditure patterns on its headleased properties.**

## RECOMMENDATION 7

**That the DCJ develops a set of benchmarks, taking into account regional variations, related to the time and cost of different categories of repair work.**

### No controls over lease extensions for repair work

The HOMES system did not require lease expiry dates to be recorded for headleased properties. This meant FACS could, and often did, continue to pay rent with no defined end period after a lease had expired. The failure to define lease expiry dates made it easier for Mr Baynham to continue rental payments on vacated properties, which afforded Sardonyx Project Management more time to undertake repairs.

Ms Walsh advised the Commission that, as a general rule, when a property is vacated, rent payments should automatically cease. The Commission agrees that, as a minimum, end-lease dates should be recorded and rental payments should cease on this date unless senior authorisation is provided. There should also be periodic reviews of decisions to extend rental payments. The implementation of these measures will provide the DCJ with greater control over its expenditure on headleased properties.

## RECOMMENDATION 8

**That the DCJ develops a system to ensure that rental payments cannot continue without senior authorisation after a headleased property is vacated. Any decision to extend rental payments should be subject to ongoing management review at set intervals.**

### Financial delegations were too high and generally unenforced

Financial delegations constrain individual discretion and help ensure scrutiny over high levels of expenditure, acting as a safeguard against inappropriate expenditure.

FACS did not take steps to inform staff of their delegations limits. Although Mr Baynham held a financial delegation of \$50,000 (inclusive of GST) as a headlease coordinator, neither he nor his managers were aware of this limit. As managers were unaware of their subordinates' financial delegation limits, they were unable to enforce them. There was also confusion over whether

the delegation pertained to a property, contractor or each transaction.

Moreover, systems such as HOMES and SAP did not embed controls to prevent expenditure beyond threshold amounts or to detect the splitting of large expenditure amounts to avoid delegation limits.

In relation to three of the 11 properties examined by the Commission, Mr Baynham authorised cumulative payments to Sardonyx Project Management exceeding \$50,000, as indicated in the table.

| Property                         | Cumulative expenditure authorised by Mr Baynham |
|----------------------------------|---|
| units 1-8/21 Burdett St, Hornsby | \$174,320                                       |
| 60 Fawcett St, Ryde              | \$74,720.50                                     |
| 976 Canterbury Rd, Roselands     | \$51,820  |

The Commission did not receive information from FACS about how it determined headlease coordinators' financial delegation limits. However, given FACS was obligated to undertake repairs, as opposed to significant renovation work, the \$50,000 delegation appeared excessively high. The fact that repairs totalled less than \$50,000 in seven of the 11 properties examined by the Commission also suggests that a lower delegation limit would be more appropriate.

The DCJ advised the Commission that it has implemented a system of escalating approvals for expenditure over \$1,000, with compliance to be monitored by its Customer Service Business Improvement (CSBI) division. The revised financial delegations and procedures have been communicated to all headlease staff. Additionally, pending funding, the DCJ is seeking a technological solution to embed financial delegation controls through automation. It is also noted that the implementation of recommendations 5 and 6 will help highlight when cumulative payments are made to a single contractor in respect of a property. As a result, the Commission does not propose to make any recommendation to the DCJ in relation to its financial delegations.

### Budget responsibility removed from program expenditure

In well-controlled financial systems, responsibility for budget and expenditure decisions are aligned such that a budget holder is accountable for the financial implications of their actions. While a financial system should also provide for independent scrutiny, the alignment of

responsibility with control ensures there is a motivation to review decisions and constrain spending.

During the time of Mr Baynham's conduct, the LAHC was responsible for the headlease program budget but had almost no control or visibility over expenditure at a transactional level. Conversely, headlease coordinators had an extraordinary level of control over expenditure but no accountability for the headlease budget. This separation of accountability and control diffused responsibility for expenditure, consequently diminishing scrutiny or checks on spending decisions.

Exacerbating this loose environment was the absence of any overarching agreement or protocol between the FACS business areas that impacted on their understanding of roles, responsibilities, information-sharing and communication. This meant that there was no feedback or evaluation processes between head office, the districts and the LAHC to ensure that control and operational gaps were identified and corrected.

The DCJ has since advised the Commission that it has documented the roles and responsibilities of the CSBI, the district housing director, team leaders, headlease coordinators and the LAHC. The Commission understands that the CSBI is now responsible for all aspects of the headleasing program and budget management, operational and financial reporting and relationships with FACS's internal stakeholders. Consequently, the Commission makes no recommendation in relation to this aspect of the investigation.

### Inadequate accounting practices and monitoring of expenditure

In 2018, FACS engaged PricewaterhouseCoopers to undertake a review of its headleasing functions in response to discovering Mr Baynham's conduct. Numerous issues affecting FACS's ability to manage its headlease budget were identified including:

- monthly reconciliations over rental payments, repairs and maintenance were not performed
- the data in the HOMES system was not reconciled with what had been paid out of SAP
- the districts and head office did not monitor repairs incurred due to tenant damage and payments that were yet to be recouped from tenants
- the status of leases and expenditure was only tracked through manual spreadsheets, mostly maintained by headlease coordinators
- overpayments of rent were manually identified and time was spent attempting to recoup the money from real estate agents/owners.

The review resulted in a number of recommendations to FACS about the improvement of its operational and financial monitoring practices. FACS has accepted the recommendations and implementation of these recommendations is in progress. The Commission therefore makes no recommendations in relation to the review.

## FACS's poor human resource controls

### Staff lacked requisite skills and received no training

Headlease coordinators are, in effect, property managers. The role requires not only strong soft skills, such as negotiation, organisation and customer service abilities, but also requires an understanding of:

- the *Residential Tenancies Act 2010*, the Residential Tenancies Regulation 2010 and the Residential Tenancies Agreement to ensure both FACS and agents/owners comply with their legal obligations
- common building and property problems to accurately and comprehensively complete condition reports at the commencement of the lease of a headleased property
- the difference between “fair wear and tear” and tenant damage to accurately assess liability for repairs at the end of a lease for a headleased property
- depreciation and market costs of building works to accurately evaluate quotations for repair work on headleased properties.

FACS's 2011 summary of the headlease coordinator role identified “sound knowledge of the private rental market” and “capacity to work with teams, property owners, solicitors and real estate agents” as the only property management attributes required. These attributes do not sufficiently cover the skills needed to perform the headlease coordinator role competently.

Headlease coordinators were not required to have any relevant property management or building works experience before commencing the role, despite the skills and knowledge headlease coordinators needed to fulfil their roles, and the attributes specified in the position description. In particular, although it was a core responsibility, FACS did not require headlease coordinators to have any experience relevant to understanding and scrutinising repair costs.

Between April 2014 and July 2017, Mr Baynham was the only staff member involved in headleasing in the

Sydney District with property management or building works experience. Ms Hayek, the other Sydney District headlease coordinator, having come from a background in social work, had no experience in either property management or building works.

Ms Hayek and Mr Baynham agreed to divide their duties due to Ms Hayek's lack of experience. Mr Baynham became responsible for all of Ms Hayek's end-of-lease inspections while Ms Hayek was responsible for office-based work. This arrangement was approved by their manager, Mr Modder. In effect, Ms Hayek's lack of skills and knowledge led to a division of roles in the Sydney District, whereby Mr Baynham became responsible for the handback of all headleased properties.

This division of roles continued when Ms Welford replaced Ms Hayek as a headlease coordinator in July 2017. For example, Ms Welford gave responsibility to Mr Baynham for the handback of a severely damaged headleased property at 1 First Avenue, Maroubra. Ms Welford explained that she was not confident assessing such extensive damage on a large property while Mr Baynham appeared knowledgeable and prepared to take responsibility. As a result of assuming Ms Welford's responsibilities, Mr Baynham was able to secure the repair work for this property for Sardonyx Project Management.

FACS provided almost no formal training to headlease coordinators to improve their skills or educate them about the role requirements and processes. For example:

- Mr Baynham advised the Commission that he did not receive any training in his role as a headlease coordinator when he commenced in April 2014 or thereafter
- Ms Hayek advised the Commission that, when she commenced in 2014, she had “four hours of training that was it, on a Friday afternoon”.

The provision of training (in addition to clear policies and guidance) could have equipped headlease coordinators with the skills needed to perform the role. This would have prevented the ad hoc arrangement that gave Mr Baynham responsibility for headlease repairs. Better trained staff are also more likely to identify questionable or inappropriate conduct.

On 13 and 14 February 2019, FACS provided face-to-face training for all headlease staff, line managers and other staff involved in the headlease program on its new policies and procedures. Although this is a positive development, it appears to have been a one-off event. The lack of training and skills shortages amongst headlease staff and their managers should be addressed at a more comprehensive level.

## RECOMMENDATION 9

**That the DCJ develops a comprehensive position description for headlease coordinators that reflects the key skills and capabilities required for the role.**

## RECOMMENDATION 10

**That the DCJ develops and periodically delivers training for all staff (including managers) involved in the headleasing process to equip them with the skills and knowledge required for the role.**

### Over reliance on employee-initiated conflict of interest declarations

FACS's Code of Ethical Conduct required all staff to seek approval to undertake secondary employment or private work, and for approvals to be documented and retained on an employee's personnel file. As discussed in chapter 2, Mr Baynham was aware when he commenced his role as a headlease coordinator in April 2014 that he was required to seek approval to engage in private work.

As outlined in chapter 1, in October 2015, FACS adopted a new Secondary Employment and Private Work Policy. Under the policy, employees could not commence private work until written approval was given. Approvals were only to be granted where the private work did not interfere with an employee's primary role with FACS and where the work was not conducted in FACS's normal working hours. Approvals, including existing approvals, were only valid for 12 months. After this time, employees were required to reapply for approval. The policy also stated that, if an employee changed their primary role in FACS, any existing private work approvals would be terminated. Mr Baynham did not apply for, or receive, any approval to engage in private work under the policy.

In March 2016, FACS introduced its Guidelines for Managing Conflicts of Interest, which required employees to disclose any actual or perceived conflicts of interest to their manager. Mr Baynham knew his work with Sardonyx Project Management constituted a conflict of interest because his application to undertake similar work had been refused on precisely that basis in March 2013. Despite this, at no time did Mr Baynham declare a conflict of interest in relation to his private employment with Sardonyx Project Management.

FACS's Code of Ethical Conduct, Secondary Employment and Private Work Policy, and Guidelines for Managing Conflicts of Interest all required Mr Baynham to declare his private employment. However, despite being aware of the requirement to declare his private work, he never did. Mr Baynham simply ignored the policies and continued performing his secondary work on headleased properties without FACS's awareness.

The above documents relied on an employee's understanding of their declaration obligations and inherent willingness to comply as the main mechanism to detect conflicts of interest. FACS managers were not required to undertake proactive measures to ensure that staff were complying with their requirements.

Although Mr Baynham was ultimately responsible for his actions, it is beneficial for an agency to take steps to positively enforce obligations and influence behaviour. The Commission is aware of a number of agencies that approach private work and conflicts of interest proactively. These agencies require staff, especially those in high-risk positions, to regularly make declarations that they are/are not engaging in secondary employment or do/don't have any conflicts of interest. While this approach still allows staff determined to conceal private interests to do so, it makes this more difficult by requiring active and repeated deception.

Moreover, such declarations signal to all staff and managers that the organisation takes private interests seriously, making it more likely that suspicions will be reported and acted upon. Other proactive measures for identifying conflicts of interest include running data analytics to detect suspicious transactions or relationships that may be related to conflicts of interest.

As headleasing coordinators occupy a high-risk position, the Commission believes FACS should adopt a more proactive approach to conflict of interest declaration requirements for this role.

## RECOMMENDATION 11

**That the DCJ considers proactive measures to help identify conflicts of interest and influence staff behaviour, such as requiring all headleasing staff to regularly complete declarations related to private work and conflicts of interest.**

### Failure to enforce secondary employment and private work requirements

FACS's secondary employment and private work requirements were undermined by poor management practices and a weak supporting framework. As explained in chapter 4, Mr Modder, Mr Baynham's manager, was made aware that Mr Baynham was engaging in private work in early 2016 by a staff member who showed him a Sardonyx business card.

Mr Modder advised the Commission that he spoke with Mr Louat, the delegate responsible for secondary employment approvals, who confirmed he had approved Mr Baynham's private work for "decking services" in February 2013. At no time after the granting of this

approval did Mr Louat or any of Mr Baynham's managers ever check the status of this authorisation and the conditions attached to it:

- Mr Louat did not check because he believed his original February 2013 approval did not require renewal
- Mr Modder relied on Mr Louat's advice that the approval was current
- Mr Lavdeos was not advised that Mr Baynham had been granted any private employment approvals.

FACS's Secondary Employment and Private Work Policy did not require Mr Modder or Mr Louat to verify that Mr Baynham's secondary employment was current. This was in part because the policy placed the onus of reapplying for approval, when an existing approval expired, entirely on the employee.

Nor were there any systems or requirements in place to prompt line managers or delegates to terminate a staff member's secondary employment approval and seek a new approval in accordance with the policy when they changed roles. Moreover, there were no systems in place to alert a new line manager or delegate about existing or previously refused staff approvals. The policy recommended managers "discuss and attempt to resolve any concerns that arise in relation to secondary employment and private work with the employee" including when "changes to arrangements occur with the employees ... [or] any new conflict of interest arises". This fell well short of a clear requirement for managers to ensure their subordinates' secondary employment and private work existing approvals were current, accurate and did not give rise to conflicts of interest.

While policies are a critical foundation for preventing corruption, they are effective only to the extent that they are thorough and managers take proactive steps to ensure compliance with their provisions.

## RECOMMENDATION 12

**That the DCJ reviews its policies and procedures relating to secondary employment and private work to ensure they require managers to actively monitor compliance with requirements.**

## RECOMMENDATION 13

**That the DCJ informs managers of existing employee secondary employment and private work approvals, including when reporting lines change.**

## Investigative failures

As referred to in chapter 4, in September 2016, the PCEP unit received allegations concerning Mr Baynham and payment anomalies. The allegations included a claim that Mr Baynham made authorised payments totalling \$42,000 for 76 Lord St, Newtown, without supporting documents. The payments related to work undertaken by Sardonyx Project Management.

In conducting his investigation into the allegations, Mr Modder appeared not to fully heed a number of warning signs. This was surprising, given the allegations were reported by a team leader with experience in investigating fraud. Mr Modder's suspicions were also not raised when Mr Baynham ignored his requests to provide supporting documentation for the payments. Mr Modder was also aware that Mr Baynham was engaged in private work, potentially providing an opportunity to abuse his position for private gain. Finally, there were obvious control and other serious weaknesses in the operations of the headlease function.

Mr Modder did not advise any senior staff, nor the PCEP unit, that he had been unable to obtain the supporting records for the payments. Instead, Mr Modder informed Mr Louat on 23 December 2016 that Mr Baynham had "suitably responded" to a request for supporting information. Mr Modder also did not ensure an audit was conducted of Mr Baynham's work as recommended by the PCEP unit.

As noted in chapter 4, Mr Modder acknowledged to the Commission that his response to the allegations was inadequate and that Mr Baynham did not provide the documents to support the payments. Mr Modder advised that he failed to properly investigate Mr Baynham's conduct because he:

- had placed excessive trust in Mr Baynham who "seemed like a very honest person" and "a very experienced headlease coordinator". He also "didn't think Chanse was capable of [the conduct]"
- did not regard the payments of \$42,000 as unusually high, particularly given his understanding of the extent of the damage
- did not consider the matter serious, despite the payments being unsupported
- lacked the knowledge and skills to investigate; in particular, he was unfamiliar with how to access payments information in the HOMES system, had no investigative experience or training, and had no experience in construction so could not determine whether the payments were fully supported or reasonable

- lacked the capacity to investigate thoroughly as he had direct and indirect responsibility for overseeing 220 staff members.

FACS's failure to properly investigate the allegation against Mr Baynham also suggests shortcomings in the PCEP unit and the SSESNS's senior management.

The PCEP unit did not undertake an investigation, instead referring the matter to Mr Modder despite considering the allegations "serious". In referring the matter to Mr Modder, the PCEP unit did not consider his ability to remain objective, nor did it consider his capability or capacity to investigate the matter.

The PCEP unit responded to Mr Modder's review by closing the matter and recommending to him that the district carry out a complete audit. The PCEP unit did not subsequently follow up with Mr Modder, or any other staff member or manager, about whether the audit was conducted or whether other issues had been identified.

Mr Modder forwarded the PCEP unit's recommendation to both Mr Groves, SSESNS executive district director, and Margaret MacRae, acting director of Housing Services, however, neither of them took the matter further. Consequently, there was no direction from Mr Groves or Ms MacRae to undertake an audit.

## RECOMMENDATION 14

**That the DCJ reviews its internal investigations processes to ensure:**

- **allegations are investigated by officers with sufficient skills and capabilities**
- **matters are not closed inappropriately and are followed up when referred to other areas**
- **investigation recommendations are implemented.**

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

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

In the event a plan of action is prepared, the DCJ is required to provide a written report to the Commission of its progress in implementing the plan 12 months after

informing the Commission of the plan. If the plan has not been fully implemented by then, a further written report must be provided 12 months after the first report.

The Commission will publish the response to its recommendations, any plan of action and progress reports on its implementation on the Commission's website at [www.icac.nsw.gov.au](http://www.icac.nsw.gov.au).

## Appendix 1: The role of the Commission

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

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

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

The Commission may also investigate conduct that may possibly involve certain criminal offences under the *Electoral Act 2017*, the *Electoral Funding Act 2018* or the *Lobbying of Government Officials Act 2011*, where such conduct has been referred by the NSW Electoral Commission to the Commission for investigation.

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

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

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

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

## Appendix 2: Making corrupt conduct findings

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

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

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

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

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

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

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

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

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

Subsection 9(4) of the ICAC Act provides that, subject to subsection 9(5), the conduct of a Minister of the Crown or a member of a House of Parliament which falls within

the description of corrupt conduct in s 8 is not excluded by s 9 from being corrupt if it is conduct that would cause a reasonable person to believe that it would bring the integrity of the office concerned or of Parliament into serious disrepute.

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

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

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

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

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

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

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

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

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

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

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

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

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

## Appendix 3: Summary of response to proposed findings

Section 79(A)(1) of the ICAC Act provides that the Commission is not authorised to include an adverse finding against a person in a report under s 74 of the ICAC Act unless the Commission:

- has first given the person a reasonable opportunity to respond to the proposed adverse finding
- includes in the report a summary of the substance of the person's response that disputes the adverse finding, if the person requests the Commission to do so within the time specified by the Commission.

Counsel Assisting the Commission made written submissions setting out, inter alia, what adverse findings it was contended were open to the Commission to make against various parties. These were provided to the relevant legal representatives on 20 December 2019 and submissions in reply were received from the representatives of Mr Baynham, Ms Hayek, the LAHC and the DCJ.

Mr Baynham requested that a summary of his responses be included in the Commission's report.

### The accounting document

Mr Baynham submitted that "the accounting document" prepared by the Commission's senior forensic accountant was problematic and should not be accepted. The accounting document is a summary of all payments received by Sardonyx Project Management, including payments made by FACS to Sardonyx Project Management. The findings set out in the summary indicate that Sardonyx Project Management received \$1,673,330 from FACS. It is one of several accounting summaries prepared by the Commission's senior forensic accountant.

Mr Baynham submitted the accounting document was problematic because:

- the identity, qualifications and expertise of the author had not been identified
- the accounting document did not satisfy the rules of evidence
- the primary materials were not identified
- Mr Baynham had no reasonable opportunity to assess the accuracy of the accounting document nor did he have the financial resources to retain an accounting expert to assist
- there were other properties included in the calculations, other than the 11 headleased properties considered in relation to chapter 3
- the figure of \$1,673,330 put forward in the accounting document as the amount received by Sardonyx Project Management for work on headleased properties should not be accepted by the Commission.

The Commission does not accept Mr Baynham's submissions in relation to the accounting document. They ignore a number of matters.

First, the Commission is not bound by the rules of evidence. The document tendered in evidence does not purport to be an expert statement containing expressions of opinion. Rather, it is a summary of the payments made by FACS to Sardonyx Project Management, as identified from available FACS and Sardonyx Project Management records.

Secondly, the primary records and summaries were available in the brief of evidence provided to Mr Baynham and his representative.

Thirdly, the Commission is satisfied Mr Baynham had a reasonable opportunity to assess the accuracy of the accounting document. The submissions and exhibits were made available to Mr Baynham on 20 December 2019. Mr Baynham's representative had access to them

from 9 January 2020. Mr Baynham’s representative provided Mr Baynham’s submissions in reply on 9 March 2020. In the Commission’s view, Mr Baynham and his representative were given a reasonable opportunity to assess the accuracy of the accounting document and raise any particular matters of concern.

Fourthly, as noted elsewhere in this report, the 11 properties addressed in chapter 3 were provided as examples only. They were not advanced as representing an exhaustive analysis of all headleased properties at which Sardonyx Project Management carried out work and received payment. Mr Baynham’s company carried out work on numerous headleased properties. That is common ground.

The Commission is satisfied that the accounting document provides an accurate analysis of the money received by Sardonyx Project Management for work on headleased properties over the period examined in the Commission’s investigation. The Commission is satisfied that Sardonyx Project Management received \$1,673,330 from FACS as a consequence of its involvement in repairs to headleased properties.

### **Did Mr Baynham know that Sardonyx Project Management would be paid by the agents/owners?**

Mr Baynham submitted that there is insufficient evidence that Mr Baynham had “knowledge” the real estate agents/owners would pay Sardonyx Project Management. It was submitted on Mr Baynham’s behalf that Mr Baynham’s knowledge of what the agents/owners would do with the Sardonyx Project Management invoices is a matter of conjecture and there are many factors that could prevent the payment of a rendered Sardonyx Project Management invoice.

The Commission accepts that there may have been factors beyond Mr Baynham’s control that might have resulted in non-payment of the Sardonyx Project Management invoices. A particular agent or owner may have refused to make payment because of dissatisfaction with the standard of the works carried out. A dishonest agent or owner may have refused to make payment for no other reason than they preferred to keep the money in his or her pocket. The list of possibilities is endless. However, Mr Baynham’s submission is beside the point.

The real issue is whether Mr Baynham *intended* that the agent/owner would make payment. Of that there can be no doubt. The Commission is satisfied that Mr Baynham intended that each of the Sardonyx Project Management invoices were paid. He believed they would be paid and, without exception, they were paid. This is unsurprising. Mr Baynham retained control over the entire process. He authorised payment by FACS of moneys reflecting the value of the Sardonyx Project Management invoices to the agent/owner. It is inconceivable that he had any doubts in his mind that the agent/owner would then refuse to pay Sardonyx Project Management.

### **The “lowest quotation” submission**

Mr Baynham submitted that the “lowest quote” finding should not be adopted (chapter 3 in relation to properties 7 and 9).

In substance, the submission was that Mr Baynham could not have known the real estate agents for 62 Mason Street, Maroubra, and 1 First Avenue, Maroubra, would accept the Sardonyx Project Management quotations. It was submitted that it was a matter for the agent/owner to accept or reject the Sardonyx Project Management quotations. It was further submitted that there was no evidence demonstrating that Mr Baynham knew Ms D’Alessandro (property 7) or Mr Bao (property 9)

would accept the Sardonyx Project Management quotations provided to them.

Mr Baynham admitted he had access to the agents' quotations and used them in the preparation of the Sardonyx Project Management quotation, so that the Sardonyx Project Management quotation was lower than those submitted by the other contractors. This was not in issue.

There are a number of reasons why the Commission does not accept Mr Baynham's "lowest quote" submission.

The submission ignores the role of the headlease coordinator in controlling the carrying out of work on headleased properties, including the acceptance or rejection of quotations for repairs submitted by agents/owners. As outlined in chapter 6, although the FACS headleasing policies and procedures failed to address the quotation process, there was a well-established practice whereby headlease coordinators would seek and approve quotations sent to them from agents/owners, and ultimately approved these quotations for payment. Unsurprisingly, the lowest priced quotation would usually be approved. This practice was addressed by Mr Baynham in his evidence:

*[Counsel Assisting]: So the real estate agents would provide the quotes to you and would you decide whether or not the work should be undertaken?*

*[Mr Baynham]: Yes.*

*[Q]: And would you usually go with the lowest quote or what sort of decision-making process was involved in how to decide on which contractor you chose?*

*[A]: Go with the lower ones, yes.*

*[Q]: Is that what you would do. Okay. And then how would approval be made for payment?*

*[A]: I'd send through just an email, approve the quote, quote such and such, approved.*

The evidence of other FACS employees was consistent with Mr Baynham's evidence. Ms Welford said she would approve quotations in her role as a headlease coordinator. Ms Walsh, FACS manager of operations support (previously a team leader) stated:

*If it is tenant damage it is my understanding that the headleasing coordinator is required to get two quotes. The headlease coordinator would choose the lowest*

*quote and pay that amount to the real estate agency or the private landlord/lessor to pay the repairs*

Mr Baynham suggested the agent/owner had a role in approving quotations. In relation to Sardonyx Project Management's engagement at property 7, 62 Mason Street, Maroubra, he gave the following evidence:

*[Counsel Assisting]: How did Sardonyx Project Management come to be engaged to carry out works in relation to this property?*

*[Mr Baynham]: Provided a quote to the real estate, the quote was cheaper than what they had so they engaged me.*

In relation to property 9, 1 First Avenue, Maroubra, Mr Baynham said, "I provided a quote to Jack [Bao]. Jack knew what work I did. Jack engaged me, yes".

In the Commission's view, Mr Baynham's evidence that he was "engaged" by agents/owners is not an accurate reflection of the process.

Although the agent/owner had a role in obtaining quotations, they had no role in the approval process. The only "approval" given by the agent/owner was an instruction to the contractors to commence work, once they had received confirmation from the headlease coordinator that the works had been approved by FACS and that FACS would meet the cost.

The Commission is satisfied that it was part of Mr Baynham's role as a headlease coordinator to approve the works, including the cost of carrying them out. By simply creating Sardonyx Project Management quotations, which were for a lesser amount than other quotations provided to him by the agent/owner, Mr Baynham could ensure Sardonyx Project Management's quotations were approved. In practice, the agent/owner played no role in accepting or rejecting quotations.

## Submissions in respect of corrupt conduct and s 74A(2) statements

### Chapter 3 corrupt conduct findings and s 74A(2) statements

Mr Baynham submitted that the offence of misconduct in public office could not be relied on for the purposes of s 9(1)(a) of the ICAC Act because it had not been analysed sufficiently in Counsel Assisting's submissions. The Commission does not accept this submission. There was a sufficient analysis of the elements of the offence

and its possible application to the conduct of Mr Baynham in Counsel Assisting's submissions.

Mr Baynham also submitted that the DPP's advice should not be sought in respect of the offence of misconduct in public office. He again contended that there were a number of issues with the "accounting document". The Commission has already addressed these matters. It does not accept Mr Baynham's submissions in respect of the accounting document. It is satisfied that Sardonyx Project Management received \$1,673,330 from FACS in respect of its involvement with works carried out at headleased properties.

Mr Baynham submitted that the DPP's advice be sought in respect of the common law offence of misconduct in public office in relation to his misuse of information or material he acquired in the course of his official functions for properties 7 (62 Mason Street, Maroubra) and 9 (1 First Avenue, Maroubra) should not be accepted because the offence of misconduct in public office had not been sufficiently analysed in Counsel Assisting's submissions. This submission is rejected. As already noted, the Commission is satisfied there was sufficient analysis of the elements of the offence and its possible application to the conduct of Mr Baynham in Counsel Assisting's submissions.

#### **Chapter 4 corrupt conduct findings and s 74A(2) statement**

Mr Baynham also submitted that s 192E of the Crimes Act could not be relied on for the purposes of s 9(1)(a) of the ICAC Act because the offence of s 192E of the Crimes Act had not been analysed sufficiently in Counsel Assisting's submissions. The Commission does not accept this submission. The Commission is satisfied that there was sufficient analysis of s 192E of the Crimes Act and its possible application to Mr Baynham's conduct in Counsel Assisting's submissions.

It was also submitted by Mr Baynham that it was difficult to assess whether Mr Baynham's conduct in rendering the AJ Frankfort invoices supported a serious corrupt conduct finding. In the Commission's view, there is no such difficulty. Mr Baynham admitted to using Mr Frankfort's invoice templates without his knowledge and with the purpose of hiding Sardonyx Project Management's involvement in the work carried out at the Marrickville property from those at FACS. The Commission is satisfied that such conduct is serious corrupt conduct.

Mr Baynham submitted that the DPP's advice should not be sought with respect of the prosecution of Mr Baynham for an offence of fraud contrary to s 192E of the Crimes Act in relation Mr Baynham's creation of the two AJ Frankfort invoices. It was submitted that

the offence of s 192E of the Crimes Act had not been sufficiently analysed in Counsel Assisting's submissions. This submission is rejected. The Commission is satisfied there was a sufficient analysis of the elements of the offence and its possible application to the conduct of Mr Baynham in Counsel Assisting's submissions.

## Appendix 4: Submissions that the matter should be dealt with by an s 14(2) report

Mr Baynham submitted that the Commission should furnish a report pursuant to s 14(2) of the ICAC Act for the following reasons:

- there was no public inquiry, therefore the likely public interest would be minimal at best
- the conduct was limited to Mr Baynham, who has no public profile and the matters identified would factually not capture public attention
- the principal functions of the Commission, as identified in s 13(1) of the ICAC Act, are discharged by furnishing a report pursuant to s 14(2) of the ICAC Act
- the likely harm to members of Mr Baynham's family if they were exposed to publicity as a result of the publication.

Submissions by Ms Hayek were also in favour of furnishing a report pursuant to s 14(2) of the ICAC Act for the following reasons:

- the integrity of any criminal prosecution flowing from the investigation would be preserved by not disclosing the findings
- the systemic failures, which may have led to Mr Baynham's conduct going undetected for a period of time, would be better dealt with by furnishing a report pursuant to s 14(2) of the ICAC Act because the public interest would best be served by the appropriate ministers directing the DCJ to conduct internal investigations on potential weaknesses in their processes.

Section 14(2) of the ICAC Act provides as follows:

*If the Commission obtains any information in the course of its investigations relating to the exercise of functions of a public authority, the Commission may, if it considers it desirable to do so:*

- furnish the information or a report on the information to the authority or to the Minister for the authority, and*
- make to the authority or the Minister for the authority such recommendations (if any) relating to the exercise of the functions of the authority as the Commission considers appropriate.*

The Commission is satisfied the matters raised in this investigation are such that it should report its outcome by way of a public report pursuant to s 74(1) of the ICAC Act. The matters taken into account by the Commission included:

- Mr Baynham's conduct, as outlined in this report, revealed serious corrupt conduct, involving the expenditure of a significant amount of public funds for private advantage. A report furnished pursuant to s 14(2) of the ICAC Act cannot make findings of corrupt conduct, but provides information and makes recommendations to the authority or the minister for the authority
- a report pursuant to s 14(2) of the ICAC Act is subject to the secrecy provisions of s 111 of the ICAC Act. The principal functions of the Commission include educating and informing the public about the detrimental effects of corrupt conduct, the promotion of the integrity and good repute of public administration, and the fostering of public support in combatting corrupt conduct. These functions, which are set out from s 13(1)(h) to s 13(1)(j) of the ICAC Act, would not be achieved if the Commission reported pursuant to s 14(2) of the ICAC Act.





INDEPENDENT COMMISSION  
AGAINST CORRUPTION

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9 am – 5 pm Monday to Friday

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