

INDEPENDENT COMMISSION AGAINST CORRUPTION

STATEMENT IN THE MATTER OF: Operation Spicer

PLACE: Independent Commission Against Corruption ("ICAC")

NAME: Jodi McKay

ADDRESS: Known to the ICAC

OCCUPATION: Public Official

TELEPHONE NO: Known to the ICAC

DATE: 7 March 2014

States: -

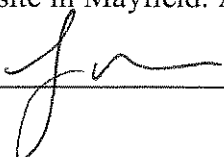
1. This statement made by me accurately sets out the evidence which I would be prepared, if necessary, to give in Court as a witness. The statement is true to the best of my knowledge and belief, and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true.

2. I am 44 years of age.

3. I have been a member of the Australian Labor Party ("ALP") since 2006. I was elected Member for Newcastle in 2007. I also held the portfolios of Minister for the Hunter, Minister for Tourism, Minister for Women, and Minister for Science and Medical Research, between 2008 and 2011. I was not re-elected in 2011.

4. The New South Wales Government has carriage of developing the former BHP site in Mayfield. A State Environmental Planning Policy ("SEPP") also

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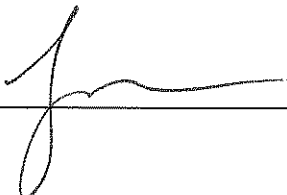
covers all of the Port Authority land, which gives the Government control over development.

5. A Masterplan was developed for the former BHP site. I'm unsure when the Masterplan Plan was completed. It covered the whole site and identified light industrial, port activity, and some commercial activity for the land.

6. A tender process was instigated for the back part of the former BHP site (around 60 hectares), and was won by Buildev. I believe Buildev's proposal was for light industrial and commercial development. There was certainly no proposal for a coal loader either within the Masterplan or Buildev's proposal. The Minister for the Hunter at that time was Michael Costa.

7. A number of changes were made within Government over time that affected the Ministerial portfolios associated with the land. For example, the Minister for the Hunter was given oversight of the Hunter Development Corporation ("HDC"), which had been managing the decontamination and tender process for the former BHP site on behalf of the State Property Authority ("SPA"). The HDC is charged with helping to facilitate economic growth in the Hunter Region.

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8. I believe that the front 90 hectares of the site was given to the Newcastle Port Corporation, under the control of the Minister for Ports, who at the time was Joe Tripodi.

9. I was appointed Minister for the Hunter in September 2008 and given carriage of HDC shortly after.

10. Soon after I became a Minister, I wrote to Paul Broad, Chair of the Board of HDC, and indicated that all matters relating to the Buldev-Mayfield site were to be dealt with by the HDC Board, and the Minister for the SPA. Ownership of the land ultimately rested with the SPA. I made this decision because Buldev had donated to the ALP in support of my campaign in 2007 and I did not believe it was appropriate for a minister to be making decisions related to an issue involving an organisation that had donated to their election campaign.

11. After I was elected Member for Newcastle in 2007, I discovered Buldev had donated \$50,000 to the ALP head office to support my campaign; however I knew nothing of this until contacted by the Sydney Morning Herald in April 2008. There are a number of media articles relating to this issue. The donation by Buldev was made to the ALP head office without my knowledge.

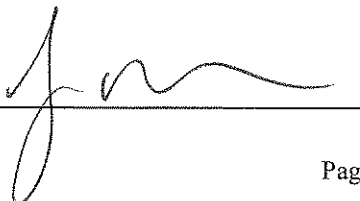
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12. In mid 2009 the Newcastle Port Corporation entered a tender process for a container terminal for the front of the site in accordance with the Ports Growth Plan. Garry Webb was the CEO of the Newcastle Ports Authority and the Chair of the Board was Paul Genes.
13. The Port Corporation developed a Concept Plan for their part of the site in late 2010, which included the container terminal, the subject of the earlier tender process.
14. Toward the end of 2010 or in early 2011, I was contacted by Jim Boyle, head of the Maritime Union of Australia (“MUA”). Boyle indicated he was concerned about delays in announcing the successful tender proposal for the container terminal. I believe it was more than 12 months since the tender process had closed.
15. I spoke to the Treasurer’s office (he was also the Minister for Ports) a number of times about the issue and on one occasion to Patrick Schiltz, Chief of Staff to the Treasurer, Eric Roozendaal. I told him that I didn’t understand why there was a delay and I asked him why it was taking so long to confirm. He indicated he would check and come back to me, but there was no response.
16. Around that time, I also became aware through my Ministerial Advisor, Joshua Brown, of a proposal by Buildev to develop a coal terminal on their

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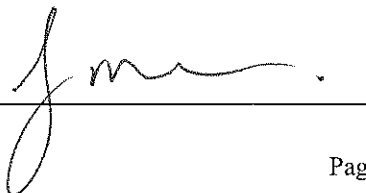


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part of the site, which I believe would require access to the land that fronted the harbour (the container terminal site).

17. I had also become aware that Nathan Tinkler, the owner of a number of coal mines, had become involved in the Buildev company. There was an article to that affect in the Newcastle Herald. I am unsure if Tinkler's interest was in the company or the land. I believe a number of requests were made by Buildev to my office to meet with me to discuss the coal loader proposal, but I refused to meet with the company given their earlier donation to the Labor Party.
18. Buildev was very politically active. They had contact with a number of Ministers and MPs and attended fundraising events for the ALP and the Liberal Party. They were also regularly seen at NSW Parliament House.
19. During late 2010 and early 2011, I met with Nathan Tinkler at least twice, maybe three times. The meetings were in regard to the NRL team, the Newcastle Knights and the A- League soccer team, the Newcastle Jets. I had also been involved in the redevelopment of Energy Australia Stadium and was aware of the significant amount of money the Newcastle Knights owed the NSW Government for use of the stadium. It was publically known the Knights were in financial difficulty and Nathan Tinkler, who was a significant donor to the club, was keen to take over the team and secure their

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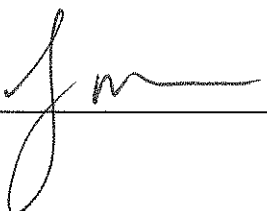


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financial viability, which I supported. The Knights had always struggled to find ongoing sponsorship.

20. My meetings with Tinkler took place in his office at The Boardwalk building. The former NRL player, Paul Harragan, who also supported Tinkler's involvement in the Newcastle Knights, may have also been present at one of the meetings with Tinkler.

21. I was also involved in talks regarding the Newcastle Jets. Ben Buckley, CEO of the Football Federation Australia ("FFA") and Ken Edwards who was acting as a consultant to the FFA, were talking to local business people to find a way for the soccer team to continue in Newcastle. Buckley was keen to talk with Tinkler at some point and I believe he had asked Ken Edwards to make contact with him and other business people who might be interested in supporting the club. I'm not sure if Tinkler was financially involved with Buildev at that particular time. On one occasion around that time I saw Darren Williams sitting on the lounge outside the ministerial offices at parliament house. I do not know whom he was meeting. He waved at me and I said hello to him as I was heading to my office and I mentioned that Ken Edwards was talking to local business people about the Jets. I did not discuss any other issue with him and the conversation would have been no more than 30 seconds in length.

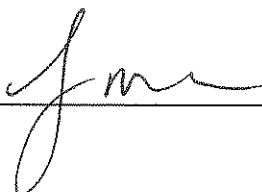
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22. I had a number of conversations with Ken Edwards and Ben Buckley in regard to the Newcastle Jets. I believe Ken Edwards convinced Tinkler to become financially involved in the club and Tinkler later appointed Edwards as the club's Executive Chairman. Edwards was present at one of the meetings that I had with Tinkler.
23. At one of the meetings I had with Tinkler over the Knights and the Jets, he raised the issue of the coal loader and I indicated I would not discuss the matter with him. At that stage I knew he was involved in some way with Buldev. In doing so, I clearly indicated my opposition to the proposal, which I believed did not comply with the site's Master Plan or the original tender for the land, and was not aligned to the Port Corporation's long held strategy for coal loading in the Port and the tender process that had been entered into by the NSW Government for a container terminal for the front part of the site. I also believed there had been no consultation or transparency with the community, and the proposed site was very close to some residential areas. I was also aware of significant opposition to the proposal by the Board of HDC and the Board of the Newcastle Port Corporation.
24. I did receive some negative publicity for my position on the coal loader because I would not meet with Buldev to be briefed on the proposal, however I believed it was inappropriate for me to meet with them, given the donation the company had made to the ALP.

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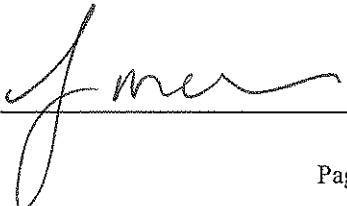
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25. At the last meeting I had with Tinkler he offered to support my campaign for reelection. His offer came at the end of a general conversation about the Newcastle Knights. I don't recall word for word what he said but he said words to the effect of how it was going to be a hard election (NSW 2011 State Election) for the ALP. He mentioned the Newcastle Lord Mayor John Tate, who was a candidate in the 2011 NSW State Election for the Electorate of Newcastle, would make it difficult for me to hold the seat. At the time of Tinkler's offer of support, the law forbade developers from financially supporting Members of Parliament. I told Tinkler that as a developer, he could not support my campaign. Tinkler's response to me was that he had hundreds of employees and that he can get around the rules that way. I took his comment to mean that he could use his money but get his employees to donate to my campaign. Only Tinkler and I were present when he made those comments and it made me feel very uncomfortable. Tinkler was standing up when he made the comments but his demeanor was not aggressive. I refused his offer of support.

26. I met with Tinker two to three times during the four years of my term as the Member for Newcastle. The meetings with Tinkler came at his request with very little notice. They were never long meetings, but were never recorded in my diary because they were not planned meetings. There was always an expectation on Tinkler's part that I would meet with him. My purpose in

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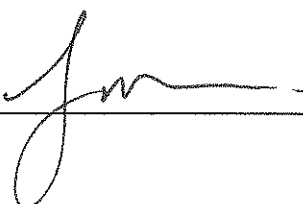
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meeting with Tinkler was my intent to see the Newcastle Knights and Newcastle Jets issues resolved. I did not record any notes about my meetings with Tinkler, however I always made sure my advisor, Joshua Brown, was aware of the meetings. I did promptly report his offer to support my campaign to the Independent Commission Against Corruption (“ICAC”) in 2011.

27. Garry Webb and Paul Broad were both vehemently against Buldev’s proposal for the coal loader on the former BHP land. Rail access was also a big issue between the Port Authority and Buldev. The Board of the HDC and the Board of the Newcastle Port Corporation were also opposed to the proposal of a coal loader on the site. A coal loader on the land had never been government policy.

28. During this time I was in contact with Garry Webb over the concept plan for the harbour frontage land, which was earmarked for the container terminal. I had been focusing my efforts on a resident group called the “Mayfield Community Consultation Group” which was headed by John Hayes. They were concerned about containers going by road and an increase in the number of trucks, as opposed to loading and moving containers by rail.

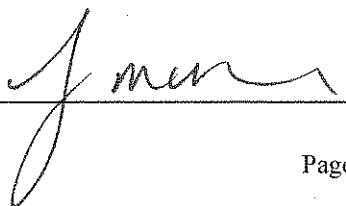
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29. At the residents' request I wrote to the Minister for Planning requesting an extension of the consultation period for the plan. That was approved by the Minister in early February 2011, which took the end of the consultation period to after the "caretaker" period, which began on 4th March 2011. During the Caretaker period, Ministers continue to administer the State, but are not able to make major policy decisions or appointments. The caretaker period continues after polling day until it is clear who will form the new Government.
30. Before requesting the extension, I spoken with the CEO of the Port Corporation, and the Minister for Planning's office, where it was confirmed that the extension to the concept plan should not affect the Treasurer's ability to sign off on the successful tender for the site because the tender had been issued some months before the concept plan was exhibited and they were two separate processes. I declare that my partner was the Chief of Staff to the Planning Minister at this time.
31. At this time I was also in contact with Garry Webb over the tender proposal for the container terminal. He was becoming increasingly concerned about the delay in the Minister/Treasurer's office.
32. As it got closer to the caretaker period, conversations with Garry Webb indicated that there had been approval given by Eric Roozendaal to a proposal, which I believe had been recommended for acceptance by the Port

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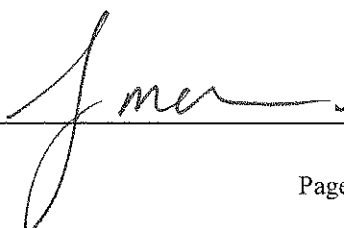
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Corporation board. It was expected that once the Treasurer had given his approval, the Board of the Port Corporation would ratify the decision, and an announcement made.

33. I also had conversations with a staff member of the Treasurer, Sam Crosby, who was also concerned about the delay. At one point I believe that Crosby conveyed to the CEO of the Port Corporation the Minister's approval of the successful proposal, which was then revoked the next day. Crosby was "removed" from the Treasurer's office around this time. I believe Ian McNamara, who previously worked for Joe Tripodi, and was close to the Treasurer, took over managing the issue and all communication with the Port Corporation.

34. I was becoming increasingly concerned and considered it odd that no announcement had been made about the tender process, which complied with the Masterplan, the Concept Plan and was in line with long held government policy. This was a significant and positive development and it seemed to me as though every effort was being made not to announce it.

35. Garry Webb wanted the final board ratification before the government entered caretaker mode on 4th March. As far as he was concerned there was no acceptable reason for the delay. Although the consultation period for the concept plan would extend into the caretaker period, both Webb and the

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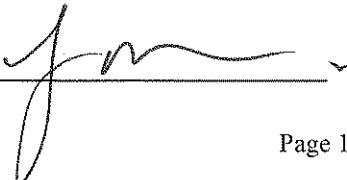

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Minister for Planning's office confirmed that the extension to the Concept Plan consultation period did not affect the Minister's ability to sign off on the successful tender for the container terminal.

36. On 16th February 2011, I spoke to the Treasurer and I advised him that I had grave concerns about the delay in the announcement. He told me that as I had lengthened the caretaker process he couldn't sign off. I indicated to him that I was aware that issue should not prevent him from approving the terminal. He paused and said, "Haven't you spoken with Tinkler?" I said to him that I had spoken with Tinkler and made it very clear to him that I would not support a coal terminal on that site because there had been no transparency or consultation with the community. The Treasurer said he would come back to me.

37. Around three hours after that telephone call with the Treasurer, a confidential Treasury document was "leaked" to the Newcastle Herald, undermining the viability of a container terminal on the site. Matthew Kelly from the Newcastle Herald called me about the Treasury document. He faxed a copy of the document to me.

38. I contacted Garry Webb and asked him about the Treasury document. He appeared surprised by the information in the document and said he had never seen the document and did not know such a document existed. I found that

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unusual given Treasury would usually consult with the CEO of a state government entity on matters such as this.

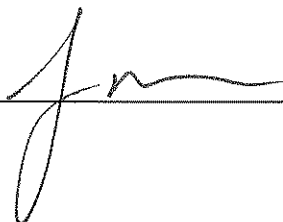
39. I then called the Treasurer and I told him that a confidential Treasury document had been given to the Newcastle Herald since our conversation earlier that day. I said to him, "What are you doing?" He denied that he had leaked the document. I said to him "I will not be part of what you are doing." "I will not support what you are doing." He then told me not to make such comments over the phone. The conversation was very heated and my voice was raised. The conversation was overheard by staff in the Department of Premier and Cabinet office in Newcastle.

40. Sam Crosby told me later that the Treasurer had contacted him, and blamed him for the leak of the document.

41. Not long after the conversation with the Treasurer, I received a message from him stating: "Jodi can you call me back before we both do something that we may regret." I did not return his call.

42. There are several issues that are of relevance at the time of my conversation with the Treasurer. The first was the offer from Nathan Tinkler to me, to financially support my campaign. Following my argument with the Treasurer concerning the leaked document to the Newcastle Herald, my feeling was that Tinkler arranged the final meeting with me so that he could offer to

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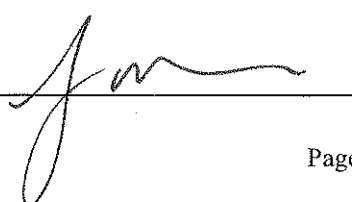
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financially support my campaign. He was not surprised when I indicated the law forbade him donating to my campaign and it appeared to me that he had given thought to how he could donate to my campaign and get around the law. Given the Treasurer's comment about Tinkler, I believe he knew Tinkler had met with me.

43. My feeling was that there was something very wrong with what was happening at that time, particularly following the Treasurer's question to me as to whether or not I had spoken to Tinkler. I felt so concerned about what has happened that in an article in the Newcastle Herald on 17th February, I publicly stated that "forces within the government" were trying to undermine the container terminal for Newcastle.

44. There a number of other things that occurred around that time that added to sense of unease. Firstly, Joe Tripodi used a person named Ann Wills as his "eyes and ears" in Newcastle. She was an ALP member and former advisor to Michael Costa. She was renting an office off the Independent Lord Mayor of Newcastle, John Tate, and was working for Buildev. Wills set up a company called "Wills Communication". Buildev confirmed to the Newcastle Herald at the time that Wills had done work for them but denied she was a "lobbyist" (she was not on the lobbyist register).

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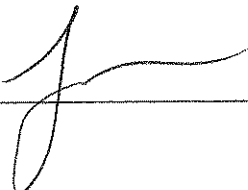
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45. Secondly, Ann Wills had taken the independent Lord Mayor to meet with Joe Tripodi in the days before John Tate confirmed that he would run against me in the election. They were seen together at Parliament House by at least two MPs - Sonya Hornery and Robert Coombes.


46. When told about their visit to Parliament House, I confronted Tripodi by sending him a text message. I wrote words to the effect of: "How did you meet with John Tate and Ann Wills?" He replied, "They were passing, they call in." I had the Parliament House visitor register checked by a member of my staff however there was no record of Tate and Wills registering as visitors on that particular day even though Tripodi had confirmed he had seen them. I rarely had text or phone contact with Tripodi but I wanted to know why he would do this and what his intention was. The Lord Mayor and Ann Wills denied to the Newcastle Herald that a meeting took place.

47. Thirdly, in early March 2011, around three weeks before the election and around three weeks after my conversation with the Treasurer, a brochure titled "Stop Jodi's Trucks" was circulated to at least five Newcastle suburbs around the Mayfield area. There was a postal address on the brochure that linked it to Wetherill Park in Sydney. The brochure indicated that 1000 trucks per day would be seen on Newcastle streets from the container terminal. I made a complaint about the distribution of the brochures to the Electoral Commission and the NSW Police. The brochures were distributed

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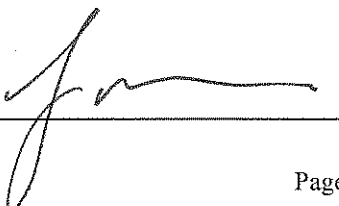
after the writs were issued on the 5th March 2011 but were not authorised as is required by law. Once the writs are issued, all election material must include details of the name and full address of the person authorising the printing of the material, and the name of the printer and the full address at which it was printed.

48. The NSW Police identified a female who was paid \$600 cash to distribute the brochures. The NSW Police and the Newcastle Herald traced its printing to Mesh Media located at Wetherill Park in Western Sydney. Media Mesh's owner, "Vince", told the police that he was paid \$5,000.00 in cash by someone by the name of "Ann." I suspect that person to be Ann Wills.

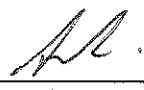
49. Following the circulation of the brochures I received complaints and correspondence from members of the public advising me that they would not support my re-election based on the information in the flyer. Although I should have been focusing my efforts elsewhere in my electorate, I again door knocked the area to tell people that the information in the flyers was incorrect.

50. My campaign director, Simon Adam, also raised the issue with the Electoral Commission. The Electoral Commission informed me that it was a matter for the Police, and at best would attract a \$250.00 fine.

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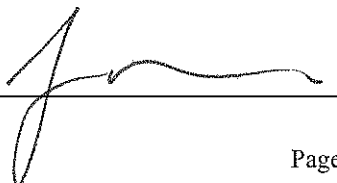
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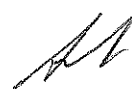
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51. Detective Inspector Parker of the NSW Police identified Linda Samenki as the person who distributed the brochures with her children. According to a Newcastle Herald article, The Liberal Party, The Lord Mayor, the Greens and the Tinkler Group all denied responsibility for the brochures. I'm unsure if the Newcastle Herald questioned Ann Wills and Buildev.
52. Fourthly, Detective Inspector Parker told me that Newcastle solicitor Nick Dann contacted the Police to state that he represented a "third party" that had an interest in the matter. I believe he told Police that his client "had knowledge of the electoral system" and indicated it was "coming from Sydney."
53. Detective Inspector Parker sought legal advice from the Office of the Department of Public Prosecutions (ODPP) and their advice to him was that they did not believe there was intent to distribute the brochures after the writs had been issued, even though the brochures were distributed on the 5th, 6th and 7th March. My suspicion is that the Police were not inclined to devote significant resources to investigate the matter as the penalty for the offence is so minor.
54. I have also been told by whom I can't recall that Joe Tripodi was seen in Newcastle in the last few months meeting with Darren Williams of Buildev. I was also told at the time that Buildev had met with Mike Gallacher who at the time was the Shadow Minister for the Hunter.

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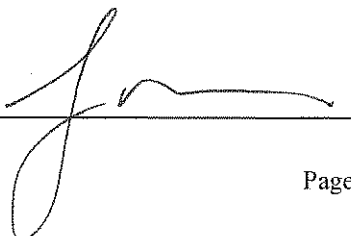


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55. I subsequently lost the 2011 election. I believe the distribution of the flyer had an impact on my re-election as it was intended to do.

56. While I did not know of anyone who benefited financially during this time, I reported the events to the ICAC, police and the electoral commission in 2011. I believe the matter was also referred to the Electoral Funding Authority.

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