

AN INVESTIGATION OF  
MATTERS RELATING TO  
THE CONDUCT OF THE  
HON. KEN HAYWARD MP

NOVEMBER 2003



**CMC Vision:**

To be a powerful agent for protecting Queenslanders from major crime and promoting a trustworthy public sector.

**CMC Mission:**

To combat crime and improve public sector integrity.

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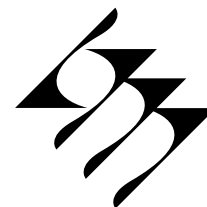
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Dear Sirs

In accordance with section 69 of the *Crime and Misconduct Act 2001*, the Crime and Misconduct Commission hereby furnishes to each of you its report *An investigation of matters relating to the conduct of the Hon. Ken Hayward MP*. The Commission has adopted the report.

Yours faithfully

**BRENDAN BUTLER SC**  
Chairperson



# CONTENTS

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<b>Glossary</b>	<b>ix</b>
Abbreviations	ix
Terms	ix
<b>Key figures</b>	<b>xi</b>
Named	xi
Unnamed	xii
<b>Summary</b>	<b>xiii</b>
Background	xiii
The role of the CMC	xiv
The investigation	xiv
Key conclusions	xv
Recommendations	xvii
A further observation	xviii
<b>Chapter 1: The background to the CMC’s investigation</b>	<b>1</b>
Reports in the <i>Courier-Mail</i>	1
Correspondence from the Premier	1
The CMC’s assessment process	2
Four areas of concern	2
Legislative issues	2
The decision to investigate	5
The Parliamentary Estimates Committee hearings	5
Other correspondence and the widening of the investigation	5
Investigative methodology	6
Consultation	7
<b>Chapter 2: Mr Hayward’s interests and associations</b>	<b>9</b>
Parliamentary service	9
Relevant corporate relationships	9
Hayward Trust	9
Hamcor	10
Macadamia nut farms	11
Crestnut Products	11
Binary Chemicals	11
Hardway	12
Electoral donations	13
Other interests	13

<b>Chapter 3: Issues concerning the parliament</b>	<b>15</b>
Jurisdictional issues	15
The parliamentary Code of Ethical Standards	16
Transacting business with the state	17
Recommendation 1	23
Standing orders	23
The parliamentary Register of Members' Interests	24
<b>Chapter 4: The land transactions</b>	<b>27</b>
The allegations	27
The Industry Location Scheme and the Property Services Group	27
The <i>Industrial Development Act 1963</i>	29
The Narangba Industrial Estate	29
General investigative methodology	29
Lot 69: the first land purchase	31
Crown Law advice	32
The witnesses	33
Conclusions re Lot 69	35
Lot 101: the second land purchase	36
The valuation	37
Conclusions re Lot 101	39
Lot 68: the third (proposed) purchase	39
The valuation	40
Conclusions re Lot 68	41
Other land transactions	41
Crestnut Products	41
Purchase in the estate by a third party	41
Recommendations 2 and 3	41
<b>Chapter 5: Parliamentary travel</b>	<b>43</b>
Possible misuse of entitlements	43
Investigations conducted	43
Members' travel entitlements	44
The evidence	47
The claim documents	47
The Avon Community Development Foundation and the Avon Industrial Park	48
The draft itinerary	48
The evidence of the primary witnesses	48
Further testing the evidence	52
Conclusions	53
Recommendation 4	55

<b>Chapter 6: Grants</b>	<b>57</b>
The grant allegation	57
The Queensland Industry Development Scheme	57
Investigations conducted	58
The QIDS grant approval process	58
Mr Hayward’s role	59
Conclusions	60
Other grants	61
Crestnut Products	61
Suncoast	61
<b>Chapter 7: Mining matters</b>	<b>63</b>
The allegations	63
Bunya Resources	64
Hardway	64
Department of Natural Resources and Mines	64
Travel to Bottle Tree Creek	65
Conclusions	65
<b>Chapter 8: The disclosure of interests</b>	<b>67</b>





# GLOSSARY

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## ABBREVIATIONS

ALP	Australian Labor Party
ACDF	Avon Community Development Foundation
ASIC	Australian Securities and Investments Commission
CEO	Chief Executive Officer
CJC	Criminal Justice Commission
CMC	Crime and Misconduct Commission
DBIRD	Department of Business, Industry and Regional Development
DEDT	Department of Economic Development and Trade
DMR	Department of Main Roads
DNRM	Department of Natural Resources and Mines
DSD	Department of State Development
DTA	Daily Travel Allowance (for Parliamentary Members)
EPM	Exploration Permit — Minerals
FMIS	Financial Management Information System
GST	Goods and Services Tax
ILS	Industry Location Scheme
MDL	Mineral Development Licence
MEPPC	Members' Ethics and Parliamentary Privileges Committee
NIES	National Industry Extension Service scheme
NSTC	North–South Transport Corridor
PAC	Public Accounts Committee
POQA	<i>Parliament of Queensland Act 2001</i>
PSG	Property Services Group, Department of State Development
QAO	Queensland Audit Office
QEDS	Queensland Export Development Scheme
QIDS	Queensland Industry Development Scheme
QTAS	Queensland Trade Assistance Scheme
SO	Standing Order (of the Legislative Assembly)

## TERMS

the Act	<i>Crime and Misconduct Act 2001</i>
Binary Chemicals	Binary Chemicals Pty Ltd
Bottle Tree Creek	site of the primary mining venture of Bunya Resources Pty Ltd
The Clerk	The Clerk of the Queensland Parliament. The Registrar for the Register of Members' Interests
the Code	Code of Ethical Standards of the Queensland Parliament
Commission	Crime and Misconduct Commission
Crestnut Products	Crestnut Products Pty Ltd, trading as 'Nutworks'

the estate	Narangba Industrial Estate
Hamcor	Hamcor Pty Ltd
Handbook	Members' Entitlements Handbook of the Queensland Parliamentary Service
Hardway	Hardway Pty Ltd
LANDMASS	Land valuation database of the Department of State Development
the Minister	Minister for Industrial Development
the MR Act	<i>Mineral Resources Act 1989</i>
the Register	Register of Parliamentary Members' Interests
Steritech	Steritech Pty Ltd
Suncoast	Suncoast Gold Macadamias (Aust) Ltd

## KEY FIGURES

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Many of the key figures involved in this investigation hold significant public positions. Other key figures were named publicly in the media articles that directly led to the investigation, or are listed in publicly accessible records as holding positions as officers of relevant companies. Accordingly, these people are generally referred to by name in this report. Others who were not publicly named, and who had only minor roles in the matters investigated, are referred to by other means.

### NAMED

Mr Terrence Armstrong	Director of Binary Chemicals Pty Ltd and co-owner of the Binary Chemicals business
The Hon. Tom Barton MP	Current Minister for State Development; vendor of Lot 68 in the Narangba Industrial Estate, as Minister for Industrial Development
The Hon. Peter Beattie MP	Premier and Minister for Trade, who referred these matters to the CMC
The Hon. Anna Bligh MP	Acting Minister for State Development during Mr Barton's absence in July/August 2003
Ms Julie Boyd	Mayor of the Mackay City Council
Mr Ron Boyle	Former Director-General of the Department of Business, Industry and Regional Development
Mr Rory Callinan	Journalist with the <i>Courier-Mail's</i> investigative unit, 'Insight'
Mr Bruce William Davidson	Minister for Tourism, Small Business and Industry from 26 February 1996 to 26 June 1998
Mr Maurice Harvey	Director of the Property Services Group in the Department of State Development
Mr Don Hayward	Brother of Ken Hayward; Director of various companies including Hamcor Pty Ltd, Binary Chemicals Pty Ltd and Hardway Pty Ltd
The Hon. Ken Hayward MP	Member for Kallangur; subject of the concerns investigated by the CMC; director of Crestnut Products Pty Ltd, trading as 'Nutworks'
Mr William Hayward	Father of Ken and Don Hayward; Director of Hamcor Pty Ltd and Hardway Pty Ltd
The Hon. Tony McGrady MP	Minister for Police and Corrective Services; former Minister for Mines
Mr John McLoughlin	Former Mayor of the Caboolture Shire Council
Mr Tim Mulherin MP	State ALP Member for Mackay
The Hon. Bob Quinn MP	Leader of the State Parliamentary Liberal Party and Deputy Leader of the Coalition
Mr Keith Ryan	Chairman and Director of Crestnut Products Pty Ltd
Mr Len Scanlan	Auditor-General of Queensland
Mr Paul Tomlinson	Chief Executive Officer of the Avon Community Development Foundation, Western Australia
The Hon. Max Trenorden MP	Western Australia Parliamentarian; leader of the WA State National Party and Member for Avon

Mr Liam Walsh  
Mr Rob Whiddon

Journalist with the *Courier-Mail's* investigative unit, 'Insight'  
Chief of Staff, Office of the Premier and Minister for Trade

## UNNAMED

### The land transactions

- L1 a former DBIRD officer (the Departmental Freedom of Information Coordinator)
- L2 a former senior DBIRD officer; acted as Director-General from 18 September to 11 October 1995
- L3 the former DBIRD Regional Director of the Southern Area
- L4 a current DSD officer
- L5 a landowner and business proprietor in the Narangba Industrial Estate
- L6 a current DSD officer with the Property Services Group
- L7 a current DSD officer who holds a managerial position in the Property Services Group

### The grants

- G1 a former officer (Small Business Development Officer) of the DSD's Sunshine Coast State Development Centre
- G2 a Senior State Development Officer of the DSD's Sunshine Coast State Development Centre
- G3 the Director of the DSD's Sunshine Coast State Development Centre

### The mining matters

- M1 former director of Bunya Resources Pty Ltd
- M2 a Senior Policy Officer with the Department of Natural Resources and Mines
- M3 the Acting Regional Manager of the Department of Natural Resources and Mines Rockhampton office

## SUMMARY

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**The CMC has investigated concerns that a member of the Queensland Parliament, the Hon. Ken Hayward MP, may have acted improperly in relation to various transactions between government agencies and business entities with which he may have been directly or indirectly linked. We also investigated the circumstances of Mr Hayward's claim for parliamentary travel expenses in relation to a particular interstate trip in 2000, because concerns were raised that this trip may have been related to private rather than parliamentary business.**

## BACKGROUND

In July 2003 the *Courier-Mail* published a number of articles about Mr Hayward's alleged business interests and links between those interests and transactions involving government agencies, in particular the Department of State Development and its predecessor departments. During that month information was also given to the CMC by the Hon. the Premier, other ministers and the Department of State Development, in relation to the matters raised in those articles.

In summary, concerns were raised publicly about the following issues:

1. There were two completed sales and one proposed sale of land in the Narangba Industrial Estate from the Department of State Development and its predecessors to private business entities apparently connected to Mr Hayward. The contract for the first land sale was executed by Mr Hayward, as the vendor, at a time in 1995 when he was the Minister for Industry. The land in question was used (or, in the case of the proposed sale, is intended to be used) for the operations of a chemical manufacturing business known as Binary Chemicals Pty Ltd.
2. Mr Hayward claimed travel expenses, in the form of parliamentary travel allowance for attending to parliamentary business, for a journey he undertook to Western Australia in March 2000. During this journey, among other things, he visited a location where Binary Chemicals subsequently set up a business. Mr Hayward was accompanied for part of this trip by the managing director of that company.
3. A company of which Mr Hayward was a director, called Crestnut Products Pty Ltd, received a government grant in 2001 through the Queensland Industry Development Scheme, which is administered by the Department of State Development.
4. Mr Hayward made speeches in the Queensland Parliament, on issues said to be of relevance to the interests of businesses and companies with which he was connected, without declaring those interests to the parliament. These matters included issues said to be relevant to the operations of Binary Chemicals and references to mining matters, at a time when Mr Hayward had an involvement in a private mining venture and when he had lent monies to some family companies, which in turn held shares in companies involved in mining activities. Reference was also made to whether Mr Hayward had declared all of his interests, as required in the Register of Parliamentary Members' Interests.

## THE ROLE OF THE CMC

Under the *Crime and Misconduct Act 2001*, the CMC has primary responsibility for continuously improving the integrity of and reducing the incidence of misconduct in the public sector. If a complaint raises a suspicion of serious official misconduct, the CMC may itself undertake the investigation, where it is in the public interest to do so.

After considering the available information, officers of the CMC formed the view that some of it related to conduct that, if proven, could amount to official misconduct. However, this did not apply to all the issues raised. It was considered that some concerns about Mr Hayward's alleged conduct in relation to the parliament, such as alleged failures to declare relevant interests in the Register of Members' Interests or when making speeches to the parliament, did not involve matters that could amount to official misconduct; the conduct in question could not, even if proved, amount to a criminal offence (which is necessary before the conduct of an elected official, such as a member of parliament, can amount to official misconduct). The information about the matters that could involve official misconduct was considered to be of a sufficiently serious and sensitive nature to make it in the public interest for the CMC to conduct the investigation itself.

## THE INVESTIGATION

The investigation examined the three land transactions, the grant and the Western Australia trip, as mentioned above. In view of the concerns that had arisen in relation to that trip, the CMC made inquiries into all parliamentary travel claims submitted by Mr Hayward from 1995 until the present time, including some detailed inquiries in relation to a number of those claims. Documentation was sought in relation to these claims and CMC officers liaised with The Clerk of the Parliament. They conducted interviews with relevant witnesses in Western Australia and at several locations throughout Queensland.

The CMC made comprehensive inquiries to identify all of Mr Hayward's business interests and those of relevant associates or other entities, and to identify any other relevant grant or land transactions between these interests and associates and Queensland Government instrumentalities. CMC investigators obtained all relevant files and policies and procedures from the Department of State Development, and interviewed current and former departmental officers involved with processing and approving the land transactions and the QIDS grant. They undertook comparative inquiries in relation to other land transactions involving the Narangba Industrial Estate and communicated with the office of the Crown Solicitor.

Inquiries were also made in relation to the processing of certain mining tenement applications linked to Mr Hayward.

A number of people who were or are involved in Mr Hayward's past and current relevant business interests were interviewed. Mr Hayward voluntarily participated in two lengthy interviews during the investigation and his legal representative made a written submission about one aspect of these matters.

To the extent that the relevant legislation permitted, the CMC also liaised extensively and exchanged information with the Auditor-General of Queensland and his staff, because the Queensland Audit Office (QAO) was conducting audit inquiries in relation to the majority of the matters the CMC investigated.

The CMC acknowledges the cooperation and assistance of The Clerk, the QAO and the relevant government departments and agencies and their officers.

## KEY CONCLUSIONS

As a result of the evidence obtained during the investigation, the following key conclusions were reached:

**The investigation of the circumstances surrounding the three land sales found no evidence of any improper relationship between Mr Hayward and any departmental officer, and no evidence of official misconduct by any person. However, the evidence in relation to the contract for the proposed sale, if accepted, arguably could support a view that a provision of the *Parliament of Queensland Act 2001*, which prohibits members of parliament from transacting business with state entities, may have been breached.**

The evidence supports a view that the same terms and conditions applied to these land sales as would have usually applied to other purchasers, and that they were (or will be) undertaken at market value. There was no evidence that Mr Hayward or any associate of Mr Hayward was improperly favoured in any of these transactions, or that Mr Hayward or anyone else sought to influence anyone to achieve such an outcome.

However, the Commission considers that the investigation has identified evidence which, if accepted, could support a view that Mr Hayward's interest in the proposed land transaction may breach the prohibition contained in section 71(1) of the *Parliament of Queensland Act 2001* (POQA), which prevents members of parliament from transacting certain types of business with state entities. Under the POQA a member transacts business with an entity of the state if the member has a direct or indirect interest in a contract with that entity. Here, the contract of sale is between an entity of the state and two purchasers, one of which is a company acting as trustee for the Hayward family trust. These two purchasers are also the owners of the shareholding in Binary Chemicals. Mr Hayward, in addition to being a named beneficiary of the trust, has a loan account with it, arising from past distributions, monies gifted by him and other monies he has lent to the trust. The loan balance in his favour is a very considerable amount. In those circumstances, it is considered that he has an indirect interest in this contract.

In the view of the Commission, a breach of that section of the POQA by itself could not amount to official misconduct, because such a breach would not involve a criminal offence. The POQA provides that, if section 71(1) is breached by a member of parliament having a prohibited interest in a contract, that contract is invalidated (to the extent of the contravention) and, if the Legislative Assembly so resolves, the member's seat in parliament may be vacated.

This aspect of the investigation has also given rise to three procedural recommendations (see 'Recommendations' below).

**The Commission considers that, having regard to the weight of the evidence, the concerns that Mr Hayward may have misused his parliamentary travel entitlements in relation to the trip to Western Australia have not been substantiated.**

Mr Hayward asserted that the purpose of his travel was to attend to parliamentary business pertaining to the work of a party committee of which he was a member; this was the Ministerial Legislative Committee for Mines and Energy and Regional Development. He explained that the focus of his trip was on issues relating to regional development and that the trip involved no component of personal business. The procedures governing the payment of travel allowance entitlements to members provide that expenses can be claimed only if the travel was for the **primary** purpose of conducting parliamentary business outside the member's electorate.

For a case of fraud (under the Criminal Code, s. 408C) or official misconduct to be made out in respect of this matter, the evidence would need to be sufficient to support a finding by a tribunal of fact, in terms of the standard of proof required to support a possible prosecution, that the primary purpose of Mr Hayward's trip was personal rather than parliamentary business. For the reasons set out in the report, the Commission considers that the weight of the evidence of the relevant witnesses favours Mr Hayward on this point. That being the case, the Commission, after careful consideration of the available evidence, has determined that the evidence is insufficient to support a referral of a brief of evidence to the Director of Public Prosecutions, for the consideration of any prosecution proceedings considered warranted under section 49(2)(a) of the *Crime and Misconduct Act 2001*.

This aspect also gave rise to a procedural recommendation (see 'Recommendations' below).

**The investigation did not establish any evidence of official misconduct on the part of any person in providing the QIDS grant to the company of which Mr Hayward is a director.**

The evidence established that the application process leading to the awarding of this grant to Crestnut Products was commenced before Mr Hayward became a director and before the Hayward family had any interest in the company's operations. There was no evidence of any pressure or influence being exerted by Mr Hayward and no evidence that he had any role in making the grant application. There were no procedural deficiencies or other evidence to indicate that the usual criteria and processes for the grant scheme had not been followed.

The Commission identified some other government grants made to entities connected to Mr Hayward. However, the files for those matters indicated that these grants predated the times when Mr Hayward acquired interests in those entities; and again there was no evidence to indicate either that Mr Hayward had any involvement in these grant applications or that the usual processes were not followed.

**The investigation did not find any evidence of official misconduct in relation to the processing of any mining applications in which Mr Hayward had an interest. Nor did it obtain any evidence to suggest that Mr Hayward had ever claimed parliamentary travel allowance in respect of his journeys to the site of a private mining venture.**

There is no evidence to indicate that Mr Hayward ever sought to improperly influence the administration of certain mining tenements granted to a company with which he was connected. The processing of the relevant applications was conducted in accordance with normal procedures.

While Mr Hayward made a number of journeys to the site of one particular mining interest, near Wowan, a careful analysis of his claims for parliamentary travel allowance produced no evidence to indicate that he had ever improperly claimed expenses for this travel.



## RECOMMENDATIONS

Four procedural recommendations are made:

- 1. That the section of the Code of Ethical Standards of the Legislative Assembly of Queensland that deals with the rules relating to members dealing with executive government be updated; and that detailed reference be made to the relevant provisions of the POQA and the way in which these have changed the types of transactions that are prohibited.**

In their present form, the POQA provisions appear to have a wide-ranging impact on members' ability to enter into contracts relating to interests in land where an entity of the state is the other contracting party. Pastoral and mining leases may be such examples. As a result, there may be serious consequences for members who may breach the POQA in respect of business transactions which would have been exempted under the *Constitution Act 1867*.

To the Commission's knowledge, no issues have previously arisen as to the scope or application of sections 70 and 71 of the POQA, given the recent introduction of those provisions. The Commission noted that the Queensland Parliament's Code of Ethical Standards, which contains some information and provisions about members transacting business with executive government, did not make detailed reference to the relevant provisions. The relevant parliamentary committee is at present updating that code. The provisions represent, in some respects, a significant change to the position that previously existed under other legislation which has now been repealed. In view of this, and given the wide interpretation that now appears to be open in respect of the POQA provisions, we recommend that in the updating process consideration be given to including detailed information about the relevant POQA provisions and the changes they effect, to assist members of parliament and the public service. It may be that at some future time consideration could be given to reviewing the scope of the present provisions.

- 2. That the Department of State Development implement measures to ensure that land sale files contain material setting out the complete basis upon which the sale price of that land is calculated.**

The CMC's investigations regarding the three land transactions identified that the relevant departmental files did not contain any one document that clearly showed the calculations leading to, or the basis for the determination of, the ultimate sale price of the land. While in each case the inquiries established that the relevant land was to be sold at market value, the Commission thought that it would be advantageous for the files to contain some contemporaneous material setting out the basis of the calculation of the sale price. This might readily be achieved by ensuring that a copy of the relevant record from the Department of State Development's land valuation database was placed on file and acknowledged by the officer approving the sale.

- 3. That the Department of State Development implement measures to obtain information, from any entity seeking to purchase land in the capacity of trustee, about the trust in question (such as a copy of the trust deed), in order to ensure that commercial assessments of prospective purchasers are as fully informed as possible.**

The Commission noted that the Department of State Development undertakes a detailed assessment of potential purchasers of state industrial land. Here, one of the purchasers was the company that acts as the trustee for Hayward Trust. The department's inquiries undertaken before the first sale did not extend to requiring production of the trust deed for Hayward Trust. Access to the deed at the relevant time (or access to some further detail about the trust) would have brought to the department's attention the link between Mr Hayward and the co-purchaser company.

The Commission considers that it may be reasonable for the department to seek further information from potential purchasers where a trustee situation arises, in order to afford the best opportunity for reliably evaluating a new client.

4. **That consideration be given to amending the administrative arrangements for the submission by members of Daily Travelling Allowance claims and associated travel expenses, where interstate travel is involved and the 'parliamentary business' nominated by the member pertains to parliamentary committee or parliamentary party committee business. The amended arrangements should include a requirement that within a specified time after the completion of the travel a concise report be furnished by the member to the relevant committee, with a copy to The Clerk, containing information similar to that currently required in respect of Overseas Daily Travel Allowance. The reporting requirement should specifically incorporate obligations on the member to state that the primary purpose of the travel was for parliamentary business, and to disclose the names of any person or people travelling with the member.**

The Commission noted that, in respect of the trip to Western Australia, Mr Hayward did not prepare any formal report for the committee in respect of which he said his travel had been undertaken. The Commission considered that a reporting requirement would be of assistance to and would inform such committees, and would assist with satisfying any inquiries that might arise as to the purpose of the trip and the validity of any consequent travel expense claim.

## A FURTHER OBSERVATION

Finally, it is to be expected that members of parliament will from time to time become involved with government instrumentalities in a private capacity, or in an official capacity on behalf of other persons where an issue of conflict of interest may arise (such as family members, or a person with whom the member may share some financial interest). The issue of what information should be disclosed in such circumstances is a complex one, which may ultimately depend on the circumstances of each situation. The Code of Ethical Standards contains some statements of fundamental principles to 'assist Members to better understand the nature of their public office and the distinct obligations that arise by virtue of that office'. A system already exists under the Code whereby members can obtain confidential advice concerning conflicts of interest and parliamentary practice and procedure from The Clerk or, in some cases, the Members Ethics and Parliamentary Privileges Committee. The Integrity Commissioner also has a role in these matters.

If it is helpful for the Commission to contribute any further guidance, in light of the circumstances investigated here, it is the view of the Commission that the above fundamental principles would best be observed by members making full disclosure to any other parties involved in such representations, where a member's contact is made in a private capacity, and/or where the member has an interest which is of a personal or financial nature. Such disclosures should be documented by the member and the recipient agency.

# THE BACKGROUND TO THE CMC'S INVESTIGATION

## REPORTS IN THE *COURIER-MAIL*

Between 12 and 30 July 2003 the *Courier-Mail* ran a number of stories concerning the business interests of a Labor Member of the Queensland Parliament, the Hon. Ken Hayward MP, the Member for Kallangur ('Mr Hayward'). The stories were written by Mr Rory Callinan and Mr Liam Walsh who are journalists attached to 'Insight', the newspaper's investigative unit. In summary, the various articles questioned the propriety of Mr Hayward's conduct in relation to various matters, including:

- the receipt in 2001 of a government grant by a company of which Mr Hayward was a director, called Crestnut Products Pty Ltd ('Crestnut Products')
- Mr Hayward's speeches in the parliament on issues said to be of relevance to the interests of businesses and companies with which he was connected, including a company known as Binary Chemicals Pty Ltd ('Binary Chemicals')
- land sales from government instrumentalities to private business entities which were apparently connected to Mr Hayward
- Mr Hayward's claim for parliamentary travel expenses in connection with travel he undertook to Western Australia in March 2000.

Some articles noted that the Premier, the Hon. Peter Beattie MP, had stated (when responding to the matters raised by the journalists) that the Crime and Misconduct Commission (CMC) should examine Mr Hayward's affairs and these issues 'in order that the full confidence of the public and business can be maintained'.

More details of what was reported in the relevant articles follow in later sections of this report.

## CORRESPONDENCE FROM THE PREMIER

On 11 July 2003 a letter from the Premier was received at the CMC. The letter noted that a newspaper had asked a series of questions about Mr Hayward and Binary Chemicals, and that the Minister for State Development, the Hon. Tom Barton MP, had advised that the newspaper had also raised questions about Crestnut Products. Mr Beattie stated he was advised that a Department of State Development (DSD) grant to Crestnut Products 'was handled with complete propriety and integrity'. However, Mr Beattie stated:

The questions are such that I believe there is a need for the Crime and Misconduct Commission, as the independent watchdog, to examine the issues involved in order that the full confidence of the public and business can be maintained.

Another letter from the Premier was received by the CMC on 15 July 2003. This second letter advised that the Premier had received some more questions from the *Courier-Mail* relating to the receipt of expenses by Mr Hayward in connection with a visit to Western Australia in March 2000. These questions were referred to the CMC for investigation.

## THE CMC'S ASSESSMENT PROCESS

### Four areas of concern

From the various media articles and the above correspondence, four areas of Mr Hayward's alleged conduct were identified initially as possible matters for investigation by the CMC:

- the propriety of the awarding of a Queensland Industry Development Scheme ('QIDS') grant to Crestnut Products in 2001
- a possible conflict of interest in Mr Hayward's conduct in promoting issues directly relating to the operation of Binary Chemicals, allegedly without declaring any personal or pecuniary interest
- the propriety of the land sales from government instrumentalities to private business entities which were apparently connected to Mr Hayward
- whether it was lawful for Mr Hayward to claim for parliamentary travel expenses in connection with the travel he undertook to Western Australia in March 2000.

### Legislative issues

One of the main purposes of the *Crime and Misconduct Act 2001* ('the Act') is 'to continuously improve the integrity of, and to reduce the incidence of misconduct in the public sector'.<sup>1</sup> 'Misconduct' is defined in Schedule 2 of the Act as 'official misconduct or police misconduct'. Only the former is relevant here, and it is defined in section 15 of the Act as:

Conduct that could, if proved, be —

- a) a criminal offence; or
- b) a disciplinary breach providing reasonable grounds for terminating the person's services, if the person is or were the holder of an appointment.

**Conduct** is defined in section 14 of the Act as:

- a) for a person, regardless of whether the person holds an appointment — conduct, or a conspiracy or attempt to engage in conduct, of or by the person that adversely affects, or could adversely affect, directly or indirectly, the honest and impartial performance of functions or exercise of powers of:
  - (i) a unit of public administration; or
  - (ii) any person holding an appointment; or
- b) for a person who holds or held an appointment — conduct, or a conspiracy or attempt to engage in conduct, of or by the person that is or involves —
  - (i) the performance of the person's functions or the exercise of the person's powers, as the holder of the appointment, in a way that is not honest or is not impartial; or
  - (ii) a breach of the trust placed in the person as the holder of the appointment; or
  - (iii) a misuse of information or material acquired in or in connection with the performance of the person's functions as the holder of the appointment, whether the misuse is for the person's benefit or the benefit of someone else.

Section 14 also provides that to 'hold an appointment' means to hold an appointment in a unit of public administration. A person holds an appointment in a unit of public administration if the person holds any office, place or position in that unit, whether the appointment is by way of election or selection (s. 21).

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<sup>1</sup> s. 4(1)(b).

Section 20 defines a unit of public administration as including, among other entities, the Legislative Assembly and public sector departments.

An elected holder of an appointment can only commit misconduct where the conduct concerned could, if proved, amount to a criminal offence — the first limb of section 15. This is because there is no code of conduct or disciplinary regime applying to people such as members of parliament, a breach of which might be characterised as a ‘disciplinary breach’. In the absence of such a disciplinary breach, the possibility of terminating an office holder’s services on that basis cannot arise.

Accordingly, allegations of misconduct against a person who holds an appointment as a Member of the Legislative Assembly, such as those made here, only fall within the CMC’s jurisdiction if the alleged conduct could, if proved, be a criminal offence.

Subsection (a) of the definition of conduct applies to anyone, whether they hold an appointment or not. However, for the purposes of subsection (b) of the definition of conduct, there must be a connection between the relevant conduct of the subject person and their appointment in a public office, as it refers to conduct of a person ‘who holds or held an appointment’. Three limbs of proscribed conduct follow. Paragraph (i) is concerned with the honest and impartial discharge of an office holder’s official functions and exercise of powers. Paragraph (ii) concerns breaches of the trust ‘placed in the person as the holder’ of an office; and paragraph (iii) is broadly concerned with the misuse of information or material acquired in connection with the performance of official functions.

Returning to paragraph (ii), for present purposes, this means that what must be shown, for a potential case of official misconduct to be established against a member of parliament, would be a breach of the trust placed in that member as the holder of their appointment as a member of parliament (and which, for the reasons given above, could amount to a criminal offence, if proved). It follows from the decision in *Re Mullen*<sup>2</sup> [1995] 2 Qd R 608 that for paragraph (ii) to apply to an office holder there must be misconduct by the officer in the course of or pertaining to the exercise of the powers, functions, duties or responsibilities attaching to his or her office. Private conduct of such an individual which is essentially unconnected with their office is therefore outside the terms of paragraph (ii), unless it has the ancillary effect intended to be caught by subsection (a) of section 14; namely, that such conduct adversely affects, or could adversely affect, directly or indirectly, the honest and impartial performance of functions or exercise of powers of a unit of public administration or any person holding an appointment. Unless this is so, conduct of a private nature which does not relate to a member of parliament’s official functions, powers or position could not amount to the type of conduct proscribed by sections 14 and 15.

In summary, the jurisdiction of the CMC to investigate allegations relating to a member of parliament’s alleged conduct in office is limited to circumstances where that conduct could, if proved, amount to a criminal offence.

Section 33 of the Act provides that the CMC has the function of ensuring that a complaint about, or information or matter involving, misconduct is dealt with in an appropriate way. Section 46 of the Act provides the CMC with the authority to investigate complaints of misconduct itself.

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2 A decision of Lee J of the Queensland Supreme Court, dealing with the corresponding provision under the previous legislation — the *Criminal Justice Act 1989*.

When assessing how to perform its misconduct functions, the CMC must have regard to the principles outlined in section 34, which are:

- (a) Cooperation
  - To the greatest extent practicable, the Commission and units of public administration should work cooperatively to prevent misconduct.
  - The Commission and units of public administration should work cooperatively to deal with misconduct.
- (b) Capacity building
  - The Commission has a lead role in building the capacity of units of public administration to prevent and deal with cases of misconduct effectively and appropriately.
- (c) Devolution
  - Subject to the cooperation and public interest principles and the capacity of the unit of public administration, action to prevent and deal with misconduct in a unit of public administration should generally happen within the unit.
- (d) Public interest
  - The Commission has an overriding responsibility to promote public confidence —
    - in the integrity of units of public administration; and
    - if misconduct does happen within a unit of public administration, in the way it is dealt with.
  - The Commission should exercise its power to deal with particular cases of misconduct when it is appropriate having primary regard to the following —
    - the capacity of, and the resources available to, a unit of public administration to effectively deal with the misconduct;
    - the nature and seriousness of the misconduct, particularly if there is reason to believe that misconduct is prevalent or systemic within a unit of public administration; and
    - any likely increase in public confidence in having the misconduct dealt with by the Commission directly.

Section 59 of the Act also states, among other things, that the Commission and units of public administration are to work cooperatively to achieve optimal use of available resources. It states that the Commission, in performing its functions, must liaise with units of public administration and coordinate its activities with theirs, to avoid needless duplication of work.

Under section 60(2) of the Act the Commission may give information coming to its knowledge to a unit of public administration if the Commission considers that the unit has a proper interest in the information for the performance of its functions. Section 62 restricts access to documents or things in the Commission's possession, although it also provides that such material may be made available for inspection by any person with the Commission's express written authorisation.

It should be noted that the CMC does not have a function in determining issues of criminal guilt where, as in this case, allegations of possible criminal offences are raised for investigation. It may sometimes be necessary for the Commission to reach conclusions about factual matters for the purposes of reporting on an investigation. However, the Commission is not a criminal court and it has no adjudicative role.

The Commission does have a function of helping to prevent misconduct. Under section 24 of the Act, the Commission can perform this function in many ways,

including by making recommendations to units of public administration and reporting on ways to prevent misconduct.

Finally, section 64(1) of the Act provides that the Commission may report in performing its functions and that its report may contain recommendations. The Act also provides various means as to how the Commission can report on an investigation; these include producing a public report, as is the case here, where under section 69 an appropriate direction has been obtained from the Parliamentary Crime and Misconduct Committee.

### **The decision to investigate**

Having regard to the nature of the concerns that had been raised about Mr Hayward's alleged conduct, on 14 July 2003 the CMC determined it would investigate the matters that had been raised, with the exception of possible conflicts of interest on Mr Hayward's part in promoting issues directly relating to the operation of Binary Chemicals, allegedly without declaring any personal or pecuniary interest. The CMC's decision not to investigate that aspect of the matter was based on the view that the alleged conduct there, even if proved, could not amount to official misconduct under the Act, as it could not amount to a criminal offence. The CMC was also mindful of the issues and considerations discussed more fully in Chapter 3 of this report. However, in formulating that view, the CMC considered that the facts forming the basis of the conflict-of-interest concerns were of relevance to the other allegations, and for that reason might need to be explored during the course of the investigation, if only to properly understand Mr Hayward's interests in the various business entities.

By letter dated 16 July 2003, the Chairperson of the CMC advised the Premier that the CMC had resolved to investigate the matters relating to Mr Hayward. The CMC's investigation was conducted as 'Operation Sphere'.

## **THE PARLIAMENTARY ESTIMATES COMMITTEE HEARINGS**

The matters concerning Mr Hayward were mentioned at the public hearings of Parliamentary Estimates Committee A on 15 July 2003. At that time, the Premier confirmed that he had referred those matters to the CMC. The Auditor-General of Queensland, Mr Len Scanlan, confirmed that he had requested his officers to commence audit work in relation to the issues that had been raised in the *Courier-Mail*.

## **OTHER CORRESPONDENCE AND THE WIDENING OF THE INVESTIGATION**

On 22 July 2003 the Premier's Chief of Staff, Mr Rob Whiddon, wrote to the CMC advising that the *Courier-Mail* had asked the DSD if it had given financial assistance to a number of companies, including Suncoast Gold Macadamias Pty Ltd. Mr Whiddon advised:

Suncoast Gold Macadamias received approval for a QIDS grant in February 2001 for training associated with the upgrade of computer and IT systems.

On completion of the grant in February 2003 the company received the sum of \$23 308.38 (excluding GST) from the Government.

I refer this grant to you in connection with the other questions received from the *Courier-Mail* in relation to the Member for Kallangur ...

On 23 July 2003 the DSD advised the CMC of the existence of a current contract of sale between the minister, as vendor, and purchasers Terrence Armstrong and Hamcor Pty Ltd ('Hamcor'), as trustee for Hayward Trust. The contract, which at that time was due to settle on 31 July 2003, concerned Lot 68 on Crown Plan 867910, which is a block immediately adjacent to the two other blocks owned by the same entities and from which Binary Chemicals operates. The land is situated on the Narangba Industrial Estate ('the estate').

On 28 July 2003 Mr Whiddon sent the CMC a copy of a further series of questions which had been directed to the Premier by the *Courier-Mail*, concerning Mr Hayward and certain mining interests. Some *Courier-Mail* articles in late July referred to speeches made by Mr Hayward to Parliament concerning the mining industry, in circumstances where Mr Hayward had reportedly not disclosed his family trust's investments in mining operations or mining interests held by his father, Mr William Hayward. These articles also referred to Mr Hayward's alleged personal involvement in the making of applications to the Mines Department, and in negotiations with a landowner at a gold exploration venture site of interest to a company known as Bunya Resources Pty Ltd ('Bunya Resources'), half-owned by Hamcor. It was also reported that Mr Hayward's father's company, Hardway Pty Ltd ('Hardway'), had held shares in three mining companies, Sedimentary Holdings, Australian Resources Ltd and Dominion Mining Ltd, and that in his entries in the Register of Parliamentary Members' Interests ('the Register') Mr Hayward had made no mention of either Hamcor's or Hardway's mining investments.

It was further reported that the State Opposition had called on the Speaker to

... investigate whether Mr Hayward had breached parliamentary rules by voting on Bills that could have affected a mining company half-owned by ... Hamcor.

In view of the above information, the Commission determined to examine the current contract of sale pertaining to the estate and to further consider Mr Hayward's role in relation to the matters raised in the media about mining issues.

On 29 July 2003 the Minister for Police and Corrective Services, the Hon. Tony McGrady MP, advised that he also had been contacted by the *Courier-Mail* about the mining matters mentioned above. Mr McGrady's previous role had been as the Minister for Mines and Energy. He advised the CMC that he had no recollection of the issues raised by the *Courier-Mail* ever being brought to his attention as Minister for Mines and Energy, nor did he recall ever meeting Mr Hayward's father.

On 29 July 2003 the Acting Minister for State Development, the Hon. Anna Bligh MP, wrote to the Chairperson assuring the CMC of the complete cooperation of the DSD in this investigation.

As the CMC's investigation progressed, further correspondence was exchanged with the DSD, the Minister for State Development, and parliament — through the Speaker and The Clerk of the Parliament ('The Clerk') — on relevant issues including the CMC's access to necessary records and information.

## INVESTIGATIVE METHODOLOGY

Having regard to the principle of cooperation, the CMC liaised with the Queensland Audit Office (QAO), which was conducting its annual audit at the DSD at the time the initial allegations arose. During the CMC's investigation, ongoing discussions occurred as to the inquiries being conducted by each organisation. This was to ensure that a timely and cost-effective investigation occurred, reducing duplication of effort as much as possible. There was some difference in the focus of the inquiries conducted by the two agencies, but there was full cooperation to the extent permitted by the respective agencies' legislation. Written authorities were executed under sections 60(2) and 62 of the Act to allow for relevant investigative material to be disseminated to the QAO, and for QAO officers to inspect original documentation in the Commission's possession.

The CMC's inquiries were conducted by a multidisciplinary project team and were aimed at ascertaining whether there was evidence of official misconduct on the part of any person. At the outset, the CMC sought the provision of all original files and records relating to the matters under investigation. That



material was perused and it was thought necessary to conduct interviews with people who had been involved in the grants, land sales and travel claim of interest, concerning the circumstances surrounding those transactions.

During the investigation approximately 30 witnesses were interviewed. These interviews included inquiries made in Western Australia and in various regions of Queensland. Mr Hayward participated in two lengthy formal interviews with CMC staff.

All people and agencies involved in the investigation cooperated promptly and fully with the CMC. The timely assistance of The Clerk and all of the relevant departments and their officers, particularly the DSD, should be acknowledged.

## CONSULTATION

As noted, Mr Hayward participated in two lengthy interviews in relation to the matters under investigation. He also submitted a statement in relation to the Western Australia trip. During the investigation his legal representative was invited to make submissions on a specific issue (outlined in more detail in Chapter 3), concerning the possible effect of some provisions of the *Parliament of Queensland Act 2001*. A submission was received and considered.

The DSD was also advised about some draft procedural recommendations the Commission was considering, arising from the investigation of the land transactions. The DSD provided responses, which were considered in the formulation of the recommendations appearing in Chapter 4.



## MR HAYWARD'S INTERESTS AND ASSOCIATIONS

### PARLIAMENTARY SERVICE

Mr Hayward is currently the Member for Kallangur and is a member of the State Australian Labor Party (ALP) Government. Previously, between 1986 and 1992, he was the Member for Caboolture. He was a chartered accountant in public practice before his election and holds a Bachelor of Commerce degree and a Diploma in Advanced Accounting. He is a Fellow of the Institute of Chartered Accountants in Australia and an Associate of the Australian Society of Certified Practising Accountants.

Mr Hayward has a significant career of parliamentary service. He is Chairman of the Public Accounts Committee (PAC), a position he has held since 30 July 1998; but he has stood aside from that position during the CMC and QAO inquiries. He was the Deputy Chairman of the PAC from 2 April 1996 until 19 May 1998. Before that, he was a member of the PAC from 23 November 1988 to 17 December 1991 and Chairman from 6 March 1990 to 17 December 1991.

He has been a member of various Parliamentary Estimates Committees from 1998, and was the Minister for Business, Industry and Regional Development from 31 July 1995 to 19 February 1996. He was the Minister for Transport and Minister Assisting the Premier on Economic and Trade Development from 21 February 1995 to 31 July 1995 and the Minister for Health from 16 December 1991 to 21 February 1995. In 1991 he was Chairman of the Ministerial Advisory Committee for the Moreton Bay Strategic Plan, and he was a Member of the Select Committee of Subordinate Legislation from 1987 to 1989.

Mr Hayward has also been a member of various Ministerial Legislative Committees, including Primary Industries and Rural Communities; Natural Resources and Mines (from March 2001); Mines and Energy and Regional Development; Tourism, Sport and Racing; Primary Industries (from July 1998 to March 2001); Premier, Economic and Trade Development and the Arts; and Treasury and Regional Development (from December 1989 to December 1991).

### RELEVANT CORPORATE RELATIONSHIPS

#### Hayward Trust

The deed of trust is publicly available. It states that the trust commenced in Brisbane on 19 June 1987, the trustee being the company Hamcor. The trust is a discretionary one. The primary beneficiaries are listed as being:

- William Hayward
- Don Hayward
- Ken Hayward
- Don Hayward's wife
- any adopted or natural children of the above, prior to the perpetuity date.

Mr Don Hayward (Mr Hayward's brother) confirmed that Hamcor does not operate in its own right, but operates only as trustee for Hayward Trust. In that

capacity Hamcor owns interests in various business entities, such as Binary Chemicals. Mr Don Hayward provided the investigation with a copy of the last settled balance sheet of the trust, which disclosed that as at 30 June 2002 three beneficiaries of the trust were owed substantial monies by the trust, including Mr Hayward. Without disclosing the exact balance, it can be said that Mr Hayward is currently owed a very considerable amount of money (which he acknowledged was a significant amount) by the trust, as recorded in his beneficiary loan account. Mr Don Hayward explained that this loan balance had arisen from a combination of sources, including monies Mr Hayward had put into the trust (such as tax refunds), income distribution amounts from previous years and monies gifted to Mr Hayward. The balance sheet for the trust lists Mr Hayward's beneficiary loan account balance as a liability of the trust.

Mr Hayward was asked to describe his personal and family business interests from 1995. He said the following about Hamcor:

How do I fit into that? Because Hamcor is a trustee, technically I'm a beneficiary of the Hayward Trust which sits below it, as you'd appreciate in saying that I've never received any benefit as part of the distribution from the Hayward Trust, okay?

Later in the interview Mr Hayward said:

My brother tells me I've never had a distribution since I've been elected to the parliament.

Mr Hayward emphasised that his information in this respect was essentially provided to him by his brother. He claimed little direct knowledge of the workings of the trust. The issue of Mr Hayward's understanding of the trust arrangements and the extent of any benefits that have flowed to him from the trust were explored at some length during the investigation. Mr Don Hayward, in addition to advising of the loan balance in Mr Hayward's favour, noted that monies had been drawn out by Mr Hayward from this loan account on occasions, such as to fund the purchase of a motor vehicle. He also noted that the trust may have contributed monies to Mr Hayward's purchase of a house. Mr Don Hayward also advised that income is distributed to Mr Hayward's wife. Mr Hayward himself was unsure of these matters. He stressed that his brother and father control Hamcor and he has little knowledge of the trust arrangements and dispersal of benefits. Despite Mr Don Hayward's information and the quantum of the trust loan balance in his favour, Mr Hayward effectively maintained that he did not, at this time or in recent times, have an interest in the trust that he viewed as a beneficial one.

He thought the Register would record that he is a beneficiary of the trust. It does. The current Register entries also record, in the section requiring the disclosure of sources of income of over \$500, the following entry:

Interest/distribution from loan to Hamcor Pty Ltd (a trust controlled by father and brother)

In the section of the Register requiring the listing of assets valued at over \$5000, Mr Hayward has listed 'loan to Hamcor Pty Ltd (A trust controlled by father and brother)'.

## **Hamcor**

Hamcor was incorporated on 4 June 1980. One of the current directors (from 15 May 1992) is Mr William Hayward, who is the father of Ken and Don. The other directors are Mr Don Hayward, from 19 June 1980, and his wife, from 5 January 2000. The issued capital of the company consists of twelve \$1 ordinary shares; six are beneficially owned by Don Hayward and six are beneficially owned by his father.

The Australian Securities and Investments Commission (ASIC) Historical Extract for Hamcor was shown to Mr Hayward. This indicated that Hamcor's registered office and principal place of business is at an accounting practice called

'Haywards' situated at Level 1, 488 Lutwyche Road, Lutwyche. Mr Hayward said that the accounting practice called Haywards is now operated by other people. Mr Hayward has not been involved with the firm since 1986 and he understood that his brother has not been involved with the firm for a number of years. The firm continues to use this name because it was the name of the founders of the accountancy practice.

Mr Hayward is aware that Hamcor owns shares in a number of other companies. He was a director of Hamcor from 19 June 1980 to 15 May 1992. He resigned from this position at that time and disposed of his shares, as he was in the State Ministry.

The business interests of Hamcor as trustee for Hayward Trust have been identified from ASIC public record searches and interviews during the investigation. They are numerous and include, or have included, among other things, interests in boxing promotions, mining ventures, chemical manufacturing, land development, macadamia nut processing and labour hire.

The publicly available ASIC record for Crestnut Products indicates that Ken, Don and William Hayward own a large parcel of shares in this company. Mr Don Hayward provided documentation that indicates this parcel of shares was in fact transferred to Hamcor as trustee for Hayward Trust on 1 March 2002.

### **Macadamia nut farms**

Ken, Don and William Hayward in partnership (equal shares) operate two macadamia nut farms. This partnership supplies nuts to Crestnut Products. One farm is situated at Gympie and the other is located at the Glasshouse Mountains.

### **Crestnut Products**

Crestnut Products is a nut processing company. ASIC records, confirmed by Mr Hayward, indicate that he became a director of this company on 1 June 2001. This company trades as 'Nutworks' at Yandina. Mr Hayward advised that he does not have a day-to-day involvement in Crestnut Products. He attends directors' meetings where reports are provided and the board then makes decisions based on those reports. Board meetings occur on average once a month and take approximately three hours. People who attend the board meetings are the Chairman, the Chief Executive Officer and himself. This information has been confirmed with the company Chairman, Mr Keith Ryan.

Mr Don Hayward explained the circumstances of his brother becoming a director of this company:

I suppose the circumstances are that Hamcor acquired so many shares that we wanted some say and he became a director because I didn't have time to do it.

### **Binary Chemicals**

Binary Chemicals is a chemical manufacturing business. Its shareholding is owned by Mr Terry Armstrong and Hamcor (as trustee for Hayward Trust). It operates a factory located in Magnesium Drive at the Narangba Industrial Estate (the estate), and another near Northam in Western Australia.

The investigation has sought to ascertain the nature of Mr Hayward's links with Binary Chemicals. The directors of the company are Mr Armstrong and Mr Don Hayward. Mr Hayward has never been a director and stated he has no interest in Binary Chemicals. However, he advised that he is a cheque signatory to the bank account of the business and occasionally signs cheques. He stated that his brother was not a regular visitor to the company's Narangba premises as he conducts his business from an office in Bowen Hills. Mr Hayward also said that Mr Armstrong travels frequently and that therefore he is a cheque signatory on the basis of convenience to the business. He also has tallied workers' hours at the factory.

He stated this meant:

... until probably three years ago it was a much smaller firm and what used to happen was, at the end of each week, I would just tally up the relevant hours according to what employees there worked and give them to my brother who would calculate the wages and stuff.

Mr Hayward also confirmed that at times he had attended meetings with the company's bankers and that he had taken on the task of negotiating with the business's creditors. He explained that the majority of these creditors were located interstate and that in attending to these negotiations he had never sought to utilise the influence or status attaching to his position as a member of parliament.

Mr Hayward was asked about his association with Mr Armstrong. Mr Hayward stated that Mr Armstrong has been a close personal friend for approximately 14 years and that he sees him on a regular basis. He said that Mr Armstrong resides in Narangba and they share an interest in politics, being members of the ALP. Mr Hayward regards Mr Armstrong as a person he can confide in and talk to, about various local and political issues. Mr Hayward said he attends Binary Chemicals' premises approximately three times a week. He was asked to explain the reason for the frequency of his visits:

... as I said, Terry Armstrong is a very personal and close friend of mine and a confidant with regard to issues involving politics, both at an international level so to speak, but certainly at a local level. He is like myself an active member of the local branch of the Labor Party. So yes I, to answer your question, no, I wouldn't sign cheques three times a week.

Mr Armstrong was also asked what Mr Hayward's role at the company was. He stated:

Well, he doesn't have any official role at Binary Chemicals — he drops in two or three times a week and sees me, more of a social thing. He does some banking for us on occasions and I often discuss things like accounts with him as well, but he, I don't think he had, it would be fair to say he's got any real involvement with the company ...

Oh well, cheques arrive in the mail and he takes them to the bank ... if he's going that way he takes them ... He is a cheque signatory as well.

## Hardway

Hardway trades in shares listed on the Australian Stock Exchange. The CMC was advised that it has no other functions. An ASIC search reveals that Hardway was incorporated on 8 August 1968. The current directors are Mr William Hayward (from 8 August 1968) and Mr Don Hayward (from 17 April 1989). Mr Ken Hayward was a former director, from a date unknown until 17 April 1989. The issued capital of the company consists of forty-two \$1 ordinary shares and one \$1 first preference share. Forty-one of the \$1 ordinary shares and the \$1 first preference are beneficially owned by Mr William Hayward, and one ordinary share is non-beneficially owned by Mr Don Hayward.

Mr Don Hayward explained that he is 'technically' the other shareholder and director in the company with his father. He stated that his father runs this company. Mr Don Hayward was unaware of all of Hardway's shareholdings, but knew that the major holding at present is in Dominion Mining.

Mr Don Hayward was asked about the *Courier-Mail* report of the loan to Hardway by his brother. He advised that he, his brother and his father each have a loan account in the books of Hardway. The reason for these loan accounts is that '... there's an intermingling of family monies there too'. Mr Don Hayward further explained:

Probably in a similar manner to, well no not in a similar manner to Hayward Trust, but there is — like, if my father has spare money and a farm or Hamcor as trustee Hayward Trust need it, the money will move between entities.

The current balance of Mr Hayward's loan account was ascertained. Mr Don Hayward advised that at times it would have been substantially higher. Interest is payable on the loan to Mr Hayward.

Mr Don Hayward stated that Hardway's fortunes are not linked to those of himself and his brother; if things did not work out for the company it would not impact on their own financial interests, and the brothers have no influence on their father's share trading.

## ELECTORAL DONATIONS

During the investigation the CMC made inquiries with the Electoral Commission of Queensland and viewed available and relevant records concerning election returns, in order to establish whether those records showed any links between Mr Hayward and any of the business entities or people relevant to the investigation. Mr Hayward's returns relating to details of gifts received, return of loans received and return of electoral expenditure were inspected, for each 'disclosure period' of relevance. Each return disclosed no gifts as being received, and no electoral expenditure.

In light of the possibility that donations may have been made directly to the relevant political party, the annual returns for the State ALP for the financial years 1995–2002 were inspected. Briefly, these returns disclose details of donations and other amounts received, amounts owing and amounts paid, where those amounts are over \$1500. These returns contained no entries relating to the entities of relevance to the CMC's investigation.

## OTHER INTERESTS

In some of the media articles, mention was made of Mr Hayward's apparent support for an irradiation plant located in the estate and operated by Steritech Pty Ltd (Steritech). One article expressed criticisms of Mr Hayward, as reportedly raised by his constituents, for promoting the estate and Binary Chemicals without declaring his interest and for not raising residents' concerns about the Steritech plant. Mr Hayward was quoted as advising that the Steritech plant was situated within an adjoining electorate and that he had referred complaints to the member for that electorate. Later articles in the *Caboolture Shire Herald* and the *Pine Rivers Press* quoted Mr Hayward as saying that he, Binary Chemicals and Hamcor had no interest in Steritech.

The investigation established that Mr Hayward, his family and Binary Chemicals have no business links or interests whatsoever with this company and its principals, and have never had any such interests. The Steritech plant is located in the Murrumba electorate, which adjoins the electorate of Kallangur.





## ISSUES CONCERNING THE PARLIAMENT

### JURISDICTIONAL ISSUES

The *Courier-Mail* articles raised a number of concerns about issues that might generally be described as relating to the standards and requirements imposed on members of parliament. These included the concerns as to whether Mr Hayward had properly disclosed his interests as required in the Register, and whether he might have breached any standing orders (SOs) of the parliament in speaking on certain issues (such as mining-related ones) without making declarations, at a time when he may have held a business interest relating to those issues.

The initial article stated that Mr Hayward had '... been promoting his brother's company, Binary Chemicals ... in State Parliament without declaring his connection'. Particular reference was made to a speech in parliament on 11 December 2001 in which Mr Hayward mentioned Binary Chemicals and another chemical formulating company also operating on the estate, in the context of speaking upon the Agricultural Veterinary Chemical Amendment Bill. Reference was also made to a speech on 8 November 2002 praising the estate's industries and a question Mr Hayward asked of then Liberal Industry Minister Bruce Davidson in May 1996, about the progress of a development control plan for the estate.

It was stated that Mr Hayward:

... [promoted the] pesticide company linked to his family, the estate in which the plant lies as well as the importance of chemicals to agriculture. But in none of the various parliamentary speeches has he revealed the Hayward family connection or his loan to a major shareholder in Binary Chemicals.

An article of 12 July 2003 quoted Mr Hayward as telling the newspaper that he did not believe (at the time of those speeches) that he should have mentioned his loan to Hamcor or family involvement: 'It's a matter of pecuniary interest. There's no pecuniary benefit that comes to me by that business existing.'

Other articles reported a call made by the Deputy Leader of the Coalition, the Hon. Bob Quinn MP, to the Speaker of Parliament seeking an investigation by the Members' Ethics and Parliamentary Privileges Committee (the MEPPC) into whether Mr Hayward had breached SO 158 of the parliament by failing to declare a financial interest during a debate and vote in 1997. The Speaker declined to refer Mr Hayward to the MEPPC. The Speaker released to the public his letter of 22 July 2003, setting out his reasons.

There were further articles in late July referring to other speeches made by Mr Hayward to parliament concerning the mining industry, in circumstances where Mr Hayward had reportedly not disclosed his family trust's investments in mining operations or mining interests held by his father. These articles referred to Mr Hayward's alleged personal involvement in making applications to the Mines Department and in negotiations with a landowner at an exploration site of interest to Bunya Resources, half-owned by Hamcor. It was also reported that Mr Hayward's father's company Hardway had held shares in three mining companies, Sedimentary Holdings, Australian Resources Ltd and Dominion Mining Ltd, and that in his Register entries Mr Hayward had made no mention of either Hamcor's or Hardway's mining investments.

It was further reported that the State Opposition had called on the Speaker to ‘investigate whether Mr Hayward had breached parliamentary rules by voting on Bills that could have affected a mining company half-owned by ... Hamcor’.

In the context of possible official misconduct by members, concerning what might be termed their parliamentary conduct, reference should perhaps be made to the offence provision in the Criminal Code concerning the receipt of bribes by members of parliament. Section 59(1) of the Code provides:

Any person who, being a member of the Legislative Assembly, asks for, receives, or obtains, or agrees or attempts to receive or obtain, any property or benefit of any kind for himself, herself or any other person upon any understanding that the person’s vote, opinion, judgment, or action, in the Legislative Assembly, or in any committee thereof, shall be influenced thereby, or shall be given in any particular manner or in favour of any particular side of any question or matter, is guilty of a crime, and is liable to imprisonment for 7 years, and is disqualified from sitting or voting as a member of the Legislative Assembly for 7 years.

There is no evidence that Mr Hayward has engaged in conduct of the kind prohibited by this provision. Although Mr Hayward has various direct and indirect business interests there is no evidence that he asked for, received, obtained or agreed or attempted to obtain any property or benefit to act in a manner proscribed by section 59 of the Code.

Matters such as alleged breaches of SOs or the requirements to disclose relevant interests in the Register would ordinarily not amount to conduct capable of constituting official misconduct, such as would fall within the CMC’s investigative jurisdiction, because such conduct could not by itself amount to a criminal offence. The CMC recognises that such issues relate to proceedings of parliament which are matters for the parliament alone to adjudicate upon, through the processes it has established, if issues or complaints arise.

Accordingly, the CMC has limited its examination of these issues concerning parliamentary ‘standards’ and obligations to the context of their relevance to the concerns which were assessed as being capable of amounting to official misconduct — for example, whether Mr Hayward had ever improperly influenced any sale of land in order to secure an unfair advantage for himself or associates. As noted in relation to the suggestion in the articles that Mr Hayward may have failed to declare a conflict before speaking on certain matters in the Legislative Assembly, the CMC considered that the facts which formed the basis of those concerns were of relevance to the other allegations and for that reason those facts needed to be explored during the course of the investigation, if only to properly understand Mr Hayward’s interests in the various business entities. The CMC was also mindful that evidence of any conscious failure to declare certain interests, as required by the Parliament, may be a relevant factual circumstance if other evidence existed to support a view that Mr Hayward had at the material time engaged in official misconduct.

The next section of this report briefly explains some of these standards and obligations, which were of some relevance to the CMC’s inquiries or the issues raised in the public domain.

## **THE PARLIAMENTARY CODE OF ETHICAL STANDARDS**

Parliament has a Code of Ethical Standards (‘the Code’), prepared on the basis of legislation, SOs, resolutions of the House, practice and procedure. The current version dates from 4 September 2001. The Code contains a statement of purpose and a statement of fundamental principles. The Code itself is a comprehensive document, providing an overview of members’ obligations in relation to:

- the Register of Interests
- conflicts of interest — ad hoc disclosure and the rules relating to dealings with executive government, and prohibited interests; and bribery, advocacy and accepting professional fees

- authorised use of allowances
- appropriate use of information
- conduct of members in the House.

A complaints procedure is outlined and further specific provisions are included which relate to the resolution of conflicts of interest.

Further to what was said above about the CMC's limited investigative jurisdiction in this area, in relation to the concerns that were publicly raised about the adequacy or otherwise of Mr Hayward's disclosures and his Register entries, section 92 of the *Parliament of Queensland Act 2001* ('the POQA') must also be noted. Among other things, that section provides that a complaint about a member not complying with the Code may be considered only by the Legislative Assembly or the MEPCC. However, this exclusionary provision does not apply to an entity such as the CMC, if that entity may under a law (such as the Act) consider an issue and the issue that is considered involves the commission or claimed or suspected commission of a criminal offence. As discussed in Chapter 1, the CMC's investigation here was limited to examining conduct which, if proved, could be capable of constituting a criminal offence. Hence the CMC's consideration of issues relating to the obligations imposed by the Code was confined to an examination of those issues only for the purposes of understanding and evaluating their relevance to possible criminal offences.

## TRANSACTIONING BUSINESS WITH THE STATE

The Code also addresses the issue of members transacting business with the state. It notes:

There have always been restrictions on members of Parliament having financial dealings with executive government. This has come about because of the perceived need to ensure the independence of members from the executive. The obvious exception relates to members who are also Ministers or Parliamentary Secretaries.

Members should ensure that they have no unauthorised financial dealings, either as a contractor, defaulter, consultant or officeholder, with the government. Any unauthorised financial dealings with the government may result in a member's seat being vacated.

Sections 70 and 71 of the POQA restrict members' ability to transact business with entities of the state. The current sections, which came into force on 6 June 2002, replaced some earlier provisions of the *Constitution Act 1867*. The two provisions are as follows:

### 70 Meaning of 'transacts business'

(1) A member '**transacts business**' with an entity of the State if the member—

- (a) has a direct or indirect interest in a contract with an entity of the State; or
- (b) performs a duty or service for reward for an entity of the State.

(2) However, a member does not '**transact business**' with an entity of the State in the following circumstances—

- (a) for a contract—
  - (i) the contract is required of, or expressly permitted for, the member, under an Act; or
  - (ii) the contract allows or permits the member to be provided with goods or to use services that are available to the public on the same terms the goods or services are available to the public; or
  - (iii) the contract is for the lawful payment of compensation; or
  - (iv) the contract is made, entered into, or accepted, by a listed or non-aligned corporation;

Examples of subparagraph (ii)—

1. A contract to use rail passenger transport.
2. The purchase of a vehicle at a public auction conducted by an entity of the State.

(b) for a duty or service—

- (i) an Act requires or expressly permits the member to perform the duty or service; or
- (ii) neither the member nor any other person is entitled to or is entitled to and receives any reward on account of the member performing the service or duty; or
- (iii) the duty or service is the attendance at a court or other place or the giving of evidence at a court or other place in obedience to any court process.

(3) For subsection (2)(b)(ii), a member is not taken to be entitled to a reward if the member irrevocably waives for all legal purposes the entitlement to the reward.

(4) For a waiver under subsection (3), the member must, as soon as practicable after becoming aware of the entitlement—

- (a) waive the entitlement in writing; and
- (b) give a copy of the waiver to the Speaker.

(5) In this section—

**‘listed corporation’** has the meaning given by the Corporations Act.

**‘non-aligned corporation’** means a corporation with more than 20 shareholders, one of whom is the member if the member does not—

- (a) own 5% or more of the corporation’s shares; or
- (b) have control of the corporation’s board.

**‘reward’** does not include—

- (a) an amount decided under chapter 7<sup>3</sup> or the *Parliamentary Contributory Superannuation Act 1970*; or
- (b) reasonable expenses actually incurred by or for the member for any 1 or more of the following—
  - (i) accommodation;
  - (ii) meals;
  - (iii) domestic air travel;
  - (iv) taxi fares or public transport charges;
  - (v) motor vehicle hire.

## **71 Restrictions on member transacting business with an entity of the State**

(1) A member must not transact business, directly or indirectly, with an entity of the State.<sup>4</sup>

(2) If a member contravenes subsection (1) in relation to a contract with an entity of the State—

- (a) the contract is invalid to the extent of the contravention; and
- (b) the member is not entitled to, and may not receive, the reward in connection with the contract.

(3) If a member contravenes subsection (1) in relation to the performance of a duty or service for an entity of the State, the member is not entitled to, and may not receive, the reward for the duty or service.

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<sup>3</sup> Chapter 7 deals with members’ salaries.

<sup>4</sup> A footnote in the Act states that ‘the effect of a contravention of this subsection is dealt with under section 72(1)(h) (Vacating seats of members in particular circumstances)’.

(4) A member does not contravene subsection (1) in relation to a contract with an entity of the State if the member—

- (a) acquires the interest in the contract—
  - (i) under a testamentary disposition or because of the laws of succession; or
  - (ii) as executor, administrator or trustee of the estate of a deceased person; and
- (b) disposes of the interest within—
  - (i) 1 year after the day the person whose death gave rise to the interest mentioned in paragraph (a) died; or
  - (ii) a longer period allowed by the Assembly.

(5) A new member does not contravene subsection (1) in relation to an interest in a contract with an entity of the State arising before the member's election if he or she disposes of the interest within 6 months after being elected.

(6) A new member does not contravene subsection (1) in relation to an obligation to perform a duty or service arising before the member's election if he or she discharges the obligation within 6 months after being elected.

(7) It is declared that subsection (1) does not extend—

- (a) to a contract or agreement with WorkCover Queensland in relation to insurance business carried on by it; or
- (b) to any contract or agreement securing the repayment of the principal, or the payment of interest on, or both the repayment of principal and the payment of interest on, an amount lent to an entity of the State; or
- (c) to any contract or agreement for the provision of legal assistance under the *Legal Aid Queensland Act 1997*, or similar assistance under another law, directly or indirectly by a member who is a lawyer or by a legal practice in which a member who is a lawyer has an interest.

(8) In this section—

**'new member'** means a member who was not a member of the Assembly immediately before the Assembly last expired or was last dissolved.

Section 72(1) provides that a member's seat in the Assembly becomes vacant in certain circumstances, which include those set out in sub-paragraph (h):

- (h) the Assembly by resolution—
  - (i) decides the member has contravened section 71(1), whether or not after reference of the question to the Court of Disputed Returns under the *Electoral Act 1992*, section 143;<sup>5</sup> and
  - (ii) decides not to make a declaration under section 73.

Importantly, section 73 of the POQA provides that in some circumstances the Assembly may declare a disqualifying ground to have no effect. It provides:

### **73 Assembly may disregard disqualifying events**

(1) This section applies if the Assembly considers that anything that happened whether before or after the commencement of this section (the **'disqualifying ground'**) may have caused—

- (a) a person to be disqualified from being elected as a member; or
- (b) the seat of a member to become vacant.

(2) The Assembly may declare by resolution the disqualifying ground to be of no effect.

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<sup>5</sup> *Electoral Act 1992*, s. 143 (reference of question as to qualification or vacancy).

(3) The Assembly may make the declaration only if the Assembly considers the ground—

- (a) has stopped having effect; and
- (b) was in all the circumstances trivial in nature; and
- (c) happened or arose without the actual knowledge or consent of the person or member or was accidental or due to inadvertence.

(4) This section applies despite any other provision of this chapter.

(5) This section has no effect on the jurisdiction of the Court of Disputed Returns.

Accordingly, a breach of section 71(1) of the POQA by a member, in the form of the member having a direct or indirect interest in a contract with an entity of the state, would render the contract invalid, to the extent of the contravention, and may ultimately lead to the vacation of the member's seat.

The above provisions can be contrasted with those that were contained in the *Constitution Act 1867*:

**Disqualifying contractors and persons interested in contracts—election to take place on vacancies**

6.(1) Any person who shall directly or indirectly personally or by any person whatsoever in trust for the person or for the person's use or benefit or on the person's account undertake execute hold or enjoy in the whole or in part any contract or agreement for or on account of the public service shall be incapable of being elected or of sitting or voting as a member of the Legislative Assembly during the time the person shall execute hold or enjoy any such contract or any part or share thereof or any benefit or emolument arising from the same.

(2) And if any person being a member of such Assembly shall enter into any such contract or agreement or having entered into it shall continue to hold it the person's seat shall be declared by the said Legislative Assembly as the case may require to be void and thereupon the same shall become and be void accordingly.

**Proviso exempting from disqualification members of companies exceeding 20 in number**

(3) Provided always that nothing herein contained shall extend to any contract or agreement made entered into or accepted by any incorporated company or any trading company consisting of more than 20 persons where such contract or agreement shall be made entered into or accepted for the general benefit of such incorporated or trading company.

**Election of disqualified persons void**

7.(1) If any person by this Act disabled or declared to be incapable to sit or vote in the Legislative Assembly shall nevertheless be elected and returned as a member to serve in the said Assembly for any electoral district such election and return shall and may be declared by the said Assembly to be void and thereupon the same shall become and be void to all intents and purposes whatsoever.

**Penalty for sitting or voting**

(2) And if any person under any of the disqualifications mentioned in section 6 shall whilst so disqualified presume to sit or vote as a member of the said Assembly such person shall forfeit the sum of \$1000 to be recovered by any person who shall sue for the same in the Supreme Court.

**Scope of ss. 6 and 7**

7A.(1) Sections 6 and 7 and the provisions relating to a public contractor of the *Legislative Assembly Act 1867*, section 7 extend, and it is hereby declared have always extended, only to contracts or agreements for the furnishing or providing of wares and merchandise to be used or employed in the service of the public.

(2) Without limit to the generality of subsection (1), sections 6 and 7 and the provisions relating to a public contractor of the *Legislative Assembly Act 1867*, section 7 do not extend, and it is hereby declared never have extended—

- (a) to any lease, licence to occupy, or other contract or agreement whereby any estate or interest in land is held under the Crown

pursuant to the *Land Act 1994*, or pursuant to that Act and any other Act relating to the alienation of Crown land within Queensland, or pursuant to any other Act or Acts relating to the alienation of Crown land within Queensland, or whereby the right to hold under the Crown any such estate or interest is acquired, or agreed to be acquired, from any other person; or

- (b) to any lease, licence, authority, permit or other contract or agreement relating to mining, dredging, searching, or prospecting for, or the obtaining of, petroleum, coal, gold or any other mineral in or on any Crown land in Queensland; or
- (c) to a contract or agreement with Suncorp Insurance and Finance, or the Workers' Compensation Board, in relation to insurance business carried on by it; or
- (d) to any contract or agreement securing the repayment of the principal, or the payment of interest on, or both the repayment of principal and the payment of interest on, moneys lent to the Crown or to any Crown corporation or instrumentality or corporation or instrumentality representing the Crown.

As can be seen, the Constitution Act provisions did not extend to the situation where a member acquired an interest in Crown land.

The POQA provisions, according to the Explanatory Note, are 'concerned with preventing contracts between the State and a Member which may bring a Member into conflict with his or her duties in making the Government accountable'.

In looking specifically at the issue of contracts in which a member may have a direct or indirect interest, it can be noted that the POQA provisions contain some exceptions, for certain types of contracts, including where '... the contract is required of, or expressly permitted for, the member, under an Act' or where 'the contract allows or permits the member to be provided with goods or to use services that are available to the public on the same terms the goods or services are available to the public' .

The Explanatory Note to the POQA states that 'the exceptions largely follow the existing exceptions in sections 6 and 7A of the *Constitution Act 1867*'. However, there is no express exception in the POQA for contracts involving the acquisition by a member of an interest in Crown land.

The earlier provisions under the Constitution Act were in force at the time of the majority of transactions investigated by the CMC. As noted, those provisions were expressly declared by that Act to only extend to contracts or agreements for the furnishing or providing of wares and merchandise to be used or employed in the service of the public. The Act also expressly stated that the provisions did not extend to contracts whereby any estate or interest in land is held under the Crown pursuant to any Act relating to the alienation of Crown land within Queensland, or to any lease, licence, authority, permit or other contract relating to mining.

As explained in detail in Chapter 4 of this report, the CMC investigated the circumstances surrounding three land transactions involving the sale, or in one case the proposed sale, of Crown industrial land to Mr Terry Armstrong and Hamcor, as trustee for Hayward Trust, for the purposes of the operations of the company Binary Chemicals. The first two transactions settled several years ago, but the third is still on foot. The purchasers and the current minister (as vendor) have executed a contract of sale. The CMC understands that, as at the time of reporting, the contract has not yet been completed, due to the current investigation. An 'entity of the State', as used in section 71(1), is defined in the Act to include, among other things, a minister of the state.

The current contract was executed by the parties on 1 July 2003. The Minister for Industrial Development informed the CMC that he was not aware of Mr

Hayward having any involvement in that matter until he received advice from Crown Law, around the time that the contract was initially due to settle, some 30 days after execution.

Mr Hayward does not appear to have what could be properly termed a direct interest in that potential contract. He is not personally a contracting purchaser. However, the question arises as to whether he has an indirect interest in the contract, arguably arising by virtue of his interest in Hayward Trust (which Mr Hayward asserts is not a beneficial one) and Hamcor's dual positions as trustee of Hayward Trust and co-purchaser. As noted in Chapter 2, Mr Hayward has a significant loan balance, in his favour, from the trust. The loan balance is due in part to distributions, the making of which gives a discretionary beneficiary an interest in the trust property: *Hunt v. Muollo* [2003] NZCA 66 at [11]. The issue that arises here is a question of law, and a submission from Mr Hayward's legal representative was sought on the issue. Mr Hayward's counsel submitted that Mr Hayward, as the beneficiary of a discretionary trust, has no specific interest in the trust property until the trustee elects to exercise the discretion (as to who is to receive benefits) in his favour. Accordingly, it was further submitted that Mr Hayward could not have an interest in the contract: *England v. Inglis* (1920) 2 KB 636 at 639.

Notwithstanding, on the evidence obtained during the CMC's investigation (as outlined in subsequent sections of this report), in the Commission's view it must be accepted to be the case that Mr Hayward has an interest in the trust, and therefore an interest in the activities of Hamcor, which only acts in the capacity of trustee for Hayward Trust. It would in turn follow that he has an indirect interest in the current contract, and that there may have been a breach of the prohibition contained in section 71(1) of the POQA upon members transacting business with an entity of the state. Absent the incorporation in the POQA of the specific exemption provisions formerly present in the *Constitution Act 1867*, there is no specific exemption permitting the acquisition of any interest in land.

Another consequence may arguably arise as a result of a contravention of section 71(1) of the POQA. Section 204 of the Criminal Code provides:

#### **204 Disobedience to statute law**

(1) Any person who without lawful excuse, the proof of which lies on the person, does any act which the person is, by the provisions of any public statute in force in Queensland, forbidden to do, or omits to do any act which the person is, by the provisions of any such statute, required to do, is guilty of a misdemeanour, unless some mode of proceeding against the person for such disobedience is expressly provided by statute, and is intended to be exclusive of all other punishment.

(2) The offender is liable to imprisonment for 1 year.

Section 204 of the Criminal Code is clearly a wide-ranging provision in its possible application. Perhaps for that reason, it is little used in practice and there is no recent authority on the section.

The POQA provisions do not expressly state that a breach of section 71(1) is an offence. That Act also expressly provides a 'mode of proceeding' against a person who breaches section 71(1); this involves the possible vacation of the member's seat and the application of provisions that invalidate the relevant contract and prevent the member from profiting from it. Accordingly, while it could be argued that a breach of section 71(1) by a member may possibly trigger the section 204 Criminal Code offence provision, having regard to the decision in *Murgon Shire Council v. Maudsley* [1921] Qd R 1, the better view is that it does not.

As outlined in greater detail below, the CMC's investigation of the land transactions has revealed no evidence of official misconduct by Mr Hayward or any other person; the evidence indicates that the current transaction is subject to the same processes, terms and conditions available to the public and relates to land which has been available for public sale for many years, and which is



being purchased at market value. However, that evidence does also indicate a possible contravention of section 71(1) of the POQA, which in turn would activate the consequences described in subsections (2) and (3) and which may in turn lead to the Assembly possibly considering a resolution for the purposes of section 72(1)(h).

In view of these outcomes, and the content of the Explanatory Note, one might wonder whether it was really the intention to exclude such contracts/interests from the types of business that members should not transact with the state. Clearly, it is desirable that there be some limits placed on the ability of members to contract with the state — for instance, in respect of the provision of services such as consultancy advice. However, the POQA provisions in their present form appear to be wide-ranging in their impact on the ability of members to enter into contracts relating to interests in land where an entity of the state is the other contracting party. Pastoral and mining leases may be such examples.

To the Commission's knowledge, no issues have previously arisen as to the scope or application of sections 70 and 71 of the POQA, given the recent introduction of those provisions. However, in view of the wide interpretation which now appears to be open in respect of those provisions and the serious consequences for members who may breach the POQA in respect of business transactions that would have been exempted under the *Constitution Act 1867*, the Commission raises these issues for the information of members and the public. It may be that at some future time consideration could be given to reviewing the scope of the present provisions.

## RECOMMENDATION 1

In examining the issues concerning the POQA provisions, it was noted that the present form of the Code (as available at the Queensland Parliament's website) does not make detailed reference to these provisions and the impact they may have on members' ability to transact business with state entities. The Commission understands that the MEPPC is in the process of updating the Code, including updating references to obligations now dealt with by the POQA. As the POQA has impacted significantly on the types of transactions with state entities in which members can involve themselves, it would be of assistance to members and the public service for the Code to clearly state the effect of the current provisions and the changes in exemptions. Accordingly, the Commission recommends:

- 1. That the section of the Code of Ethical Standards of the Legislative Assembly of Queensland that deals with the rules relating to members dealing with executive government be updated; and that detailed reference be made to the relevant provisions of the POQA and the way in which these have changed the types of transactions that are prohibited.**

## STANDING ORDERS

The Code notes that the Queensland Parliament follows the Westminster tradition in requiring members to declare their financial interests in any matters before the House. The Code notes that the parliament 'operates on the principle that transparency is, in most cases, the best safeguard against conflicts of interest'. It makes reference to the 'long established rule of Members not voting on certain types of questions in which they have a direct pecuniary interest'. In this respect, SO 158 states that members are not to vote in divisions upon a question (not being a matter of public policy) in which they have a direct pecuniary interest not held in common with the rest of the subjects of the Crown. SO 158A requires declarations of pecuniary interests in debates and other proceedings; it is wider than SO 158, as it requires the declaration of any pecuniary interest.

SO 203 was also raised during the CMC investigation. It requires 'Committee members' to disclose to the committee any conflict of interest the member may have in relation to matters before the committee. In light of the mining interests held by Hardway and Hamcor, Mr Hayward was asked if he had disclosed any possible conflicts to meetings of the ministerial legislative committees responsible for, among other areas, mining. Mr Hayward responded that he considered that SO 203 was of no application to such committees (also known as 'party' or 'caucus' committees) and was of application only to parliamentary committees such as the PAC or the MEPPC.

## THE PARLIAMENTARY REGISTER OF MEMBERS' INTERESTS

The Queensland Parliament first established an ongoing Register by resolution in 1989. The initial resolution has been amended on several occasions since then. The Code states:

It is the responsibility of each member to conscientiously comply with the requirements of the Registers of Members' and Related Persons' Interests. A member who knowingly fails to comply with the requirements contained in the registers commits a contempt of Parliament.

The purpose of the disclosure requirements in the Register of Members' Interests is to place on the public record any pecuniary or other interests which may give rise to a conflict of interest, or a perception of a conflict of interest. Public disclosure by members seeks to provide information which might be thought to affect a member's conduct as a member, or influence their speeches or votes in Parliament. In summary, the public declaration of interests provides some basis upon which the integrity of members may be judged.

Members of the Legislative Assembly are subject to stringent public disclosure obligations under resolutions of the House. The members' interests resolution provides for a Register of Members' Interests and a Register of Related Persons' Interests.

As can be noted, the resolution requires that members also disclose relevant interests of related individuals (for example a spouse or dependent person). Changes in interests must be notified within one month of the member becoming aware of the change, and members must submit an annual statement. Annual statements about the content of each member's register (but not those of related individuals) are tabled in parliament. The Register itself is compiled and kept by The Clerk, as Registrar. It is accessible to the public.

The matters that must be disclosed are categorised, and include:

- (a) shareholdings or controlling interests in shares or companies
- (b) positions held in companies
- (c) beneficial interests in trusts
- (d) trusteeships
- (e) partnerships
- (f) real estate
- (g) liabilities
- (h) debentures
- (i) savings and investments
- (j) gifts
- (k) sponsored travel or accommodation
- (l) other income
- (m) other assets
- (n) membership of organisations and financial contributions to organisations
- (o) potential and apparent conflicts of interest.

The Code provides that a knowing (as opposed to inadvertent) failure by a member to provide a statement of interests to the Registrar or to notify a change in details, or the knowing provision of a statement which is false, incomplete or misleading in a material particular, amounts to a contempt of the parliament. The complaints procedure laid down in the Code involves the referral of relevant matters to the Speaker and the MEPPC.

Investigators met with The Clerk during the investigation, in order to inspect the Register and the Related Persons' Register entries made by Mr Hayward for the relevant parliaments, and to discuss and understand the requirements relating to those registers and their keeping. Mr Hayward was also questioned about these issues. He noted that he had spoken about the circumstances of the company Hamcor with the previous Clerk, and as a result he had specified in his entries that the company was controlled by his father and brother.



## THE LAND TRANSACTIONS

### THE ALLEGATIONS

The initial *Courier-Mail* article stated that Mr Hayward was involved in selling a block of Industry Department land to Hamcor for Binary Chemicals' factory at the Narangba Industrial Estate while he was the Industry Minister.

A later article referred to the existence of correspondence establishing that in 1996 Mr Hayward had personally phoned a public servant, Mr Maurice Harvey (then State Industries Properties Manager), about buying other land in the estate for Binary Chemicals. Reference was made to Mr Armstrong as being the other half-owner of Binary Chemicals, the purchase of land by that company for \$192 000 and to Hamcor holding shares in Binary Chemicals and Crestnut Products. Another article suggested that the \$192 000 purchase price for this land was 'cheap', as another block worth \$330 000 had originally been sought. However, this article also noted Mr Hayward's claim that the land was purchased at 'market value', as well as advice from the Hon. Anna Bligh MP, then Acting Minister for State Development. She stated that the value of the specific land was affected by its unusual shape and the chance that it could become landlocked by a proposed transport corridor, and advised that the sale had been finalised during the term of the Borbidge Government.

There was also mention of a disclosure being made to Cabinet by Mr Hayward at the time of the first purchase of land at Narangba and of Crown Law advice being sought.

A further report noted confirmation by Mr Armstrong that Binary Chemicals was seeking to expand on a third block of land near its factory. As noted, DSD alerted the CMC during the investigation to a current contract of sale between the minister and Hamcor and Mr Armstrong, for a third block of land in the estate.

The CMC determined to investigate the circumstances surrounding these three land transactions.

### THE INDUSTRY LOCATION SCHEME AND THE PROPERTY SERVICES GROUP

The DSD administers an Industry Location Scheme (ILS), which is described as 'one component in a suite of assistance measures available to business and industry'. Its rationale (as stated in the DSD information paper *Outline of the ILS*) is:

... to ensure business and industry is able to obtain appropriately zoned and serviced land at competitive prices to meet Queensland's economic and social objectives.

This is achieved by focusing on maximising the contribution of the private sector property market.

Intervention is only considered when there is a failure in strategic planning processes to preserve land which is essential to future economic development or when the private sector fails to meet the immediate market needs for economic development.

The ILS is also required to deal rationally with the existing property portfolio. This is done [in part] by selling all existing holdings which do not satisfy the criteria for intervention ...

The role of the ILS does not sustain a purely commercial operation providing a commercial return because it focuses on market gaps and planning failures ...

However, the ILS strives to be more commercial in its orientation and is not a vehicle to provide financial incentives. Land and buildings are sold and leased on commercial terms.

The ILS delivers two services to achieve its goal: Planning and Information Services and Property Services. The latter services are delivered by the Property Services Group (PSG), which is a specialist area within the DSD. Mr Maurice Harvey, who was mentioned in some of the *Courier-Mail* articles, is the Director of the PSG and held that position (or equivalent ones) at all times relevant to the transactions investigated by the CMC.

The PSG is responsible for managing the property portfolio held by the ILS. This is done, in part, through the sale of freehold land to eligible industries. Eligibility is determined by criteria contained within Land Management Plans. Clients who are eligible under such criteria 'are able to purchase land at fair market value'.

The information paper *Outline of the ILS* also states:

Sales are executed on standard commercial contracts for sale of land and require minimum application details. Due diligence investigations are limited to establishing the eligibility of the industry and the bona fides of the applicant's intention.

Relevant details of the ILS Property Services are further explained in the DSD's 'Guidelines and application form for purchase of PSG land'. The current version of that document includes the following:

The primary clients of the ILS, who are eligible for provision of freehold land, generally have the potential to provide long-term economic growth to Queensland. They are expected to be new and expanding industries involved in manufacturing, processing, reprocessing and ancillary activities and are generally exporting or directly competing with imports. These clients have access to freehold land on a non-competitive basis.

The following general 'eligibility criteria' are provided, as the basis against which applications are currently assessed:

- the merits of the proposed project
- the preferred development of the estate
- the existing land use definitions
- local government planning requirements, e.g. conditions of approval
- consistency with other industries located on the estate
- compatibility of land uses within and adjacent to the estate
- adequate site coverage.

Sales of land are conducted on a cash-only basis and subject to approval of the relevant proposal by the responsible local council. Other requirements, such as any involving the Environmental Protection Agency, must also be met. PSG will provide an indicative purchase price at the time of initial discussions with a potential purchaser. Land is not to be sold with a view to the owner leasing it or on-selling it speculatively; undertakings are required to the effect that the occupant will use the land for the purpose specified.

The current application form is short and seeks to elicit information about the proposed utilisation of the land; the technical capability, expertise and experience of the proponent; and the intentions and commitment of the proponent to proceed with the proposed development. The form itself suggests it

is preferable that proposals be discussed with the relevant PSG property manager before a formal application is submitted.

## **THE INDUSTRIAL DEVELOPMENT ACT 1963**

The *Industrial Development Act 1963* (Qld) is of application to the PSG's operations. Its current form provides, among other things, for the existence of a corporation named 'the Minister for Industrial Development of Queensland', with that corporation being constituted by the people who are successive Ministers for Industry. The corporation (minister) may exercise all of the powers, privileges, rights and remedies of the Crown, including all the powers of an individual; and can, for example, deal in land and enter into contracts. Under this Act the primary function of the corporation is to deal in land to facilitate the use of land for industrial purposes. The relevant minister, as this corporation, was the vendor in the three land transactions investigated by the CMC.

## **THE NARANGBA INDUSTRIAL ESTATE**

One industrial estate that is administered by the PSG is the Narangba Industrial Estate, in the Caboolture Shire on Brisbane's northside. There are two estates in South-East Queensland that are designed for 'special industries' — that is, industries that are difficult to locate because they are noxious and offensive. These are located at Narangba and Beaudesert. The Beaudesert Estate has little infrastructure; the Narangba Industrial Estate is the main option for industries in this category.

In approximate terms, the estate is bordered by the Bruce Highway and Old Gympie Road on the western side, Deception Bay Road to the north and Boundary Road to the south. Promotional material produced by the DSD states that the estate:

... offers general and special industry zoning. Available sites vary in size from 2400 m<sup>2</sup> to 3.7 hectares. Larger areas can be negotiated. Industries already operating include tanning operations, chemical manufacturing, oil recycling, 4WD coach building, timber treatment and pet food manufacturing.

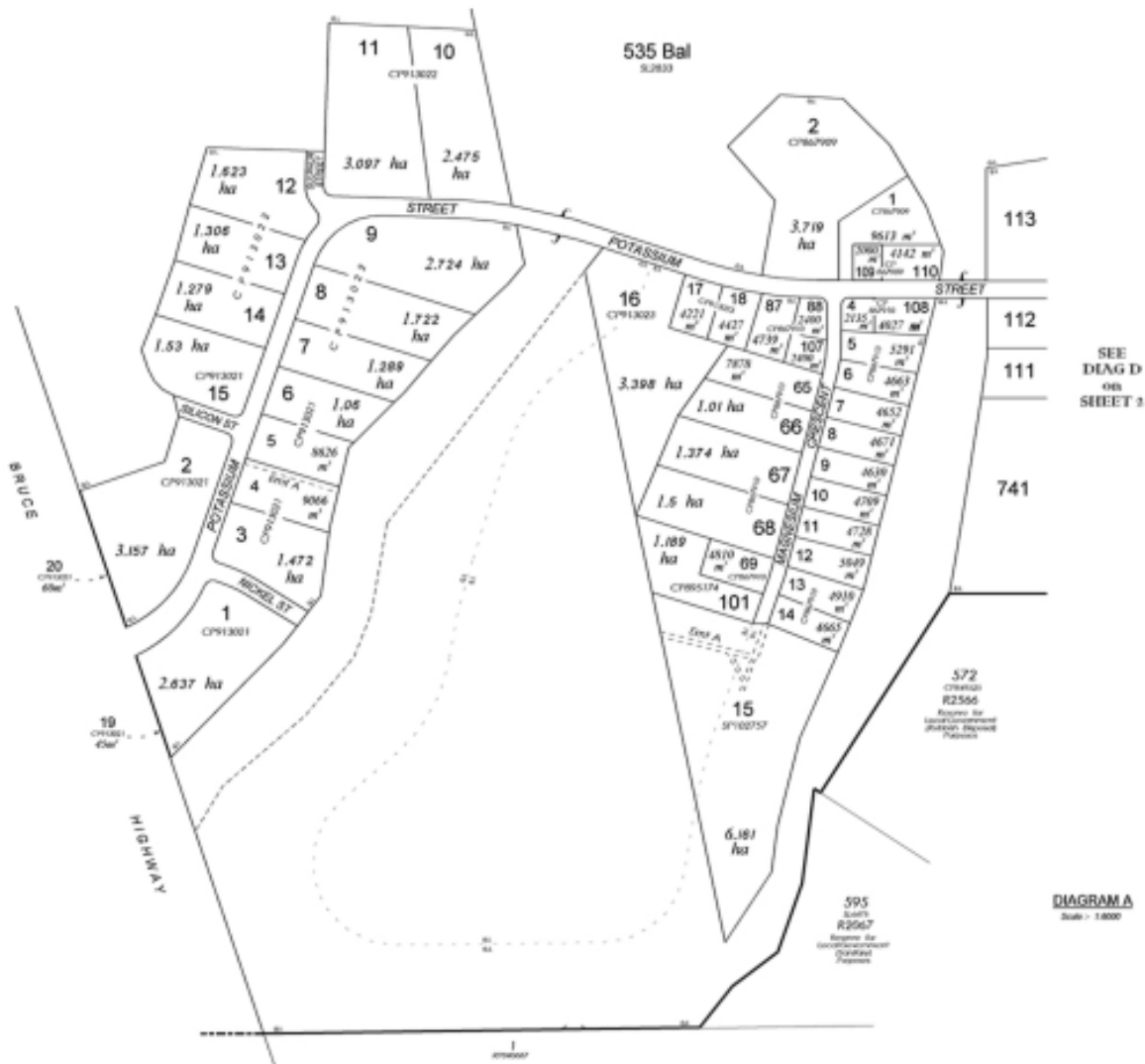
An inspection of the site established that there are many blocks of vacant land which remain available for purchase. The three land transactions examined by the CMC concerned actual or potential purchases by Mr Armstrong and Hamcor (in chronological order) of properties in the estate, situated in Magnesium Crescent and described as Lots 69, 101 and 68 (collectively referred to as 'the Binary Chemicals land') — see Figure 1 (next page).

## **GENERAL INVESTIGATIVE METHODOLOGY**

In examining the three land transactions, the CMC sought to obtain all relevant documentation and interview all relevant witnesses. The DSD's files for each sale were requested and examined. Current and former DSD officers who had any significant involvement in the sale or negotiations for each lot were identified and interviewed, as were Mr Armstrong, Mr Hayward, Mr Don Hayward and other witnesses. The estate and the relevant lots were inspected.

The above inquiries produced what might be called 'direct' evidence as to how each transaction unfolded and what role, if any, Mr Hayward played in those transactions. The recollections of each witness were explored as to how the transactions proceeded; particular attention was given to whether anyone had tried to influence an officer to act other than appropriately in the discharge of their official functions, and whether any officer did in fact act in such a way. However, given the nature of the concerns that had been raised publicly, the CMC did not limit itself to reliance on direct evidence from the primary witnesses and the file documents, but looked to test all of that evidence against other possible scenarios as to how official misconduct could have occurred in the handling of the sales. It was thought, for instance, that if any improper

# NARANGBA INDUSTRIAL ESTATE



**Figure 1.** Map of the relevant part of the Narangba Industrial Estate, depicting Magnesium Crescent and Lots 68, 69 and 101 (Source: DSD)

influence had been applied, or any corrupt or otherwise improper arrangement had been entered into, this might be disclosed through evidence of dishonesty or partiality in one or more of the following situations:

- favourable pricing arrangements being applied to the Binary Chemicals land
- fast-tracking of any purchase application, or other displays of favouritism being advanced to the purchasers (e.g. holding back prime land for them, to the exclusion of other interested, potential buyers), or
- inadequate scrutiny of any purchase application for the Binary Chemicals land, in terms of applying the eligibility criteria and making recommendations for sale.

Accordingly, in addition to comprehensively examining the files and the primary witnesses to detect whether any evidence of official misconduct existed, the CMC’s investigation looked beyond those evidentiary sources. For instance, it sought and examined detailed information about the history of transactions on



the estate, and the valuations attached to many lots. The CMC also conducted inquiries into other transactions in the estate, which were considered to be useful for comparative purposes.

## **LOT 69: THE FIRST LAND PURCHASE**

The first purchase of Binary Chemicals land in the estate involved Lot 69 on Crown Plan 867910 in the Parish of Redcliffe. This particular block is 4810 square metres in area.

Documentation held in the departmental files showed that in February 1995 an application for the purchase of land was lodged by Moistcliff Pty Ltd<sup>6</sup>/Binary Chemicals Pty Ltd with the Department of Business, Industry and Regional Development ('DBIRD'). The application stated that the preferred site to purchase was Lot 69, and that shareholders' funds would finance the company. The application was signed by Mr Don Hayward as director, although Mr Armstrong was nominated to be the contact person (and was the signatory of the covering letter). The application was considered, and a valuation, calculated on a per square metre basis, was attached to the land. This valuation was done by DBIRD staff and was based on values for like blocks recorded on DBIRD's LANDMASS computer system. LANDMASS is the computer system used to record valuations made at various dates for industrial land administered by DBIRD throughout Queensland.

Mr Harvey noted in the file that 'in light of the limited financial information supplied and questions of company ownership, a commercial evaluation is required'.

In March 1995 the lot was revalued by DBIRD officers, to a price some 25 per cent higher than the original valuation. In due course there was some discussion in DBIRD as to whether it was appropriate and fair, in the circumstances, for the potential purchasers to be made to pay the second and higher purchase price. Mr Harvey advocated that the valuation current at the time a purchase proposal suitable to DBIRD was received (i.e. the higher valuation) was the operative figure, which the purchasers should pay. The initial application had been received at the time the lower valuation existed; however, the proposal was evaluated by DBIRD officers, and the potential purchasers were asked to clarify the intended ownership of the land and provide a business plan before any recommendation could be made. In support of his view that the price should be fixed only at the time a suitable application was received, Mr Harvey cited some other examples where purchasers had paid increased prices due to higher valuations taking effect during purchase negotiations. The matter was eventually referred to a senior officer for adjudication and a decision was made which reflected Mr Harvey's view.

On 11 August 1995 DBIRD made a written and conditional offer to sell the land to Binary Chemicals for the higher valuation price. Among other things, the sale was to be subject to Executive Council approval of the sale. This offer was accepted by Mr Armstrong and Mr Don Hayward, under cover of a letter from 'Ken & Don Hayward, Chartered Accountants', over the hand of Mr Don Hayward. On 20 September 1995 the contract of sale was signed by Mr Armstrong and Hamcor as trustee for Hayward Trust (signed by Don and William Hayward). The vendor was Mr Hayward as the minister.

On 2 October 1995 Mr Hayward, as minister, and Mr Ron Boyle, then Director-General (now deceased), sent an explanatory memorandum to the Executive Council regarding the need to seek Executive Council approval for industrial estate sales. The memorandum related to a schedule of sales of blocks of land — some 11 lots in 8 different estates (including Lot 69). Executive Council

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6 The former name of Binary Chemicals.

approval for the sale was granted on 19 October 1995. Thereafter, the various conditions attaching to the sale were met (such as obtaining council building approval) and in July 1996 Mr Harvey sent a memorandum to the Hon. the Minister Bruce William Davidson<sup>7</sup>, requesting execution of the transfer documentation for sale of the land. The file verifies that all purchase monies were received.

## Crown Law advice

As noted, the relevant media articles referred to Crown Law advice being obtained about the purchase of this lot. On 6 October 1995 the Crown Solicitor sent a letter to the Director-General of DBIRD, entitled 'Conflict of Interest — Sale of Land'. It states, among other things, the following:

I am instructed that:

... the Minister for the time being charged with the administration of the Industrial Development Act ('the Minister') is about to sign a contract for the sale of certain land to Terrence Arthur Armstrong and Hamcor Pty Ltd as Trustee for Hayward Trust;

Donald Charles Hayward, a director of Hamcor Pty Ltd, is a brother of the Minister;

the Minister has no interest in Hayward Trust nor in any business activities of Donald Charles Hayward or any person, natural or otherwise, involved in the purchase of the land;

the proposal for the purchase of the land was made in the ordinary course and at a time when another person was the relevant Minister;

the proposal was processed in the ordinary course;

there was a change in the Ministry and another person became the relevant Minister;

consideration of the proposal continued in the ordinary course;

there was a further change in the Ministry and the present Minister, Mr Hayward, became the relevant Minister<sup>8</sup>;

processing of the proposal continued in the ordinary course;

as the process approached its conclusion, the relationship of a director of one of the purchasers with the present Minister was discovered.

The advice essentially concludes that as matter of reality no conflict exists, but recommends some steps be taken, because '[Q]uestions of conflict have as much to do with appearance as they do with reality ...' It further states:

On my instructions as set out in this letter, the Minister has done nothing which would justify any accusation of improper conduct in this matter. Mindful, however, of the difficulty which attends rebutting even baseless accusations, it seems to me that the Minister should record details of the transaction in the register kept by the Registrar of Members' Interests and should report all the facts to the Premier who might require the facts to be reported to Cabinet.

Two main points of interest arose on the face of the advice. The first was a question about the accuracy of the instructions apparently given to Crown Law on the point of Mr Hayward having 'no interest in Hayward Trust nor in any business activities of Donald Charles Hayward or any person, natural or otherwise, involved in the purchase of the land'. It is trite to note that the utility of any legal advice depends significantly on the accuracy of the instructions conveyed to the adviser.

Secondly, an issue arose as to whether the advice given by Crown Law, having been sought because of Mr Hayward's dual roles as minister/vendor and as a

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<sup>7</sup> of the then Coalition Government.

<sup>8</sup> Hansard indicates Mr Hayward became the Minister on 31 July 1995.

person also associated with the parties, was in fact acted upon by Mr Hayward. In this respect, the specific land transaction was not disclosed in Mr Hayward's Register entries for the relevant parliament.

There was no specific indication in the advice as to who provided the specific instructions to Crown Law, other than the forwarding of the letter for the attention of L1, a former DBIRD officer who at the time was the Department's Freedom of Information Coordinator and who played a coordinating role in DBIRD's requests for and receipt of Crown Law advice. The advice also refers to 'you' (i.e. the Director-General) as addressee, as being moved to seek the advice. As noted, Mr Ron Boyle was the Director-General of DBIRD at the time. He is now deceased. The CMC's inquiries established that a former senior DBIRD officer, L2, acted for Mr Boyle between 18 September and 11 October 1995. L2 was located and interviewed but had no specific recollection of being involved in the seeking of Crown Law advice on the issue.

Accordingly Crown Law was requested to assist. The Crown Solicitor in turn provided some information about the advice and copies of file notes and other helpful material, which indicated that L1 was the primary DBIRD officer involved in providing instructions to Crown Law on the matter. There was no indication that Mr Hayward directly provided any instructions to Crown Law. L1 was interviewed and advised that she had no recollection of any contact with Mr Hayward in relation to the instructions leading to the advice. Mr Hayward was asked about the genesis of the instructions and acknowledged that he may have provided advice about his position to one of his policy officers, who may have conveyed that advice to the Director-General's office, which in turn sought the advice. He did not remember ever seeing the final advice.

### **The witnesses**

Mr Harvey was interviewed. He has been employed in the state public sector for many years. In 1988 he transferred to the department which is now the DSD. Since 1988 he has held the position of Manager, Properties. This function is now a corporatised entity within the DSD and his position title is now Director, PSG. Mr Harvey's PSG consists of 12 staff. Approximately 98 per cent of land transactions administered by his group are freehold land sales (at commercial values).

He advised that the estate was established by the then state Department of Manufacturing and Commerce in the 1960s. In those times Crown land was set aside for industry, as was the case with this estate. The current system for industrial estates is that the PSG identifies appropriate land for industry. This land is purchased from the Department of Natural Resources and Mines (DNRM), developed and then sold. Under the previous system (applicable to the sale of lots 69 and 101), the PSG had to request the permission of the Minister for Lands to transfer ownership of lands subject to Executive Council approval. The current system (applicable to lot 68) allows the Minister for State Development to sell land without other ministerial or Executive Council approval. Land sales, however, are subject to local council building approval. This is because the PSG seeks to ensure the land is used for productive industrial purposes, and does not want land traders to exploit the system (i.e. by buying and holding vacant land, for the purpose of later on-selling it, rather than developing the land for an industrial purpose).

Mr Harvey first met Mr Hayward when Mr Hayward was the minister, in approximately 1995. Mr Harvey said that, as with all ministers, he developed a good professional working relationship, as the ministers ultimately authorise dealings with land administered by the PSG. He recalled that Mr Hayward (when his minister) telephoned him about his brother, Mr Don Hayward, going into business with Mr Armstrong and seeking to purchase industrial land. Mr Harvey recalled that Mr Hayward mentioned to him that as the minister he was the vendor of the land, and there could be a conflict of interest. He was aware

that Mr Hayward wanted advice from Crown Law to ensure that any conflict of interest was properly managed. Mr Harvey and his group were not involved in seeking this advice. Mr Harvey also stated that he would not have allowed the sale of the block to be submitted to the Executive Council unless the possible conflict of interest had been settled by the advice of the Crown Solicitor.

Mr Harvey estimated that 98 per cent of his dealings with Binary Chemicals had been with Mr Armstrong, as he was the main operational director of the company. He stated he had never been influenced by Mr Hayward to provide state land to Mr Hayward's family members or associates at a non-commercial price or subject to less onerous conditions than those attached to other like land sales. Mr Harvey had received no personal benefits from Mr Hayward and had not met with him in a private capacity outside work hours.

Mr Harvey was questioned at length about how the valuation of the lot was arrived at. The CMC noted that there was no one document on the file clearly showing the calculations that arrived at the final valuation figure. Mr Harvey was requested to perform a recalculation of his methodology to allow the process to be verified by the CMC. Mr Harvey subsequently provided some explanatory material.

Mr Harvey was also asked whether DSD sought to obtain a copy of the Hayward Trust deed, in order to ascertain the named beneficiaries of the trust, given that Hamcor was purchasing its half-share of the lot in its capacity as trustee for Hayward Trust. The CMC was advised that DSD does not presently seek to examine trust deeds.

Other DBIRD officers involved in the sale process were located and interviewed. As at February 1995 L3 was the Regional Director of the Southern Area for DBIRD. From the file, L3 was the principal officer advocating that Binary Chemicals/Hamcor should be charged the initial, lower valuation as the purchase price. L3 stated that, while he could not remember the actual details of what prompted his concerns about the sale price, he thought his query and concerns came about at his own instigation and not as a result of any representative of Binary Chemicals expressing concerns to him. He was definite that Mr Hayward did not contact him regarding the sale price; had any such contact occurred, it would have stuck in his mind. The file reveals that L3's position on the sale price was apparently motivated by the view that the potential purchasers might have been unfairly disadvantaged due to the time taken by DBIRD to process the application.

L4 was a valuer involved in the valuation processes for Lot 69. He explained that process and noted that between 1994 and 1995 some of the blocks on the estate remained static in value. The ones that did rise in value were the smaller blocks (around half to one hectare in size). He could not remember the exact relativities, some seven years on. He would have re-valued the whole estate at the time.

L4's attention was drawn to the fact that, at the time Lot 69 was being sold to Mr Armstrong and Hamcor, Lot 87 was also under negotiation, to be sold to another entity. L4 observed that there was relativity between these two lots, in terms of similar topography, good access and exposure, services and the like. L4 observed that, while there were only minor differences in the two blocks, in his view Lot 87 would be the better block because it was located in Potassium Street, as opposed to Lot 69 which was located down the end of a cul-de-sac. He also thought Lot 87 was more level. The blocks were valued at identical values per square metre.

L4 could not recall whether he knew, at the time that he did the revaluation for Lot 69, that there were negotiations for its sale. At the time he was not aware that Mr Hayward might have had an interest in Lot 69 and, to the best of his knowledge, no-one attempted to interfere in the valuation process relating to Lot

69. He was never approached by anyone, such as a Member of Parliament or a work colleague, to artificially value the land down.

Other officers involved in the sale process stated that they had no direct involvement with Mr Hayward during the course of the sale of Lot 69, and that at no stage was any pressure applied, or approaches made, by Mr Hayward or anyone else concerning the sale of this block.

Mr Hayward, his brother and Mr Armstrong were questioned about this and the other land sales. Mr Hayward stated he was not involved in the negotiations for the sale of Lot 69 and its valuation; however, he acknowledged that he was the minister at the time and was therefore responsible for the administration of industrial estates in Queensland. He advised that his brother and Mr Armstrong handled the negotiations.

Mr Hayward was aware of the negotiations for the purchase of the land while he was the responsible minister. He stated:

I was aware of what was happening while I was the minister because my brother tells me and I simply have no recollection, but he tells me that he thought that I had sought Crown Law advice, as the minister, to see whether or not I could, I was able to sign the transaction. As it turned out obviously I didn't sign it<sup>9</sup>, anyway, but he was of the opinion that I'd sought some sort of Crown Law advice. I have recollection of that.

Mr Hayward also recalled that he mentioned the transaction at a Cabinet meeting. He stated:

Well, can I say my recollection is that what happened is things come up which have to go to Governor-in-Council or something like that. Do you know what I'm saying? And this would've come up and I would've said I think I should tell everybody this land is being purchased by a company owned by my brother and his partner, his business partner.

Mr Hayward asserted that he sought no preference for his family in the purchase of land and no preference was given.

## Conclusions re Lot 69

The investigation found no evidence of any improper relationship between any DBIRD officer and Mr Hayward, or anyone connected with him. There was also no evidence of any corrupt conduct by any person.

The issue as to which valuation should apply to the ultimate purchase price for the lot was perhaps one where some favour could have been extended, if it was intended to advantage Mr Hayward or his associates, or if any pressure had been applied to the DBIRD officers involved in that decision-making process. As noted, the issue was resolved with the purchasers having to pay the higher of the two possible prices. That price was calculated on a basis that was also applied to a comparable lot under negotiation for sale around the same time. That is, it appears from our investigations that the valuation attaching to Lot 69 was calculated on the same basis as that attaching to a comparable lot. Comparatively, there is no evidence to support a view that Lot 69 was obtained at a 'cheap' or otherwise advantageous price. There is no evidence that any other purchaser was interested in the lot at the time and that Mr Armstrong and Hamcor were consequently favoured. As noted above, there was an abundance of land available.

The investigation disclosed no evidence that DBIRD's processes were not followed in eventually approving the sale. Rather, DBIRD embarked on a detailed commercial assessment of Binary Chemicals' proposed operations. DBIRD's insistence on this resulted in the negotiations stretching out over some

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9 Mr Hayward was here referring to the transfer document, rather than the contract of sale.

months, with the lot being revalued and the higher sale price being charged. All sale conditions were met before the transaction settled.

There is no evidence to support a view that any person engaged in official misconduct in relation to this transaction.

Notwithstanding that conclusion, it is considered that on any objective and reasonable basis it could only be concluded that Mr Hayward had a close connection with Hamcor's business interests. Irrespective of the view taken about whether there was any direct financial stake, the simple facts are that it was a matter of public record that Mr Hayward's brother and father were the directors of Hamcor. The other purchaser, Mr Armstrong, was a close friend. Mr Hayward himself was a director of Hamcor prior to the time of the negotiations for the land. Hamcor exists to act as trustee for the Hayward family trust, of which Mr Hayward was a named beneficiary and the holder of a loan or equity balance at the time, and which he had declared in the Register. This was clearly not a case where Mr Hayward was in the position of a person entirely disinterested in the nature and outcome of Hamcor's dealings with the government. While this situation does not in itself necessarily suggest any official misconduct, and there was no evidence of any such official misconduct discovered during our investigation, the transaction is illustrative of the perceptions and concerns that may readily arise when a member has dealings with the executive government that may also involve a personal or financial element.

These issues are discussed at further length in Chapter 8 of this report, which deals in more detail with the issues of disclosure and documentation of such interests.

## **LOT 101: THE SECOND LAND PURCHASE**

The second purchase of Binary Chemicals land in the estate involved Lot 101 on Crown Plan 895174 in the Parish of Redcliffe. This particular block is also situated in Magnesium Crescent and adjoins both Lots 69 and 68. It is 1.189 hectares in size.

The relevant departmental file concerning this purchase commenced after Mr Hayward made a phone call to Mr Harvey in or around August 1996. Mr Harvey recalled that Mr Hayward telephoned him and said words to the effect 'They want to expand,' in reference to Binary Chemicals. Mr Hayward was asked whether he was involved in the negotiations for the sale of the land. He advised that he was an opposition member in parliament at that time and that he had contacted a departmental officer. He stated, in effect, that he would have rung Mr Harvey because he regarded him as a 'mate'. Mr Hayward said he knew Mr Harvey from his time as the minister. Mr Hayward stated he had made representations on behalf of other constituents looking at moving to the estate, and provided an example involving another company.

In any event, as a result of the conversation Mr Harvey sent a facsimile to Mr Hayward, attaching a plan of the estate that focused on Magnesium Crescent. Mr Harvey recalled that he was advised by Mr Hayward that Binary Chemicals was interested in Lot 68 (the block adjoining Lot 69 to the north). He encouraged Mr Hayward to consider an alternative block at the back (west) of Lot 69, which was by then in use by Binary Chemicals. Mr Harvey said he made this suggestion because at the time the Department of Main Roads (DMR) proposed to build an arterial road at the back of the blocks fronting Magnesium Crescent, and as a result some of the land otherwise earmarked for sale in the estate might become limited in its possible use. In particular, Mr Harvey was concerned that a land area at the back of Lot 69 would in effect become 'landlocked' by the proposed arterial road, unless it could be used by Binary Chemicals or any purchaser of Lot 70 (the block immediately adjoining Lot 69 to the south).

Mr Harvey advised that DSD seeks to allocate industrial land to companies that will use approximately 50 per cent of the land area for buildings to be constructed on the site. This is because the department does not want land to be 'wasted', in the sense of most of the land not being used for a productive industrial purpose. In the case of the alternative site, Mr Harvey thought the proposed building size was appropriate to the size of the amalgamated block but, in his view, Lot 68 was too large to site the proposed buildings at that time. This further supported his view that the amalgamated block was more appropriate to the needs of Binary Chemicals. The basis for Mr Harvey's suggestion concerning the purchase of the amalgamated block was explained to Mr Hayward at the time.

In October 1996 a meeting was held between DSD officers and Mr Armstrong, at which time Mr Harvey advised that the department would be prepared to offer Binary Chemicals, subject to application, a site comprising Lot 70 and 8000 square metres to the rear of this lot as an alternative to Lot 68. Correspondence followed and in November 1996 Mr Don Hayward forwarded a letter indicating that the offer would be accepted. An application was subsequently submitted. As Binary Chemicals was known to DSD, a full commercial assessment was not required.

In due course DMR provided a survey plan for the proposed arterial corridor and in March 1997 a deed of grant was issued, after the Department of Natural Resources had compiled a survey plan to amalgamate Lot 70 on CP867910 and the area on CP912895 to the west of Lots 69 and 70 and bordered by the proposed DMR corridor. The new lot became Lot 101. A contract of sale was executed in August 1997 and Governor-in-Council approval obtained. The purchasers of the land were again Mr Armstrong and Hamcor as trustee for Hayward Trust. The sale settled in November 1997.

### **The valuation**

Mr Harvey explained to the CMC the potential cost benefit to the purchasers of the proposed site (Lot 101), in that it was valued at a rate of approximately 30 per cent less per square metre than the valuation then attaching to Lot 68. This, coupled with its smaller size compared to Lot 68, made it a cheaper purchasing proposition. The valuation attaching to this second land parcel was less than half the valuation rate at which Lot 69 (the first land) had been purchased; and this second land parcel was significantly larger than Lot 69.

Again, the investigation identified that there was no one document on the departmental file clearly showing the calculations that arrived at the sale valuation figure.

L4 was again involved in the original valuation exercise, with Mr Harvey. He noted that the topography of the land was such that the majority of land was to the back of the block, and it was not ideal in shape, in terms of its attractiveness to industry purchasers. The lot was also at the end of a cul-de-sac. He explained the valuation process and noted the adoption of what was effectively a 'sliding scale', based on lower valuations per square metre for larger lots. He cited another lot in the estate, in terms of a point of reference, which was of a hatchet shape (Lot 1). L4 also noted that, while the valuations attaching to adjoining lots were relevant, the sale price of Lot 69 would not have been taken into consideration as it was a significantly smaller block. L4 advised that there was no pressure ever placed on him to undervalue the land because it was to be sold to Binary Chemicals.

Another landholder in the estate, L5, was interviewed during the investigation. This person was concerned that Binary Chemicals had been treated favourably in the purchase of Lot 101. L5 had made some FOI (freedom of information) requests and had obtained one departmental document that had a specific valuation figure noted for Lot 101, which was markedly less than the rate paid

by L5 for his block. The CMC's investigation established that this figure, as noted on the document held by L5, was not the valuation upon which the sale of Lot 101 was transacted. The true sale price valuation was in fact nearly four times the figure noted on that document.

In order to further test the validity of the valuation attached to Lot 101, a comparative analysis was made with the value of another lot on the estate. The size of both lots is similar. Both lots are developed to the same standard (i.e. power, sewer, telephone, town water, and kerb and channelling). Both lots are of similar topography and in close proximity to each other. Lot 101 is in Magnesium Crescent, Narangba. The other Lot is in Potassium Street near the intersection of that street with Magnesium Crescent. Both lots are similarly irregularly shaped. Negotiations for the sale of the comparative lot commenced in November 1996 and its valuation was reviewed by the department in October 1996. That valuation was for a similar figure, being only \$1 per square metre less than the valuation for Lot 101.

The CMC also examined the rationale said to underpin the department's actions in amalgamating the land parcels to create Lot 101, in order to see whether there was any evidence suggesting that the process might have been embarked upon to improperly advantage Binary Chemicals.

The estate has been established for some considerable time and, as noted above, land sales have been slow. The original development plans for the estate show that it was to be developed in stages. Stage 5 A1, which established Lots 4–14, 65–70, 87, 88, 107 and 108, was developed in April 1994 (Crown Plan 867910). Essentially, this development created the Magnesium Crescent precinct as it is today. The development of further land to the south of this precinct was to be undertaken in Stage 5 A2.

The development plan shows that further lots of industrial land were to be developed to the south of Lot 70 and a considerable number of lots were to be developed to the west of Lots 69 and 70. Access to these lots was to be had from a street joining Magnesium Crescent, to the south of Lot 70.

At the time of development of the lots in the Magnesium Crescent precinct DSD did not know that the Department of Main Roads (DMR) would later plan to construct a North–South Transport Corridor (NSTC) through the estate. Survey plans provided by DMR show that the proposed NSTC would traverse the estate in an approximately north–south direction, 55 metres to the west of Lot 70. For practical purposes the proposed NSTC put an end to the development of further lots of industrial land to the west and south of Lot 70 as intended in the original development plans.

Negotiations for the sale of Lot 70 and the 8000 square metres of undeveloped land to the west of Lots 69 and 70 (Lot 101 did not exist at this time) to Binary Chemicals commenced in late 1996. Departmental records show that, before 31 October 1996, DSD entered into negotiations with the Caboolture Shire Council to sell to it the parcel of land, comprising approximately 5.7 hectares, situated at the end of the constructed segment of Magnesium Crescent. This is the parcel of land immediately to the south of Lots 70 and 14. The proposed boundaries of this unsurveyed parcel of land were the boundaries of Lots 14 and 70 to the north, the boundary of the proposed NSTC to the west and the boundary of a drainage reserve to the east. This parcel of undeveloped land was surveyed and is now represented by Lot 15 on SP 102757. It was ultimately sold to the Caboolture Shire Council on 22 May 1998.

The Caboolture Shire Council has granted an easement to Beta Net Ltd for pipeline purposes across Lot 15. This easement is described in SP 117228. The easement is approximately 45 metres south of the boundary of Lot 101 and was never intended to provide access to the 8000 square metres of undeveloped land to the west of Lots 69 and 70.



From the CMC's investigations, it appears that there were three options open to DSD to dispose of the undeveloped land to the west of Lots 69 and 70 after the transport corridor was proposed:

- to combine the undeveloped land with Lot 68
- to combine the undeveloped land with Lot 70, or
- to combine the undeveloped land with the parcel of undeveloped land (Lot 15) that was sold to the Caboolture Shire Council.

By combining the undeveloped land with one of the developed blocks, the department effectively developed the land at a minimal cost. The actual cost of amalgamating the undeveloped land with Lot 70 was less than \$1000, being the cost of the survey of Lot 101.

The only other possible course of action open to DSD was to develop the land. The department advised that this would include:

- consultation with the local authority, adjoining landholders and DMR
- the costing of earthworks and road construction
- the connection of services (power, water, drainage and sewerage)
- ancillary expenses such as survey fees, consultancy fees, and council fees and charges.

The cost of these additional works would then have to be recovered when the newly developed lot was sold.

As noted, the evidence gathered during the investigation indicates that the department sold Lot 101 to Binary Chemicals at the prevailing market value. As the demand for industrial land on the estate was slow (there are still lots in the vicinity of 8000 square metres available on the estate) it is considered that the evidence supports the view that incurring the costs associated with the development of a further lot of this size could not have been commercially justified.

### **Conclusions re Lot 101**

There was no evidence that Mr Hayward improperly sought to influence any person in relation to this sale. The evidence indicates that his involvement in the sale negotiations went no further than the initial contact with Mr Harvey to express Binary Chemicals' interest in acquiring more land for the purposes of expansion. CMC inquiries have verified that the land that now comprises Lot 101 was sold at market value.

On the evidence, there is no basis for suspecting that the department's decision to amalgamate the undeveloped land with Lot 70, at a time when an interested buyer (Binary Chemicals) was available, was in any way designed to improperly advantage Binary Chemicals or Mr Hayward.

There is no evidence to support a view that any person engaged in official misconduct in relation to this transaction.

Clearly, the fact that the initial contact with DSD came through Mr Hayward, in circumstances where departmental officers had had previous dealings with Mr Armstrong particularly, again evidences Mr Hayward's ongoing interest and links with the business of Binary Chemicals.

## **LOT 68: THE THIRD (PROPOSED) PURCHASE**

Lot 68 on Crown Plan 867910 adjoins Lot 69 to the north.

The CMC's investigations indicated that the initial discussions concerning Binary Chemicals' wish to purchase this lot commenced in April 2003 and involved Mr

Armstrong. The lot was approved for sale (to Mr Armstrong and Hamcor as trustee for Hayward Trust) in June 2003. A contract of sale was executed but the sale has not yet settled. The CMC's understanding is that this delay is due to the current investigation. The contract of sale was dated 1 July 2003.

As with the previous two blocks of land, there was no one document on the departmental file clearly showing the calculations that arrived at the sale price.

The departmental file included a copy of a contract of sale for the land between the minister and Binary Chemicals. The departmental file copy of the covering letter included a handwritten notation signed by a DSD officer, L6, dated 11 June 2003. It states:

Ken Haywood [sic] called to say the C of S should be in the name — Hamcor Pty Ltd as trustee for the Hayward Trust and Terrence Arthur Armstrong, as tenants in common in equal shares. [L7]<sup>10</sup> offered no objection.

The contract of sale was altered to reflect the correct purchaser details.

During his initial interview, Mr Hayward was asked whether he or any of his family's business interests had purchased any other state government land. He advised that the family might be purchasing another block in the estate. He was asked, 'Have you had any involvement with it,' and replied, 'Not that I can recall'. In his second interview he accepted that he had made the above call to the DSD to correct the contract details.

The public servants involved in the sale negotiations denied that anyone sought to improperly influence them in any way. The CMC was advised that the sale price of the land was the same as that which any other purchaser would have been charged.

L7 recalled having another discussion with Mr Hayward in relation to another company wishing to purchase land in the estate. L7 had met with these prospective purchasers and their local member at Parliament House, and met there also with Mr Hayward.

## The valuation

Again, in order to properly evaluate this transaction, in addition to conducting interviews with relevant witnesses we performed a comparative analysis, using a nearby lot which is presently the subject of negotiations for sale.

Both lots are of comparable size, with Lot 68 comprising 1.5 hectares and the other lot 1.01 hectares. Both lots are developed to the same standard and are of similar topography. Both front onto Magnesium Street and have identical access and exposure. The contract of sale for Lot 68 was entered into on 1 July 2003. Negotiations for the sale of the other lot commenced in May 2003. The values of both lots had been reviewed by the department on 18 August 1994 and 14 July 1995, in October 1996 and in September 1997.

The analysis of the sale of the two lots established the following:

- The overall value of industrial land (unoccupied) within the Narangba Industrial Estate during the period August 1994 to July 1995 increased by an average of 18.8 per cent.
- The value of the comparative lot increased by 18.2 per cent. This increase in value closely mirrored the average rise in land values across the estate.
- The value of Lot 68 increased by 41.9 per cent. This was the second-largest increase in land valuation for lots on the estate.
- These rises in land values valued Lot 68 and the comparative lot equally in terms of their value per square metre.

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10 Another DSD officer in the PSG.

- In 1997 both lots were revalued by DSD and, although land values across the estate rose on average by 10.9 per cent, the land values on both of these lots increased by 50 per cent.
- Between 1994 and 1997 the land value of the comparative lot had increased in value by 79.3 per cent and Lot 68 had increased in value by 112 per cent.
- The cost per square metre ratio between Lot 68 and the comparative lot has remained steady during the relevant period.

### **Conclusions re Lot 68**

No evidence was discovered to support a view that the proposed sale of Lot 68 will not be effected at market value, or that the sale negotiations and process otherwise have involved official misconduct by any person.

The issue of whether or not Mr Hayward has an indirect interest in this contract with an entity of the state, and the question of a possible contravention of section 71(1) of the POQA and any attendant consequences, including the circumstances in which the Legislative Assembly may disregard an event that may cause the seat of a member to become vacant (under s. 73 of the Act), has been addressed in Chapter 3 above.

## **OTHER LAND TRANSACTIONS**

### **Crestnut Products**

In light of Mr Hayward's current directorship in Crestnut Products and the parcel of shares held in it by Hamcor, the CMC collected and examined the files relating to the purchase of industrial land by Crestnut Products from government entities. There was no evidence that Mr Hayward had any involvement in these purchases, which occurred some years prior to his directorship in that company and his and Hamcor's share ownership.

### **Purchase in the estate by a third party**

During the investigation a concern was raised with the CMC by one of the witnesses interviewed, to the effect that Mr Hayward had assisted another business, now located on the estate, to obtain estate land at a 'cheap' price. It was also suggested that a former employee of this business had become aware of this conduct and had used that information to extract a highly favourable severance payment from his former employer.

This information was investigated by the CMC. The relevant business and the former employee were identified and interviews were conducted. Mr Hayward said he had no knowledge at all of the particular business. There is no evidence to indicate that Mr Hayward had any connection with the business at any time, that the business purchased its land at anything other than market value, or that any such information ever resulted in the business paying monies to its former employee to which this person was not entitled. There is no evidence to support the allegations that were made about Mr Hayward or this business and the Commission is satisfied they are baseless.

## **RECOMMENDATIONS 2 AND 3**

On the basis of the evidence arising from the investigation, the concern that Mr Hayward and/or people or business entities closely associated with him had been improperly advantaged in the purchase of land in the estate has not been substantiated. However, two procedural issues arose, which the Commission considers warrant further consideration.

First, the investigations regarding all three lots identified that the relevant departmental files did not contain any one document that clearly showed the calculations leading to, or the basis for, the determination of the ultimate sale price. In each transaction investigated here, the CMC was able to question relevant departmental officers about the valuation processes, and relevant explanatory material was also provided by the DSD. CMC officers also visited the DSD's offices in order to gain a better understanding of the PSG's operations, and examined information derived from the department's land valuation database (LANDMASS). However, it would have been of significant assistance if the departmental files had contained some contemporaneous material setting out the basis of the calculation of the sale price in each case. Additionally, it is thought that it would be advantageous from a record-keeping perspective for the DSD to place such material in the relevant transaction file, to ensure that such relevant information is contained in the most appropriate place for reference or audit purposes. The DSD noted that it would be an onerous task to prepare individual valuation reports for each site. In the circumstances, it is considered that the Commission's concerns could be addressed through ensuring that a copy of the relevant LANDMASS record is placed on file and acknowledged by the officer approving the sale, at the time when an agreement to sell is reached, as that record contains information about both the size of the land and its current valuation. Accordingly, the Commission recommends:

- 2. That the DSD implement measures to ensure that land sale files contain material setting out the complete basis upon which the sale price of that land is calculated.**

Secondly, it was noted that in the pre-approval stage for the first land purchase the DSD undertook a detailed commercial assessment of the intended land user, Binary Chemicals. The land was eventually purchased by the two owners of that company, Mr Armstrong and Hamcor, as trustee for Hayward Trust. However, the department's inquiries did not go to the extent of requiring production of the trust deed for Hayward Trust. Here, access to the deed at the relevant time (or access to some further detail about the trust) would have clearly brought to the department's attention the link between Mr Hayward and the co-purchaser Hamcor, as trustee for Hayward Trust, because Mr Hayward was/is a named beneficiary of that trust.

It is appreciated that the first two land transactions took place before the DSD had any responsibility in relation to the sale of state industrial land. It is also noted that there were concerns held by departmental officers, at the time of the negotiations leading to the first sale, about the fact that the intended occupier of the land was not the same as the proposed purchasers. However, the Commission has noted the guidelines and eligibility criteria that currently exist in relation to the proposed purchase of industrial land. In circumstances where the DSD is seeking to sell land to clients who fall within the category of those anticipated to 'provide long-term economic growth to Queensland', it is considered that it may be reasonable for the DSD to seek further information from potential purchasers where a trustee situation arises, in order to afford the department the best opportunity to reliably evaluate a new client. The DSD already seeks a significant amount of sensitive and commercial-in-confidence information as part of its assessment processes, such as business plans, sales figures, cash flow projections and the like. Accordingly, the Commission recommends:

- 3. That the DSD implement measures to obtain information, from any entity seeking to purchase land in the capacity of trustee, about the trust in question (such as a copy of the trust deed), in order to ensure that commercial assessments of prospective purchasers are as fully informed as possible.**

## PARLIAMENTARY TRAVEL

### POSSIBLE MISUSE OF ENTITLEMENTS

In the relevant media articles it was effectively stated that Mr Hayward had undertaken 'family business on [a] state trip' by taking a taxpayer-funded trip in March 2000 to a town in Western Australia where Binary Chemicals was establishing a chemical factory.

Some further details were provided. It was said that the trip cost the public \$1478 for Mr Hayward to spend three days in the small West Australian town of Northam, about 100 kilometres east of Perth. It was also stated that Mr Hayward travelled with Mr Armstrong, the half-owner (with Hamcor) of Binary Chemicals, although Mr Armstrong paid his own airfare. One article attributed statements to Mr Hayward to the effect that the local National Party Member of Parliament, the Hon. Max Trenorden MP, had invited him to Northam to discuss regional development. According to the article, Mr Hayward said the two men had met through their respective membership of state Public Accounts Committees, and he was in Northam investigating regional development; he had declared the trip as 'attending to business directly related to the subject matter of a parliamentary committee to which the member belongs'.

An article in the *Northern Times* reported that Mr Hayward had said: '... the aim of the visit was to look at community-driven strategies to boost industry and employment in regional areas'.

Another *Courier-Mail* article published details from an itinerary for this trip, under the headline 'MP's trip full of family business'. This itinerary was prepared by a Mr Paul Tomlinson, the Chief Executive Officer of Northam's Avon Community Development Foundation (ACDF). The article also stated that Mr Tomlinson had worked as a paid consultant for Binary Chemicals, and he had stated that Mr Hayward had nothing to do with the negotiations for Binary Chemicals to purchase land in the Northam estate.

A later article in the Western Australia *Sunday Times* reported that Mr Trenorden had received a donation of \$500 from Binary Chemicals during his election campaign in February 2001.

In view of the information raised in the public domain, the Commission determined that it should investigate Mr Hayward's claim for travel expenses associated with this trip. Given the nature of the concerns raised, it was also considered that some wider inquiries were justified, in order to establish whether, among Mr Hayward's other travel, there were any claims made by him that were in any way associated with travel for the purpose of either his private business interests or those of his associates.

### INVESTIGATIONS CONDUCTED

The CMC wrote to the Speaker of Parliament on 21 July 2003 advising of its investigation and seeking provision of the following documentation:

1. all original documents and records relating to payments made to Mr Hayward for travelling allowance and travel expenses for the period from 1 January 1995 until the present; including:

- payment vouchers, claims and supporting documentation such as receipts and invoices
  - any correspondence with Mr Hayward concerning his entitlements or claims
2. copies of any guidelines, advices or correspondence issued in relation to the entitlement of members to claim travel expenses for the period from 1 January 1995 until the present, being material which has now been superseded by, or is additional to, the material contained in the present edition of the Parliamentary Service's *Members' Entitlements Handbook*.

Subsequently, The Clerk advised that not all of the material sought by the CMC could be provided. Some documentation had been destroyed, in accordance with the relevant section of the Financial Management Standard, which results in certain primary evidentiary records being destroyed five years after the financial year to which the information relates. However, a range of relevant material was provided and examined in the investigation.

Interviews were conducted with all relevant witnesses, including those in Western Australia and Mr Hayward. A copy of the itinerary mentioned above was obtained.

The CMC's inquiries centred on the Western Australia trip in March 2000. After careful consideration, CMC investigators did not think any other travel claims by Mr Hayward warranted similar examination. There was not an extensive history of travel claims. There were no other trips to Western Australia, such as might obviously raise concerns about a connection with the operations of Binary Chemicals. In considering the other claims, regard was had to factors such as the destinations visited by Mr Hayward, the cost and duration of the travel, and the people who accompanied him (where relevant). Many trips were immediately identifiable as legitimate parliamentary business, concerning attendance at events such as PAC conferences. Regard was also paid to some relevant information arising from the QAO's audit activities, which also examined Mr Hayward's travel. Particular attention was given to some travel relating to mining activities, as explained further in Chapter 7. In any event, it was concluded that no other journeys or claims warranted detailed investigation.

Evidence gathered during the investigation supported Mr Armstrong's explanation that he paid his own travel expenses for the trip to Western Australia.

## MEMBERS' TRAVEL ENTITLEMENTS

The travel entitlements and other benefits afforded to members of parliament are set out in the Parliamentary Service's *Members' Entitlements Handbook*. Responsibility for the administration of the Handbook rests, unless otherwise stated, with The Clerk as the 'accountable officer'. Under section 35(1) of the *Financial Administration and Audit Act 1977* The Clerk is the accountable officer of the Legislative Assembly.<sup>11</sup> Section 36 of that Act outlines the functions and duties of an accountable officer. Some minor amendments have been made to that section since the time of Mr Hayward's trip, but the section both then and now provides that the accountable officer, among other things, bears the responsibility of ensuring that:

- procedures at all times afford proper control over expenditure
- expenditure is incurred for lawful purposes and is made in compliance with the prescribed requirements

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<sup>11</sup> There is a power of delegation — s. 36B of that Act.

- as far as is possible, having regard to the limits of the accountable officer's powers and control, reasonable value is obtained for moneys expended for delivering outputs
- internal procedures afford at all times adequate safeguards with respect to:
  - o the correctness, regularity and propriety of payments made
  - o the prevention of fraud or mistake.

The Handbook specifically notes:

With respect to travel, where The Clerk is not satisfied that travel expense information provided by a Member is sufficient to indicate that the primary purpose of the travel was for Parliamentary business<sup>12</sup>, payments on account of the travel will be withheld pending further satisfactory information being provided by the Member. In the event that insufficient evidence is supplied to The Clerk, the claim for reimbursement of costs of the travel will not be paid and all related travel costs will be met by the Member.

The above excerpt from the Handbook means that, when a member furnishes travel expense information to The Clerk seeking payment or reimbursement, the submission of such material carries with it an implicit assertion by that member that the travel was for the **primary purpose** of attending to parliamentary business. In summary, the current entitlements scheme permits the claiming of expenses in circumstances only where the expenses are incurred in connection with travel which has, as its primary purpose, the attending to of parliamentary business. Any member who submits documentation seeking the reimbursement of travel expenses where parliamentary business was not the primary purpose of their travel implicitly misrepresents their entitlement to expenses and effectively seeks to commit a fraud under section 408C of the Criminal Code.

Section 2.3 of the Handbook contains provisions about travel allowances, allocations and entitlements. It states:

Members are provided with a range of travel benefits in order to facilitate the conduct of Parliamentary business.

As a general rule, when Members travel outside their Electorate they are required to provide evidence of the nature of the Parliamentary business being undertaken prior to or following the actual travel.

Then follows the definition of parliamentary business. Some changes were made to some paragraphs of that definition in 2001; at the time relevant to the trip the definition was as follows:

**'Parliamentary business'** may be defined as:

- (a) Sittings of the Legislative Assembly or direct travel of the Member to or from such sittings;
- (b) A meeting of a Parliamentary committee of which he/she is a Member or the Member's direct travel to or from such a meeting;
- (c) Attendance at a function representing a Minister, the Speaker, Leader of the Opposition or Leader of other Party on official business as such office bearer or direct travel to or from such a function;
- (d) A meeting of the Member's Parliamentary or political party or policy formulation body, of its Executive or of one of its Committees or the Member's direct travel to or from such a meeting;
- (e) Attendance at official Government, Parliamentary or Vice-regal functions;
- (f) Attending to business outside a Member's electorate directly relating to a Member's electorate;

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<sup>12</sup> Emphasis added by CMC.

- (g) Attending to business directly related to a matter of current parliamentary debate or addressing conferences, meetings and seminars to which a Member has been invited in his/her capacity as a Member of Parliament;
- (h) Attending to business directly related to the subject matter of a Parliamentary party committee to which the Member belongs;
- (i) Attending to business related to the Member's current responsibilities as non-Government spokesperson for the Ministerial portfolio;
- (j) Studies, investigations, or inquiries on matters related to a Member's duties and responsibilities as a member of Parliament provided that the nature, official purpose, place and other relevant information is stated by the member to identify the Parliamentary business involved and strictly approved in accordance with these recommendations; and
- (k) Travel by Leader of the Opposition and Leader of any other recognised party in the Legislative Assembly for the purpose of campaigning during an 'official election campaign period' and approved by the Accountable Officer.

The handbook contains specific provisions about domestic travel. The Clerk maintains a General Travel Allocation from which the cost of members' travel on parliamentary business may be claimed:

The Travel Allocation may be used to meet the cost of a variety of travel expenses including:

- commercial air travel
- charter air travel
- car hire
- taxis
- airline club memberships
- ferry/transport expenses
- airport car parking
- prepaid toll cards
- passport fees
- visa fees/travel insurance.

The following relevant administrative arrangements are laid out:

Payment of claims/invoices of claims/invoices for the cost of travel to be met from the General Travel Allocation must be accompanied by:

- a) certification in the form specified by the accountable officer that the purpose of the travel was primarily for Parliamentary business;
- b) an indication of the nature and purpose of the Parliamentary business; and
- c) appropriate documentary evidence (eg receipt) that travel was undertaken, as required by the accountable officer.

The current form of certification (as mentioned in a) above) required by the accountable officer is contained in Schedule D of this Handbook.

**Note: Members are not required to provide certification for taxi travel less than \$50.00 claimed on General Travel Allocation.**

All taxi travel claimed against General Travel Allocation must be for Parliamentary business and the onus is on individual Members to advise The Clerk of the Parliament of any taxi travel not on Parliamentary business but which may, as a matter of course, be charged against General Travel Allocation.

Where travel includes overnight accommodation, Members may provide certification for travel costs as a component of a claim for Daily Travelling Allowance ...



The Handbook provides the following relevant information about the ‘purpose and description’ of the Daily Travelling Allowance (DTA):

Where a Member travels for the primary purpose of conducting Parliamentary business and incurs expenses as a result of overnight absence from the Electorate, a Daily Travel Allowance may be claimed.

Daily Travelling Allowance may be claimed to meet a variety of expenses including:

- accommodation
- meals/beverages
- telephone calls
- dry cleaning
- incidentals
- portage

...

Members may claim Daily Travelling Allowance for each day of 24 hours or part of a day in excess of 12 hours which includes an overnight absence from the Electorate.

Members are provided with an Allocation of 28 days per annum which is cumulative over the term of the Parliament, but not cumulative from one Parliamentary Term to another.

Note: Any travel expenses incurred including taxis, hire cars, etc may be met from the Member’s General Travel Allocation.

The amount of DTA is contained in the Handbook. The following administrative arrangements apply:

On completion of a journey, a Member may submit a claim for Daily Travelling Allowance. When submitting a claim, a Member must complete and certify the Daily Travelling Allowance Claim Form ... specified by the Accountable Officer, including details of the Parliamentary business conducted during the journey.

Note: Members may also provide certification for associated travel expenses as a component of the Daily Travelling Allowance Claim Form.

## THE EVIDENCE

### The claim documents

In response to the CMC’s request, The Clerk provided a schedule of Mr Hayward’s DTA claims for the 1999–2000 financial year; allowance reports generated by the financial management information system (FMIS); the original DTA claim for the trip (8–10 March 2000); a Qantas invoice for the trip (for flights to and from Perth); and an Avis invoice for car hire from Perth for 8–10 March 2000.

Mr Hayward claimed two days of DTA for the trip (a total of \$338), although his dates of travel were specified to be 8–11 March 2000. His airfares and hire car costs amounted to \$1478.81, paid from the General Travel Entitlement/ Allowance.

The DTA claim form, certified by Mr Hayward on 3 April 2000, contains the following information:

- The travel was from Brisbane to Perth and return.
- The ‘major centre’ visited was Northam.
- He departed at 8.40 am on 8 March 2000 and returned at 5.55 am on 11 March 2000.

- Full DTA was claimed for two days, covering hotel accommodation in Northam from 8 to 10 March 2000.
- In the section where the claimant is required to certify the parliamentary business to which the claim relates, by reference to the definition in the Handbook, Mr Hayward ticked paragraph (h): 'Attending to business directly related to the subject matter of a Parliamentary party committee to which the Member belongs'. The nominated party committee was 'Mines & Energy & Regional Development'.

Parliamentary records indicate that Mr Hayward was a member of the Ministerial Legislative Committee for Mines and Energy and Regional Development at the time of the trip. On the form Mr Hayward certified that 'this claim is true' and that 'the Parliamentary business in respect of the claim and associated travel is as stated; and is in accordance with the Members' Salaries, Allowances and Services Handbook'.

The relevant Airways Ticket Order requesting that the flight tickets be issued and the cost charged to The Clerk was dated 22 February 2000, which was presumably around the date the flights were requested by Mr Hayward. The Avis invoice shows that a vehicle was collected from the Perth airport at 2.31 pm on 8 March and returned in Perth city at 4.18 pm on 10 March 2000. A distance of 200 kilometres was travelled.

Mr Hayward's appointment diary for 2000 was obtained. It had no entries of relevance, simply noting that Mr Hayward was 'away'.

### **The Avon Community Development Foundation and the Avon Industrial Park**

Avon is a region in the West Australian wheat belt area, north-east of Perth. Mr Tomlinson, the CEO of the ACDF, described it as a proactive community body with activities directed towards improving the region's economic base. The Member of Parliament for the electorate of Avon is the Hon. Max Trenorden, who is also the Leader of the Parliamentary National Party in Western Australia. Mr Trenorden has been involved with the ACDF since its inception. Mr Trenorden was a member of his parliament's Public Accounts and Expenditure Review Committee from March 1989 and was chairman of that committee from 22 June 1993 to 10 January 2001. That committee is the counterpart of the Queensland PAC.

The ACDF has established an industrial area 18 kilometres outside Northam, called the Avon Industrial Park. Binary Chemicals operates a business, involved in the production of chemicals used in agriculture, in that park. The relevant land is owned by Mr Terry Armstrong and Hamcor, as tenants-in-common. The property transfer document was dated 6 April 2001. The vendor was the West Australia Land Authority. Binary Chemicals' Northam plant was opened on 16 November 2001.

### **The draft itinerary**

This document is headed 'Visit to Northam March 8, 9 & 10, 2000. Draft Itinerary. Ken Hayward MLA, Member for Kallangur, QLD (brother of Binary chairman, Don Hayward), Terry Armstrong, Binary director'. It was prepared by Mr Tomlinson and indicates the activities for Mr Hayward and Mr Armstrong (Figure 2, facing page).

### **The evidence of the primary witnesses**

Mr Hayward maintained that he had undertaken the trip for parliamentary rather than private business, and that he was therefore entitled to claim the expenses that he did. Essentially, he said that at the time he was a member of the Ministerial Regional Development Committee, he had previously been the

**Figure 2.** Summary of draft itinerary

<b>Date</b>	<b>Time</b>	<b>Event</b>	<b>Participants</b>
Wednesday 8 March 2000	2.25 pm	Arrival at Perth Airport	Messrs Hayward & Armstrong
	4 pm	Arrive Northam	
	7 pm	Meal	Messrs Hayward, Armstrong, Trenorden & Tomlinson
Thursday 9 March 2000	8.30 am	Depart for Meenaar	Messrs Hayward, Armstrong, Trenorden & Tomlinson
	10 am	Hosted tour of Northam	Messrs Hayward, Armstrong, Trenorden & Tomlinson, & local representatives
	12 noon to 1.30 pm	Lunch	Messrs Hayward, Armstrong, Trenorden & Tomlinson, & local representatives
	2.15 pm	Working group briefing at Mr Trenorden's office	Messrs Hayward, Armstrong, Trenorden & Tomlinson, & local representatives
	Spare time	May be spent contacting potential construction contractors	
	7 pm	Dinner jointly hosted by town of Northam and Shire of Northam	Messrs Hayward, Armstrong, Trenorden & Tomlinson, & local representatives
Friday 10 March 2000	8.30 am	Mopping up loose ends	
	9.30 am	Community briefing at Max Trenorden's office	Messrs Hayward, Armstrong, Trenorden & Tomlinson, & local representatives
		Mopping up in spare time. May visit some business leaders	
	pm	Meeting in Perth with Department of Commerce and Trade and LandCorp	Messrs Hayward, Armstrong, Trenorden & Tomlinson, & senior officers from the two government agencies
		Mopping up in spare time if necessary	
	11.25 pm	Depart Perth Airport	

minister responsible for regional development, and he had a keen interest in the issue. Mr Hayward advised that he came to know Mr Trenorden through their roles with their respective parliamentary committees; Mr Trenorden had related to him what his own community, in Northam, had been doing to encourage regional development through the use of local initiatives to expand the employment base. Mr Hayward indicated that Mr Trenorden had effectively invited him to visit the Northam area, and that they coordinated their parliamentary schedules and worked out a convenient time for Mr Hayward to visit.

While there were some differences in the evidence as to how the topic of the Avon Industrial Park arose for discussion, Mr Trenorden agreed that he had invited Mr Hayward to look at the regional aspects of the ACDF. According to Mr Trenorden, Mr Hayward also talked about Binary Chemicals and later Mr Armstrong, in terms of Mr Hayward knowing of a chemical manufacturer interested in opportunities in Western Australia. In Mr Trenorden's view Mr Hayward was the point of introduction for Binary Chemicals' operations in Western Australia.

During the visit by Mr Hayward and Mr Armstrong, Mr Trenorden's primary interest was (understandably, given his position as the local member) in attracting Binary Chemicals to the industrial park. Mr Tomlinson's position was similar. The primary focus of the West Australians was on Mr Armstrong, whom they perceived would make any decision about whether Binary Chemicals came to their state. Mr Trenorden had had earlier dealings with Mr Armstrong by the time of the trip. All of the negotiations with Binary Chemicals to which he was privy, including those after the trip, were with Mr Armstrong. Mr Tomlinson also said that Mr Hayward was not part of the 'business negotiations'. Mr Tomlinson had ongoing contact with Mr Armstrong, who made other trips to Western Australia unaccompanied by Mr Hayward. Indeed Mr Tomlinson later performed consultancy work for Binary Chemicals as the company's 'man on the ground' in Western Australia.

Mr Trenorden could not recall all of the finer details about the events listed in the itinerary. He did recall that there were some meetings and sessions attended by Mr Hayward and not Mr Armstrong, and vice versa, with some sessions focusing on briefing Mr Hayward about the processes of the ACDF. His evidence was to the effect that Mr Hayward was treated as a visiting member of parliament, and representatives of the local authority and state government agencies spoke with him about industrial and regional development issues. Mr Trenorden recalled speaking at length with Mr Hayward about community development and similar issues: 'He did seem to have a genuine interest in regional and community development.'

Mr Tomlinson could specifically recall that Mr Hayward did not attend the working group briefing on 9 March, the community briefing in Mr Trenorden's office the next day, or the meeting with departmental officers that afternoon. Mr Armstrong also recalled that Mr Hayward did not attend all of these meetings.

Mr Trenorden and Mr Tomlinson noted that after Mr Hayward's trip a delegation of representatives from the Mackay region in Queensland visited Western Australia to also see how the ACDF operated.

When asked about what he expected to gain from the trip, in terms of the benefit to the public of Queensland, Mr Hayward advised that he wanted to get an understanding of the project in Western Australia, as his own electorate is a rapidly expanding area and there are only limited job opportunities. He thought the Northam model might be an opportunity to generate local employment in a practical sort of way. He later advised the QAO, on this point, in these terms:

I expected to gain an understanding of how a local community can deal with expanding development in a declining area. For example, one of the issues drawn to my attention was the lack of banking services and its impact. When bank

closures occurred in the Kallangur electorate I was able to use the knowledge gained to speak on the matter, as it affected my local area.

Hansard records that Mr Hayward spoke on the topic of bank branch closures in parliament on 31 July 2001. In that speech he made no specific reference to Western Australia, but stated that what he said about some possible proposals arose, at least in part, from his contact with Mr Trenorden. Mr Hayward advised that he discussed the results of his trip with parliamentary colleagues, but did not prepare any report.

Mr Hayward was asked when it was first decided that Binary Chemicals might commence operations and purchase land in Western Australia. Mr Hayward noted that Binary Chemicals had a number of clients in that state. He advised that Mr Armstrong had always had a general desire to form another Binary Chemicals operation outside Queensland, in an appropriate area (such as the main agricultural areas of Western Australia). Mr Armstrong and Mr Don Hayward supported this point.

Mr Armstrong stated he had the idea to set up a plant in Western Australia approximately one year before the trip in March 2000. He said that Binary Chemicals was missing out on work in that state because of the cost of freighting its chemicals to Western Australia; furthermore, two of the company's biggest customers were based in Western Australia. Both of these factors were reasons to establish a presence in Western Australia.

Prior to the trip Mr Armstrong had been to Western Australia only twice. He said he had made a number of telephone inquiries but did not have much luck in finding a possible site. In discussions with Mr Hayward he learnt of the information Mr Trenorden had conveyed about the Avon Industrial Park and decided that, as he was intending to go to Western Australia in the near future to further his inquiries and visit his clients, he would take the opportunity to travel with Mr Hayward. Mr Armstrong stayed at the same hotel as Mr Hayward. He did not travel back to Queensland on the same flight, instead returning some days later after visiting his clients.

Mr Armstrong was asked whether Mr Hayward was aware that he was going to Northam with the idea of purchasing land. He replied:

No, we weren't, we weren't — we were going over there to look at the land. I hadn't even been over there at all at that stage and that. I didn't go over there to purchase the land. I just wanted to have a look.

In further questioning on this point, Mr Armstrong acknowledged that Mr Hayward would have been aware of the possibility that Mr Armstrong, on behalf of Binary Chemicals, might later purchase land.

When asked whether the trip was more beneficial for Mr Hayward or for him, Mr Armstrong replied:

Well, I believe he was over there for other reasons myself and I think he did discuss it with Max Trenorden about visiting the place itself. I believe, and what I've been told afterwards, that he was over there studying economic development because of his regional development, because of his interest in it. However, I was over there to look at the possibility of setting up a plant in Western Australia.

Mr Armstrong was also asked whether Mr Hayward had an interest in the land purchase. He replied:

Well, I don't know about the purchase of the land, but I mean we didn't, we hadn't made up our mind at that stage about buying the land and that I don't know whether he had any interest in the land. I suppose his friendship with me and his relationship with his brother, you may surmise that, but it wasn't something that we discussed a lot about the decision to sign the letter of intent. My discussions with Paul Tomlinson and subsequent discussions with LandCorp were done all on my own back.

Mr Armstrong returned to Western Australia approximately one or two months after the trip with a person who is now the manager of Binary Chemicals' plant in Western Australia, in order to look again at the site in Northam. He also spoke to customers of Binary Chemicals. Ultimately the decision was made to purchase land in the estate.

Mr Armstrong agreed that Binary Chemicals made a political donation of \$500 to Mr Trenorden's campaign in about February 2001. This occurred after a letter was received from Mr Trenorden requesting a donation. Mr Armstrong advised that, although he was a member of the ALP, he made the donation on the basis that he 'liked the way the town was working'. Mr Trenorden advised that at the time of that campaign he wrote to every business in his electorate, seeking donations.

### **Further testing the evidence**

In order to further test Mr Hayward's claims about the nature of his trip, we sought evidence from other sources who were thought to have been in positions to have spoken to Mr Hayward, at times closer to the trip, about the purpose of his travel.

Mr John McLoughlin is a former Mayor of the Caboolture Shire. He was a councillor for many years and mayor at the time of Mr Hayward's trip. Mr McLoughlin provided evidence that he had had discussions with Mr Hayward, prior to the trip, about Mr Hayward's purpose in travelling to Western Australia. His evidence was to the general effect that Mr Hayward was interested in viewing industrial estates in Northam and York in Western Australia, in relation to the development of the Narangba Industrial Estate. He gave Mr Hayward an information package about his Shire and some gifts to give to the mayors of Northam and York.

Mr Tim Mulherin MP is State ALP Member of the Legislative Assembly for Mackay. He is in his third term of office, having been elected on 15 July 1995. He has been a member of the PAC since that date. He has also been on a number of Ministerial Legislative Committees such as Department of Natural Resources and Mines, Public Works and Department of Innovation, Economy and Energy, Aboriginal and Torres Strait Islander Policy Committee, Families and Disability Services, and Primary Industries. Mr Mulherin said that his interests in these areas arise because they are the areas of key economic concern for Mackay.

Mr Mulherin agreed that he travelled to the Northam area, and elsewhere in Western Australia, in September 2000. He explained that around that time a particular trade union was undertaking an employment campaign and wrote to members of parliament asking them what steps they were taking to ensure that jobs remained in regional areas. He was concerned about issues affecting the coal and sugar industries, both of which were major economic concerns in the Mackay area, and he had discussions with the local mayor about economic development and what the community could do in relation to it. They looked at a number of models. He spoke to a person in his electorate who was a former Head of Campus at Edith Cowan University in Bunbury, Western Australia; this person provided information about some of the economic models that were being utilised in Western Australia.

Mr Mulherin said that he discussed these issues (and his intention to travel to Western Australia) with his colleague, Mr Hayward, who suggested that he contact Mr Trenorden in order to look at what Northam had done. Subsequently Mr Mulherin and a delegation from Mackay Shire visited Northam and Bunbury. While in Northam they met Mr Armstrong — this had not been arranged. He considered the trip to be beneficial. The council officers prepared a report.

Mr Mulherin was asked if Mr Hayward had ever mentioned that he had an interest in Binary Chemicals. He stated:

He indicated to me that the interest was not of his. It was his brother's company. Mr Don Hayward and Mr Terry Armstrong owned Binary Chemicals. I've never enquired into Mr Hayward's financial affairs and I thought that would be improper and he's never enquired about mine.

The Mayor of Mackay City Council, Ms Julie Boyd, was interviewed. She provided a similar account as to why the Mackay delegation travelled to Western Australia. Ms Boyd noted that while in Northam Mr Armstrong addressed the delegation. Ms Boyd quoted from a report prepared by the council CEO on the trip:

A briefing was provided by Mr Terry Armstrong, Managing Director, Binary Chemicals about his experiences in dealing with the Wheat Belt Development Commission, the Avon Community Development Foundation and the town of Northam.

The single overarching consideration was the generosity and sincerity of the welcome that the community held out to this Brisbane based firm. Strategically for the firm there was significant advantages in co-locating with a prime regional market area. Mr Armstrong reinforced that the community was pro-active and quickly understood the mutual advantages of Binary Chemicals' proposal. No financial incentives were offered to Binary Chemicals and in Mr Armstrong's words the communities simply demonstrated the right attitude towards his company and its proposed development.

## CONCLUSIONS

The concern that arose in relation to the trip was whether Mr Hayward had improperly claimed expenses from the public purse to effectively fund travel undertaken for his private business interests, rather than parliamentary business. As noted above, evidence gathered during the investigation establishes a close link between Mr Hayward and some of the business operations of the trust company Hamcor, such as Binary Chemicals. Mr Hayward's own evidence about his lengthy friendship with the co-owner of Binary Chemicals, Mr Armstrong, his regular attendances at Binary Chemicals' Narangba plant, the nature of his work there, and his status as a cheque signatory for the business all underscore the true nature of this link.

The evidence also establishes that Mr Hayward was accompanied on the trip by Mr Armstrong, and that those connected with the operations of Binary Chemicals had for some time contemplated commencing a plant in another state. The trip did ultimately lead to Mr Armstrong and Hamcor purchasing land in the Avon Industrial Park for Binary Chemicals to commence operations in Western Australia the following year.

Careful consideration has been given to whether sufficient evidence exists which, if accepted, could support a case of official misconduct against Mr Hayward in relation to his claim for publicly funded expenses. As Mr Hayward is an elected official, any such case would have to consist of a body of admissible evidence which, if accepted, would be capable of justifying the view that Mr Hayward has committed a criminal offence, such as fraud (Criminal Code, s. 408C).

In summary, during our investigation Mr Hayward explained the nature of his trip as parliamentary business connected to his role with the parliamentary committee relating to regional development. The claim documents, prepared shortly after the trip, disclose that the stated purpose of the travel is not inconsistent with the explanation now advanced by Mr Hayward. Other relevant witnesses provided evidence as to what Mr Hayward said to them at or around the time of the trip about his motive for the travel. Mr McLoughlin's evidence as to what was disclosed to him by Mr Hayward about the purpose of his trip before it was undertaken, and the evidence of Mr Mulherin and Ms Boyd on the same point but relating to a time shortly after the trip, also do not establish any inconsistencies such as might assist a possible prosecution.

The investigation has also looked carefully at the available evidence in order to establish what happened when Mr Hayward and Mr Armstrong were in Western Australia, as far as is now possible given the time that has elapsed since their trip. Were Mr Hayward's activities during the trip distinguishable from those undertaken by Mr Armstrong or those one might expect to arise from a trip undertaken purely for private business purposes? On this point, the evidence of the key witnesses is that there was some distinction between the way the West Australian representatives treated Mr Hayward and the way they treated Mr Armstrong, and between the activities in which the two men participated. In particular, the evidence suggests that some of the functions during the relevant period were geared towards Mr Hayward as a visiting parliamentarian, with these events including liaison with the local member and other officials, such as might reasonably be expected to meet a parliamentarian travelling on official business. It is further noted that Mr Armstrong remained in Western Australia for a period after Mr Hayward returned to Queensland, with Mr Armstrong attending to Binary Chemicals' business in visiting major clients. The evidence as to Mr Hayward's conduct while in Western Australia indicates that there were some structured and planned activities geared to the topic of regional and community development and his interest in that issue. This is as opposed to a situation of Mr Hayward only acquiring information about those matters in a more unstructured, fortuitous or opportunistic fashion. Had that been the case, it might have supported an inference (in turn perhaps capable of supporting a possible prosecution case) that the true nature of the trip was otherwise and that the claimed link to parliamentary business was an attempt at disguise.

The evidence of Mr Trenorden on these points is particularly relevant, as is his evidence about his invitation to Mr Hayward and his perception of Mr Hayward's apparently genuine interest in matters of regional development.

No doubt cases will arise where specific trips by members may involve some degree of intermingling of personal and official business. Mr Hayward asserted during the investigation that his trip involved no component of personal business. Nevertheless, in order to evaluate the evidence properly, the CMC considered the situation where travel by a member might involve a mixture of personal and official business. The CMC also liaised with the QAO on this, given the QAO's annual audit responsibilities concerning parliamentarians' travel claims. This is an area where no precise boundaries can be defined. In *Report on an Investigation into Possible Misuse of Parliamentary Travel Entitlements by Members of the 1986–1989 Queensland Legislative Assembly*, published in 1991, the Criminal Justice Commission (CJC) recommended that the conditions for payment of DTA be altered so that the allowance 'may be claimed only where the Member's travel was for the primary<sup>13</sup> purpose of conducting Parliamentary business outside the Member's electorate'. The Handbook reflects this recommendation; DTA may be claimed 'where a Member travels for the primary purpose of conducting Parliamentary business and incurs expenses as a result of overnight absence from the Electorate ...'

For the reasons set out above, the Commission considers that the evidence here could not support a finding by a tribunal of fact, in terms of the standard of proof required to support a possible prosecution, that the primary purpose of Mr Hayward's trip was personal rather than official. The weight of the evidence of the relevant witnesses is thought to be such as to favour Mr Hayward on this point. That being the case, after careful consideration of the available evidence, the Commission has determined that it is insufficient to support a referral of a brief of evidence to the Director of Public Prosecutions, for the consideration of any prosecution proceedings considered warranted, pursuant to section 49(2)(a) of the Act.

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13 Emphasis added.



In conclusion, it is considered that, having regard to the weight of the evidence, the concerns that Mr Hayward may have misused his parliamentary travel entitlements in relation to this trip have not been substantiated.

#### RECOMMENDATION 4

In reviewing the evidence obtained as a result of this aspect of the investigation, the Commission has given consideration to the current controls on the expenditure of members' travel entitlements, in order to determine whether they are entirely adequate or whether there are any further improvements that could reasonably be made to ensure more accountability. In this respect, the Commission also acknowledges the need for the entitlements system to be workable, in a practical sense, and not to be oppressive in terms of the amount of paperwork and explanatory material members must produce to substantiate claims. It is of course impossible to devise a system that will entirely eliminate risk, and the following remarks from the CJC's 1991 report are apposite:

At the end of the day no system can prevent deliberate fraud. If a Member wishes to invent a fiction then he or she will most probably be paid the allowance. However, the Member will do so in the knowledge that he or she will be leaving behind a record which can be scrutinised, and if proved false, obvious consequences will follow.

In looking at the records that were available in this case, in order to test whether Mr Hayward's claim was legitimate or fraudulent, the Commission noted that Mr Hayward had stated the purpose of his trip in the required documentation, noting the 'Parliamentary business' to which the trip related as being 'business directly related to the subject matter of a Parliamentary party committee to which the Member belongs'. Mr Hayward, as required, also specified the relevant party committee.

The Commission has considered what additional information or documentation might have assisted it in its investigation, or which might assist The Clerk as accountable officer in determining the validity or otherwise of such claims in the future. The Commission does not believe that including any further questions about the purpose of the member's travel in the standard claim form would greatly assist, as claimants already have to nominate the parliamentary business concerned and the committee involved.

Instead, consideration has been given to recommending that any member claiming DTA and other entitlements for interstate travel relating to a parliamentary committee or parliamentary party committee should provide a report on the travel, specifically describing what was sought to be gained from it, and what was in fact gained. Such a record would have obvious forensic advantages in assisting any later inquiry, whether to adjudicate upon payment of the claim, in an audit, or in an investigation; it would be prepared soon after the actual travel, and the claimant would have to provide information about the intended benefit of the trip and the actual benefit derived.

In this case, there was no subsequent report ever prepared by Mr Hayward, who noted that he would have discussed what he learnt on his trip with some of his party committee colleagues, such as Mr Mulherin; also that he relied on what he gained from the trip in making a speech the following year. The Commission also notes that the subsequent trip by the delegation from Mackay, which included Mr Mulherin, resulted in the preparation of a detailed report which Mr Mulherin was readily able to produce to the investigation.

Obviously, the imposition of such a reporting requirement would mean an addition to a member's current administrative workload. However, the Commission considers that this would not be an untoward demand in the circumstances, for the following reasons:

- A lasting record of the trip would be created, which might then assist and inform the work and functions of the relevant committee (and its successors) in respect of which the travel was undertaken.
- The report itself need not be lengthy.
- In many cases a legitimate query will arise as to why the member needed to travel interstate, rather than simply within Queensland, to transact the business of a particular committee or party committee. In the Commission's view, it is reasonable to impose a higher standard of accountability in circumstances where interstate travel, accompanied by higher cost to the public, is involved.
- Such a reporting requirement would be consistent with that which already exists for overseas travel by members. The Handbook presently provides, in relation to overseas travel (for which prior approval must also be obtained):

Upon return, Members are required to table a Report within six (6) weeks, or at the commencement of the next available sitting when Parliament is not in session. This report should contain:

- a statement of objectives in relation to the travel that indicates the nature of the studies, investigations, and inquiries which were undertaken, and what was proposed to be achieved;
- brief description of organisations visited;
- a list of persons met on Parliamentary business and the assistance and information obtained from them;
- a reference to documents obtained which would be of interest to Parliament;
- brief summaries of the study area pursued in the countries visited; and
- results achieved and any recommendations.

Accordingly, the Commission recommends:

- 4. That consideration be given to amending the administrative arrangements for the submission by members of Daily Travelling Allowance claims and associated travel expenses, where interstate travel is involved and the 'parliamentary business' nominated by the member pertains to parliamentary committee or parliamentary party committee business. The amended arrangements should include a requirement that within a specified time after the completion of the travel a concise report be furnished by the member to the relevant committee, with a copy to The Clerk, containing information similar to that currently required in respect of Overseas Daily Travel Allowance. The reporting requirement should specifically incorporate obligations on the member to state that the primary purpose of the travel was for parliamentary business, and to disclose the names of any person or people travelling with the member.**

## THE GRANT ALLEGATION

It was stated in the initial *Courier-Mail* articles that Mr Hayward was a director of a nut processing company, Crestnut Products, and that in 2001 Crestnut Products received a \$23 000 Queensland Government grant. The articles stated that when the Minister for State Development, Mr Barton, approved this grant he did not know that Mr Hayward was a director of the recipient company. The grant was made under the Queensland Industry Development Scheme (QIDS) and was stated to be for the purpose of allowing Crestnut Products to draw up a business plan, thus allowing it to seek and win a significant amount of federal funding, through the Commonwealth's Dairy Regional Assistance Program. It was also stated that Mr Hayward had listed his directorship and shareholding in Crestnut Products in the Register and in ASIC records.

In subsequent articles Mr Hayward was noted as stating that he did not speak to Mr Barton about the QIDS application, nor did he try to influence the process, and that on the advice of the Premier he had talked to the State Integrity Commissioner about becoming a director of Crestnut Products. The Integrity Commissioner had indicated that there was no problem with these business links so long as they were declared in the Register. In a later story, the Premier was quoted as saying that he had no recollection of such a conversation, '... but it would be consistent with advice I would give in relation to matters like this'.

The CMC determined to investigate the circumstances surrounding the awarding of the QIDS grant to Crestnut Products. Mr Hayward became a director of Crestnut Products on 1 June 2001. The Haywards had no interest or involvement in the operations of Crestnut Products before 2000. Mr Armstrong has had no interest in the company. The trading name of Crestnut Products is 'Nutworks'.

## THE QUEENSLAND INDUSTRY DEVELOPMENT SCHEME

The QIDS was launched in November 1998 and was 'designed to enable the State Government to work with smart firms and industry sectors to maximise their growth by supporting projects that improve business performance'. The QIDS supports Queensland's 'smart firms and sectors' to achieve five key objectives:

- (i) enhanced competitiveness
- (ii) expanded markets
- (iii) increased investment
- (iv) increased innovation
- (v) better environmental management.

Eligible applicants must:

- (i) be an established firm, or group of firms operating in Queensland
- (ii) have a demonstrated level of business success and the capacity to implement and sustain development projects

- (iii) demonstrate project outcomes of net economic benefit to Queensland
- (iv) be committed to the expansion of the business into new and different markets, or be a part of a supply chain involved in expansion into new and different markets, and
- (v) be able to match any approved funding on a dollar-for-dollar basis.

Not every type of business is eligible for assistance; for instance, applicants whose primary business focus is retail, wholesale, accommodation, hospitality or property development are excluded.

The QIDS grants are administered by the State Development Centres, which form a unit within the DSD. These centres are independent of the staff who administered the land contract dealings between DSD and Hamcor/Mr Terry Armstrong.

## INVESTIGATIONS CONDUCTED

The focus of the CMC's investigations concerning the grant under the QIDS scheme to Crestnut Products was to establish whether:

- there was any evidence that Crestnut Products did not obtain the grant on merit or in accordance with the published guidelines and processes, and
- there was any evidence that any person involved in the process of awarding the QIDS grant was corruptly influenced to award that grant, or any person corruptly applied such pressure to influence the awarding of the grant.

CMC investigators interviewed all of the available DSD officers involved in the consideration of the grant to Crestnut Products. These officers provided information in respect of the QIDS generally, the processes adopted in respect of the assessment and the awarding of the grant to Crestnut Products, the officers' interactions with Crestnut Products, their knowledge of Mr Hayward and whether they had been the subject of any pressure from any source to provide any grant assistance to Crestnut Products. The relevant departmental file relating to the grant was examined, as were the policies and procedures concerning the QIDS. Interviews were also held with the directors of Crestnut Products, being Mr Hayward and Mr Keith Ryan (who is also the Chairman).

## THE QIDS GRANT APPROVAL PROCESS

In January 2000 an inquiry was made of the DSD, through its State Development Centre at the Sunshine Coast, by Mr Ryan. G1 is a former DSD officer who at that time worked as a Small Business officer on the North Coast. She recalled attending a meeting at the offices of Crestnut Products/Nutworks and thereafter completing a Client Contact report, containing background information about the company's export market development potential and expansion plans. The next month G1 handed over the file to G2, a Senior State Development Officer in the same office.

Mr Ryan followed up the initial contact with a letter indicating the company's wish 'to apply for assistance from the State Government to help the company in expanding the geographic spread of its export market'. Mr Ryan explained that the company's goal was to effectively treble its export turnover, over a three-year period, and that funding was required to 'undertake desk research, undertake market visits and prepare detailed marketing plans'.

Mr Ryan advised the CMC that he had been speaking to the local DSD officers about the research and development work being undertaken by Crestnut Products, and it had been suggested that a grant application could be submitted. G2 told the CMC that she met with a representative of Nutworks and it was ultimately determined that Crestnut Products would seek to obtain grant funding

under QIDS to explore the possible development of machinery. G2 (as the project officer) and Crestnut Products worked together to complete a 'pre-application form' for a grant.

The application process was lengthy. The file records that detailed information was sought from the applicant company, including a Business Plan (which disclosed the names of both directors), research information and sales data. The pre-application form was dated 30 October and was approved on 2 November 2001. Thereafter the full application was completed and submitted. G2 assessed the proposal against the published criteria. G3, who is the Director of the Sunshine Coast DSD State Development Centre, then provided advice to the Director-General of DSD, who approved the application in January 2002, for an amount of \$23 000 plus GST. The grant awarded was ultimately for the purposes of expansion planning and covered part of the cost of engaging a consultant. The grant was subject to a number of terms and conditions. Before the grant was approved, some external parties were consulted (such as members of the Sunshine Coast Consultative Committee and the DSD Food and Meat Industry Taskforce).

The first grant payment was made in June 2002, after a completion report, with supporting documentation, was duly submitted by the company and assessed by G2.

## **MR HAYWARD'S ROLE**

The file indicates that the grant process was embarked upon before Mr Hayward became a director of Crestnut Products, and before the Haywards had any interest in the company's operations (their interest dating from September 2000).

Mr Hayward stated that he had no role in the grant application process, other than being aware of the matter in his capacity as a director of Crestnut Products. In that role he was aware of the application and noted that the company had engaged a consultant who prepared a business plan and feasibility study, principally into the flavoured coating of macadamia nuts. Mr Hayward was aware that the DSD provided some support for the preparation of the business plan and feasibility study through a QIDS grant, which he understood as covering approximately 50 per cent of the cost of the consultant's fee.

Mr Hayward stated he had no direct involvement in the QIDS grant, and that Mr Ryan was the principal company representative handling that matter, in terms of contacting the DSD and finding out how to make the application. Mr Hayward stated that he had never contacted any state government officer about the grant. He advised he had no influence in the process and did not seek to influence the handling of the grant in any way. He stated that no preference was sought or given.

Mr Hayward also provided some information on the disclosure of his directorship. Essentially, he stated that he had spoken with the Premier about his opportunity to become a director of a nut-processing company; Mr Beattie had apparently advised, during a general conversation, that on the face of things he did not see a problem but that Mr Hayward should talk to the Integrity Commissioner. Mr Hayward said that the conversation with the Premier took place some time before he became a director of Crestnut Products. As noted, Mr Beattie was quoted in one of the relevant media articles as indicating that, while he could not recall speaking with Mr Hayward about this directorship, the advice about the Integrity Commissioner's role was consistent with that which he would normally give in such a situation.

Under the *Public Sector Ethics Act 1994* the Queensland Integrity Commissioner's functions include advising designated people about conflict of interest issues. Mr Hayward advised that he approached the Integrity Commissioner, who in turn advised him that he could see no conflict or problem

but that the directorship should be recorded in Mr Hayward's Register entries. Mr Hayward added that he spoke to the Integrity Commissioner on the telephone but has never met him, and that he received no written advice. Mr Hayward was questioned at some length about his evidence on this point, given the requirements for seeking advice from, and giving advice by, the Integrity Commissioner, as set out in the *Public Sector Ethics Act 1994*; essentially these requirements direct that such steps be taken in writing. Mr Hayward maintained his version. Given the absence of any evidence of official misconduct (as discussed further below), it was determined that there was no purpose in pursuing the issue of what contact Mr Hayward may have had with the Integrity Commissioner.

Mr Hayward completed a Notice of Change of Details for Interests of a Member on 2 July 2001 and lodged it with The Clerk as Registrar, recording his directorship with Crestnut Products.

G1 and G2 stated they had no dealings with Mr Hayward. G1 was unaware that Mr Hayward had any interest in the company. No-one mentioned this to her at any time, nor was she ever instructed to afford the company any preferential treatment. G2 and G3 also stated that they did not know that Mr Hayward had an interest in Crestnut Products. No pressure, either from any external source or from their superiors, was ever applied to them regarding their handling of this application.

## CONCLUSIONS

On the basis of the interviews with officers from the DSD and Crestnut Products, and the other evidence obtained during the investigation, there is no evidence that these people conducted themselves in any way other than in accordance with their designated duties, in negotiating with Mr Ryan and in evaluating and recommending the QIDS grant.

An examination of the DSD's grant file did not identify any indicators of corruption, or produce any information to support a view that official misconduct influenced any decisions associated with this grant. From the file, the application appeared to have been assessed in accordance with the published criteria and due process followed in recommending the grant. Proof that the conditions upon which the assistance was granted had been met was required before funding was advanced.

Various DSD officers were involved throughout the process. None of those interviewed stated that they had been subjected to any pressure, improper influence or expectation that Crestnut Products should receive the QIDS grant, or how large the grant should be. None of these witnesses was aware of any such pressure or influence being exerted on any other officer, or at any stage of the process. There was no evidence that Mr Hayward was actively involved in the grant process. The initial discussions leading to the eventual lodging of the grant application predated the involvement of the Haywards with Crestnut Products.

During the investigation the CMC noted that the file disclosed that no ASIC search for Crestnut Products had been undertaken. The file checklist indicates that this was deemed to be unnecessary, as the client company was already known to the DSD. In any event, Mr Hayward's position as a director of Crestnut Products was disclosed in the business plan lodged with the DSD officers in June 2001. The CMC also notes that it is now regular practice for the DSD to obtain a Dunn & Bradstreet report on grant applicants.

For the reasons set out above, there is no evidence that any person corruptly or improperly influenced any person, or that any person was corruptly or improperly influenced, during the QIDS grant process. The investigation has not identified any evidence of official misconduct or misconduct on the part of any person during that process.

For completeness, it should be noted that the QIDS grant was approved before sections 70 and 71 of the POQA commenced. In any event, it does not seem that the approval of the grant, given the processes involved, would in itself give rise to a contract between the DSD and Crestnut Products.

## **OTHER GRANTS**

During the investigation, inquiries were made with the DSD to ascertain whether any entity or person associated with Mr Hayward had received any form of government grant or assistance, beyond the abovementioned QIDS grant to Crestnut Products. Mr Hayward stated that he was not aware of any other grants received by any such entity or person.

### **Crestnut Products**

DSD held a file concerning an application by Crestnut Products for assistance under the Queensland Trade Assistance Scheme (QTAS). CMC investigators reviewed the relevant departmental file for this grant. It revealed that the application for QTAS assistance was lodged in November 1996; and in 1997, after some initial concerns had been raised by the department (which was then the Department of Economic Development and Trade) about the company's eligibility, a mutual decision was reached to place the application on hold. The file indicates that the application was not reactivated. This application was not further investigated, as it related to a time before the Haywards had any interest in Crestnut Products.

### **Suncoast**

The DSD also advised that a company called Suncoast Gold Macadamias (Aust) Limited (Suncoast) received a QIDS grant, approved in February 2001, for a Profit Improvement Program. ASIC records indicated that Hamcor held some shares in Suncoast. These shares were acquired during the 1998–99 financial year. An inspection of the Register revealed that on 11 July 2003 Mr Hayward lodged a Form 3 — Notice of Change of Details for Interests of a Member in which, among other things, he advised that Hamcor held investments/a beneficial interest in Suncoast and some other companies.

Mr Hayward acknowledged that this company was known to him, and that it was a macadamia nut cooperative operating in Gympie. He stated that his family's macadamia nut plantations used to supply Suncoast until the Haywards started supplying Crestnut Products' operations approximately three years ago. Mr Hayward also advised that at the relevant time, in order to supply Suncoast, one had to be a shareholder. He believed Suncoast would have many shareholders and Hamcor would be a relatively minor shareholder.

A perusal of material produced by Suncoast and located in the relevant grant file, such as annual reports, confirmed that shareholders in the company are all nut suppliers.

The file confirmed that assistance under the QIDS had been sought and granted for a profit improvement program. Again, the application was primarily processed at a local level, which in this case was the Maryborough State Development Centre. Therefore, the assessment of Suncoast's grant was undertaken by officers independent of those who processed Crestnut Products' application on the Sunshine Coast. As noted, Suncoast's application was approved in February 2001, after the Haywards had moved their nut supplying activities to Crestnut Products.

The DSD also advised that a number of grants had been made to Suncoast by DBIRD or other forms of the relevant department, before the establishment of the DSD. Most of these grants were made under the National Industry Extension Service scheme (NIES) in the early to mid 1990s and therefore predated Hamcor's acquisition of shares in Suncoast. The files for these grants were obtained and examined, as was another file relating to an application by Suncoast in 1995 for funding under the Queensland Export Development Scheme (QEDS). That examination disclosed no indicators of official corruption or official misconduct on the part of any person in the assessment of those applications or in the subsequent awarding of any grants. All grants awarded appear to have been provided in compliance with the stated objectives and criteria of the scheme. None of the files indicated that Mr Hayward had any involvement in any of the applications.

No other government grants made to entities or people connected with Mr Hayward were identified.



## MINING MATTERS

### THE ALLEGATIONS

The *Courier-Mail* published an article on 29 July 2003 entitled 'MP fails to declare mining interests'. The article commenced by stating:

State Labor MP Ken Hayward has used State Parliament to promote mining without declaring links to his father's ownership of millions of shares in public mining companies or his hands-on role in a private gold prospecting venture.

The article mentioned that Mr Hayward has financial links to the Queensland mining industry through his ties to two family companies — Hamcor and Hardway. Hamcor was said to be half-owner of a goldmining exploration venture — Bunya Resources. Hardway was said to be his father's company, which owned shares in various publicly listed mining companies that operated in Queensland. The *Courier-Mail* article also stated that Mr Hayward's Register entries disclosed loans to Hamcor and Hardway. It went on to say that he:

... has not mentioned the interests during his involvement in mining-related parliamentary debates, questions in committees or votes on Bills, including the Native Title Resolution Bill in 2000.

Mr Hayward was reported as advising the *Courier-Mail* that he had no role or financial interest in Bunya Resources, although he had 'gone to the counter' at the Mines Department to pay for applications and inspected a site at Wowan several times. The article also stated:

[T]he MP said there was no conflict of interest in speaking or voting on matters affecting small explorers and he had shown a list of interests to the Clerk of Parliament about the register. He might not have spoken 'specifically' about Bunya Resources.

The CMC noted that the material relating to Mr Hayward's travel claims involved several claims by him for expenses relating to his attending to 'parliamentary business' involving meetings and inspections of mines. Some of these trips were to the central Queensland region. Due to the destruction of relevant records, because the claims related to dates more than five years ago, there was a lack of documentation such as might ordinarily be used to assist in ascertaining the purpose of this travel. CMC investigators noted that Bunya Resources was said to have several mining interests, including some in the Rockhampton area. Accordingly, it was determined to examine these issues in further detail, in order to establish whether there was any evidence of possible official misconduct by Mr Hayward or any other person, in the nature of:

- any possible fraud in relation to claims for parliamentary travel expenses that may have been related to private mining business
- improper influence being exerted upon the processing of any mining-related application.

In order to pursue these issues, we interviewed a number of witnesses and gathered and examined relevant documentation, including files from the agency now known as the DNRM.

## BUNYA RESOURCES

An ASIC search provided information on this company. Bunya Resources (now known as Binary Industries Pty Ltd, from 28 May 2003) was incorporated on 1 March 1996. The current directors are Mr Don Hayward (from 1 March 1996) and Mr Terry Armstrong (from 16 May 2003). The former directors are one M1 (from 1 March 1996 to 25 September 2002) and Mr William Hayward (from 25 September 2002 to 16 May 2003). The issued capital of the company consists of two \$1 ordinary shares, one of which is non-beneficially owned by Hamcor and the other of which is beneficially owned by William Hayward. That second share was previously owned by M1.

Mr Don Hayward provided information about Bunya Resources' operations, which are now defunct. While it was operating, the company was owned by Hamcor as trustee for Hayward Trust and by M1, in equal shares. Mr Don Hayward explained that M1 was a public servant with an association with Mr Hayward and a specific interest in prospecting and mining records. The aim of the company was effectively to prospect for minerals, in particular gold, and it held a number of mining leases, the major one being known as 'Bottle Tree Creek', near Rockhampton. According to Mr Don Hayward, M1 supplied the prospecting knowledge and advice and Hamcor the money to fund these operations. They were not successful and the venture was abandoned. Mr Don Hayward advised: 'Ken would've been more involved in it than myself.'

M1 was interviewed, and confirmed his role in Bunya Resources. He also confirmed that the expenses of the relevant mining operations were not met by him, but presumably by Hamcor, and that Mr Hayward had accompanied him to the Bottle Tree Creek site on a number of occasions. M1 described Mr Hayward as a mining 'enthusiast'.

Mr Hayward confirmed his interest in mining issues and his role with Bunya Resources. He agreed he had visited the Bottle Tree Creek site on at least four occasions, that he had dealt directly with the landowner on whose property the site was situated, that he had lodged applications for the company, and that he had purchased materials for mining operations with a Hamcor cheque.

## HARDWAY

The structure and ownership of this company has already been described in Chapter 2 above. The CMC was advised that it is a share-trading vehicle operated by Mr Hayward's father. At times it has held shares in listed mining companies.

## DEPARTMENT OF NATURAL RESOURCES AND MINES

M2, a Senior Policy Officer with the DNRM, was interviewed. He explained the process of licensing under the *Mineral Resources Act 1989* (the MR Act) and identified the licences granted to Bunya Resources and the processes followed. The DNRM administers mining tenements issued under the authority of the MR Act and the *Mineral Resources Regulation 2003*. The mining tenements issued are:

- Exploration Permits — Minerals (EPMs)
- Mineral Development Licences (MDLs)
- Mining Leases (leases).

An EPM entitles the holder of the permit to explore for minerals as defined under the MR Act within the terms and conditions of the permit. An EPM does not give the holder the right to mine or extract minerals; it is a prerequisite for the two other types of tenement issued under the MR Act. An MDL is an extension of an EPM; it too does not give the right to mine but gives the holder the right to further develop the resource. This may include, for example, developing

overseas markets and designing infrastructures such as pipelines to convey the resource. Both EPMs and MDLs are granted by the responsible minister. There is no right of appeal on the issue of these tenements. A Mining Lease, on the other hand, is granted by the Governor-in-Council and is subject to objection before the Land and Resources Tribunal.

At the time that the relevant mining tenement applications were lodged by Bunya Resources, EPM and MDL applications could be lodged at the office of any Mining Registrar throughout Queensland.

The CMC examined the DNRM files relating to Bunya Resources' tenements. That examination revealed only one instance noted where Mr Hayward's name was mentioned. This was in relation to an MDL applied for on 10 October 1997, concerning the Bottle Tree Creek site. There is a handwritten note on the file from a Departmental Senior Tenures officer which states:

I spoke to Ken Hayward today and he advised that the security deposit would be lodged by the 31/10/1998. The prerequisite EPM 11318 expired 2/10/98. No reply to previous extension was given and no reminder was sent as I had not received the file for the bring up.

There was nothing on the face of the DNRM files to indicate that Mr Hayward had ever sought to improperly influence the administration of Bunya Resources' EPMs and the MDL. M2 advised the CMC that his examination of the files indicated the administration of those EPMs and the MDL was conducted in a proper manner in accordance with DNRM procedures.

Inquiries were also made with M3, who is the Acting Regional Manager at Rockhampton. He confirmed that he had no evidence to suggest that any relevant Bunya Resources application was ever handled other than in accordance with usual procedures.

## **TRAVEL TO BOTTLE TREE CREEK**

Specific inquiries were made about Mr Hayward's visits to this site in light of the other available information concerning Mr Hayward's travel claims. The site is situated on a property located approximately 17 kilometres north-west of the town of Wowan. The CMC noted the dates of relevance to Bunya Resources' mining applications and considered Mr Hayward's travel claims for that period, concerning destinations in the vicinity. Some trips were said by Mr Hayward to have been for the purpose of visiting other mining sites and operations, as part of his parliamentary business. Interviews were also conducted with the property owner, as to his recollection of Mr Hayward's visits and with Mr Hayward and M1. M1 advised that he accompanied Mr Hayward on several visits to the site and that on each occasion Mr Hayward's vehicle was used for transportation, rather than flights or hire cars.

In no instance was any evidence of official misconduct detected.

## **CONCLUSIONS**

As noted previously, in the absence of any evidentiary link to conduct that could amount to a criminal offence, whether or not Mr Hayward may have failed to comply with any SO of the parliament or the Code, in relation to any conflict issues arising from his mining interests, is a matter for parliament and outside the CMC's investigative jurisdiction.

The available evidence does not support a view that Mr Hayward has improperly claimed parliamentary travel allowance, at any time, in relation to his visits to his private mining interests, or that he in any way acted improperly in connection with the administration of any mining applications pertaining to those interests.



## THE DISCLOSURE OF INTERESTS

There were several factors that generated understandable concerns that Mr Hayward may have improperly used his position to advantage the business interests of his associates and/or himself. These were: Mr Hayward's links to the purchasers in the land transactions; Crestnut Products' receipt of a government grant; and his trip to Western Australia; coupled with his prior role as the responsible minister at a time material to the first land sale, and his ongoing status as a member of parliament.

As noted above, there is no evidence that Mr Hayward either exerted or ever sought to exert any direct improper influence. However, the investigation did obtain evidence that Mr Hayward has had some involvement in all of the three land transactions examined. In the second and third transactions he was personally involved in contact with departmental officers — in one instance to express Binary Chemicals' interest in purchasing land and in the other to correct contract details. The evidence suggests that, at the time of these representations, Mr Hayward had what would objectively be regarded as an interest in Hamcor's business interests, and a clear association with its directors, who were immediate family members. The other owner of Binary Chemicals, Mr Armstrong, was a close friend. Mr Armstrong and Hamcor were to be the purchasers. The evidence raises a query as to whether this interest was ever fully disclosed, in the sense of being formally declared to the department and its officers and noted in all of the relevant land files. There is no doubt that some officers knew of Mr Hayward's links with Hamcor and that Mr Don Hayward was his brother. Indeed such awareness led to the seeking of Crown Law advice about Mr Hayward signing the first contract of sale. However, that advice included instructions that:

Mr Hayward has no interest in Hayward Trust nor in any business activities of Donald Charles Hayward or any person, natural or otherwise, involved in the purchase of the land.

On the evidence arising from the investigation, although there is no evidence of official misconduct, the Commission cannot agree that on any objective assessment such instructions accurately described Mr Hayward's position.

It is useful to revisit the conclusions contained in the Crown Law advice. The then Crown Solicitor, Mr O'Shea, advised the Director-General in the following terms:

Conflict of interest is a question of fact. Certain relationships or circumstances may give rise to inferences of such a conflict, but, in the final analysis, whether or not there has been an actual conflict will depend on, simply put, whether one person has been given an advantage not enjoyed by the community at large, by virtue of the relationship.

On the instructions set out in this letter, it is clear that the fact of the relationship ... is entirely fortuitous ...

Questions of conflict have as much to do with appearance as they do with reality which is why full disclosure is the best defence to accusations of conflict.

My conclusion is that, on the instructions as set out herein, the reality side of the equation may be laid to rest. I will now turn to the appearance side.

Putting to one side the history of this transaction and the vicissitudes of political life, we are left with the fact that the present Minister is to sign a contract with others, one of whom is his brother.

The potential for unfounded accusations of a conflict of interest and how to ensure that such accusations, should they be made, have no substance, moves you to seek this advice.

On my instructions as set out in this letter, the Minister has done nothing which would justify any accusation of improper conduct in this matter. Mindful, however, of the difficulty which attends rebutting even baseless accusations, it seems to me that the Minister should record details of the transaction in the register kept by the Registrar of Members' Interests and should report all the facts to the Premier who might require the facts to be reported to Cabinet. In advising that the transaction should be recorded with the Registrar of Members' Interests, I am conscious that the Minister's interest in this transaction is so tenuous that, at first glance, it might be thought to fall outside the Declaration agreed to by the Parliament of Queensland on 27 November 1990. However, paragraph 7(o) is probably sufficiently broad to cover this situation.

As already noted, despite the recommendation contained in the Crown Law advice, the transaction was not noted in the Register entries for Mr Hayward. Mr Hayward said he had no recollection of ever seeing the actual advice. He also said that the matter was raised with Cabinet. In the absence of evidence of official misconduct, it was considered that there was little point in pursuing the issue of whether the matter was so raised with Cabinet.

While there was no evidence of any official misconduct influencing any of the transactions investigated, it remains that these transactions involved dealings with parties with whom Mr Hayward was closely associated. Leaving aside the absence of evidence of direct influence, and looking at the issues in a general sense, it must be acknowledged that people such as politicians have status and influence in the community and particularly within the public service. In the hierarchy of the state political system and public service, any representation made directly by a member to a public servant whose duties involve the routine processing of departmental business such as land sales, grants and the like can easily give rise to perceptions of influence or favouritism being sought, particularly where it is unclear as to the capacity in which the member makes the contact, as to whether the representations are made in a personal capacity, or on behalf of a constituent or otherwise.

The Commission recognises that members retain rights, subject to the previously discussed provisions of the POQA and the Code, to conduct and pursue their private business interests. They, unlike some other public figures such as magistrates, are not required by law to devote the whole of their time to the duties of their office.<sup>14</sup> On his own evidence, Mr Hayward does not.

In its 1999 report on the investigation of matters relating to the Gocorp Interactive Gambling Licence, known as the 'Netbet' report, the CJC recommended, in conjunction with the Auditor-General, that members 'involved in lobbying activities should formally declare any financial interests in the matter and that the minuting of that financial interest occur at all formal meetings'.

The Commission has noted the rationale underpinning the existence of the Register and the quite extensive disclosure requirements imposed by the current Code of Ethical Standards and the standing orders set out above. One of the purposes of that Code is stated to be to 'assist Members to better understand the nature of their public office and the distinct obligations that arise by virtue of that office'. The Statement of Fundamental Principles adopted by the Legislative Assembly on 17 May 2001 contains the following principles:

The following six fundamental principles draw together the various concepts underpinning the duties of and obligations on a member of Parliament, to assist members to better understand their representative role and responsibilities.

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<sup>14</sup> See *Magistrates Act 1991*, s. 13(2).

### **1. Integrity of the Parliament**

The public's confidence in the institution of Parliament is essential. Members are to strive at all times to conduct themselves in a manner which will tend to maintain and strengthen the public's trust and confidence in the integrity of Parliament and avoid any action which may diminish its standing, authority or dignity.

### **2. Primacy of the public interest**

Members are elected to act in the public interest and make decisions solely in terms of the public interest. Members also have a continuing duty to declare any private interests relating to their public duties as they arise, and to take steps to avoid, resolve or disclose any conflicts arising in a way that protects the public interest.

### **3. Independence of action**

Parliamentary democracy requires that members make decisions, and be seen to make decisions, in accordance with the public interest and not because they are under any financial obligation or influence. Therefore, members are not to place themselves under any financial obligation to outside individuals or organisations, including the executive government, that might influence them in the discharge of their duties and responsibilities, and must act at all times in accordance with rules set down by the Parliament for outside appointments.

### **4. Appropriate use of information**

In the course of their duties members often receive information which is either confidential or prized (that is, not available to the general public). Members are not to misuse any confidential or prized information, particularly for personal gain.

### **5. Transparency and scrutiny**

It is vital to parliamentary democracy that the public has confidence in the integrity of the decision-making process of Parliament. To ensure transparency, public scrutiny and public confidence, it is necessary that each member disclose their pecuniary interests on a continuing and ad hoc basis when the need arises.

### **6. Appropriate use of entitlements**

Members are provided certain entitlements to assist them to discharge their duties and responsibilities. Members are to ensure that they comply with any guidelines for the use of these entitlements.

These standards were not in place at the times relevant to many of the matters investigated, but they are an obvious and most useful point of reference.

Here, conclusions have been reached to the effect that there is no evidence of official misconduct affecting any of the transactions investigated. Nevertheless, it must be acknowledged that it is to be expected that in the future members will from time to time become involved with government instrumentalities in a private capacity, or in an official capacity on behalf of other people where an issue of conflict of interest may arise (such as family members, or a person with whom the member may have share some financial interest). The issue of what information should be disclosed in such circumstances is a complex one, which may ultimately depend on the circumstances of each situation. There is already a system under the Code whereby members can obtain confidential advice concerning conflicts of interest and parliamentary practice and procedure and the Register from The Clerk or, in some cases, the MEPPC. The Integrity Commissioner also has a role in these matters.

If it is helpful for the Commission to contribute any further guidance, in light of the circumstances investigated here, it is the view of the Commission that the above principles would best be observed by members of parliament making full disclosure to any other parties involved in such representations, where a member's contact is made in a private capacity, and/or where the member has an interest which is of a personal or financial nature. Such disclosures should be documented by the member and the recipient agency. The Commission agrees with the position adopted in the Crown Law advice that 'full disclosure' by relevant members is the best method of defence against accusations of conflict.

