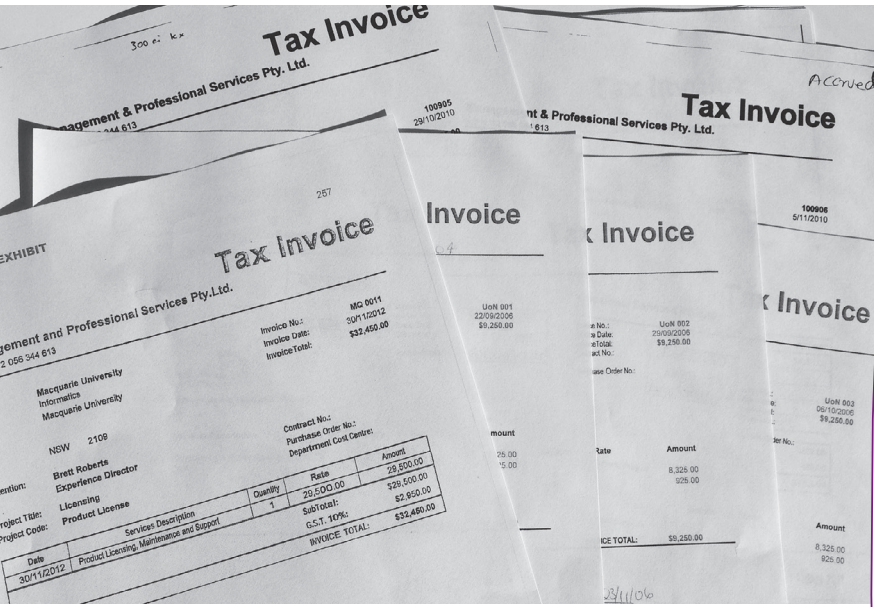


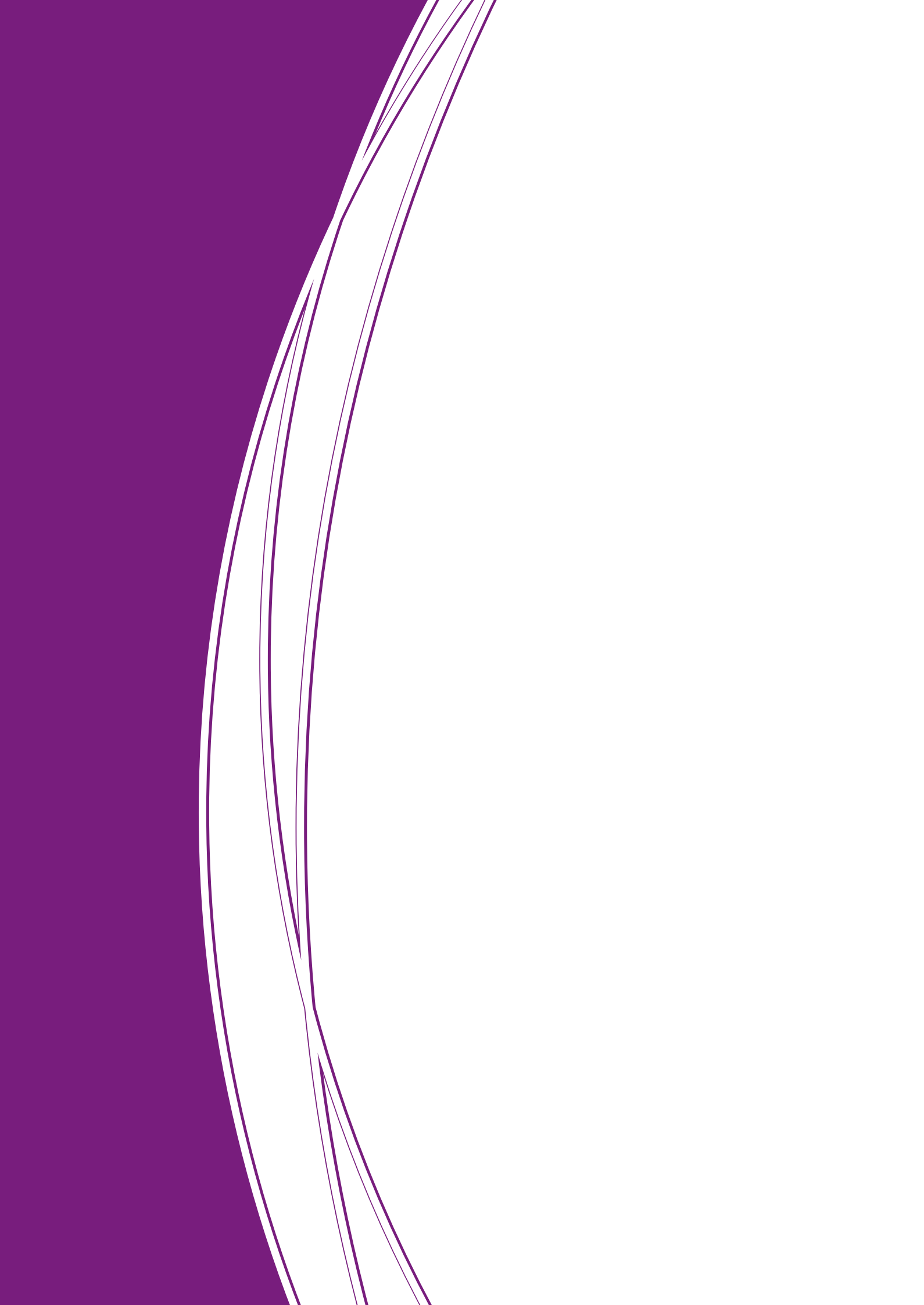


INDEPENDENT COMMISSION
AGAINST CORRUPTION
NEW SOUTH WALES



INVESTIGATION INTO THE CONDUCT OF A UNIVERSITY MANAGER AND OTHERS IN RELATION TO FALSE INVOICING

ICAC REPORT
JUNE 2015



ICAC

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AGAINST CORRUPTION
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Mr President
Madam Speaker

In accordance with s 74 of the *Independent Commission Against Corruption Act 1988* I am pleased to present the Commission's report on its investigation into the conduct of a university manager and others in relation to false invoicing.

I presided at the public inquiry held in aid of the investigation.

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

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

Yours sincerely



The Hon Megan Latham
Commissioner

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Summary of investigation and results

This investigation by the NSW Independent Commission Against Corruption (“the Commission”) concerned allegations that Brett Roberts corruptly obtained, or attempted to obtain, a benefit by issuing false invoices to the universities at which he worked. Mr Roberts worked as an information technology (IT) manager at the University of Newcastle from 2005 to 2007, at the University of Sydney in 2010 and 2011, and then at Macquarie University from 2012 to 2013.

In his role as an IT manager at these universities, Mr Roberts caused, or attempted to cause, the payment of false invoices to a private company called Management and Professional Services Pty Ltd (MAPS), a one-man IT consultancy company owned by Christopher Killalea. MAPS did not do any work for any of the universities. Mr Killalea was involved in the issuing of the false invoices at the University of Newcastle and Macquarie University. The money derived from the false invoices was deposited into bank accounts controlled by MAPS or Mr Roberts.

Mr Roberts and Mr Killalea also attempted to cover-up the false invoices at Macquarie University by submitting a false licensing agreement and also concocting emails to give the impression that MAPS had performed work for the university.

Emiel Temmerman, a director of iPath Pty Ltd, was involved in one instance of false invoicing by Mr Roberts at Macquarie University.

Results

Corruption findings are made against Mr Roberts for the following conduct:

- in November 2006, Mr Roberts engaged in corrupt conduct by dishonestly exercising his public official functions by authorising the payment by the University of Newcastle of three MAPS invoices totalling \$27,750, for work he knew not to have been done, in order to obtain a financial benefit (chapter 2)
- in December 2010, Mr Roberts engaged in corrupt conduct by dishonestly exercising his public official functions by certifying the payment by the University of Sydney of nine invoices totalling \$43,065, which he knew to be false, in order to obtain a financial benefit (chapter 3)
- in December 2012, Mr Roberts engaged in corrupt conduct by dishonestly exercising his public official functions by raising and signing a recommendation-for-purchase form for the purpose of authorising a MAPS invoice for \$32,450, paid by Macquarie University into a MAPS bank account, knowing that MAPS had not done any work for the university and that the invoice was false, in order to obtain a financial benefit (chapter 4)
- in January 2013, Mr Roberts engaged in corrupt conduct by dishonestly exercising his public official functions by raising and signing a recommendation for the purpose of authorising payment by Macquarie University of an invoice

for \$10,450 submitted by iPath Pty Ltd, knowing that iPath Pty Ltd had not conducted the work described in the invoice, in order to obtain a financial benefit (chapter 4)

- in May 2013, Mr Roberts engaged in corrupt conduct by dishonestly exercising his public official functions by submitting three false MAPS invoices, each for \$32,450, to Macquarie University, in an attempt to obtain a financial benefit (chapter 4)
- between May and June 2013, Mr Roberts engaged in corrupt conduct by dishonestly exercising his public official functions by creating and signing a false licensing agreement and creating false emails to falsely represent that MAPS had done work for Macquarie University (chapter 4).

Corruption findings are made against Mr Killalea for the following conduct:

- in November 2006, Mr Killalea engaged in corrupt conduct by adversely affecting the honest exercise of Mr Roberts' public official functions by collaborating with Mr Roberts to issue three MAPS invoices to the University of Newcastle, totalling \$27,750, for work Mr Killalea knew had not been done and that would be dishonestly authorised for payment by Mr Roberts, in order to obtain a financial benefit (chapter 2)
- in November 2012, Mr Killalea engaged in corrupt conduct by adversely affecting the honest exercise of Mr Roberts' public official functions by collaborating with Mr Roberts to create a false MAPS invoice to be paid by Macquarie University for \$32,450, for work Mr Killalea knew had not been done, knowing that Mr Roberts would use his position at Macquarie University to dishonestly authorise payment of that amount (chapter 4)
- in December 2012, Mr Killalea engaged in corrupt conduct by adversely affecting the honest exercise of Mr Roberts' public official functions by, jointly with Mr Roberts, sending a MAPS invoice to iPath Pty Ltd for \$10,450 for work he knew had not been performed by MAPS, knowing that the invoice would be used by iPath Pty Ltd to obtain \$10,450 from Macquarie University to which it was not entitled, and that Mr Roberts would use his position at Macquarie University to dishonestly authorise payment of that amount (chapter 4)
- in May and June 2013, Mr Killalea engaged in corrupt conduct by adversely affecting the honest exercise of Mr Roberts' public official functions

by collaborating with Mr Roberts to create and submit a false licensing agreement and false emails to falsely represent that MAPS had done work for Macquarie University, knowing that those documents would be used by Mr Roberts to falsely answer queries made of him by staff members of Macquarie University (chapter 4).

A corruption finding is made in chapter 4 that, in January 2013, Mr Temmerman engaged in corrupt conduct by adversely affecting the honest exercise of Mr Roberts' public official functions by agreeing with Mr Roberts to submit an iPath Pty Ltd invoice for \$10,450 to Macquarie University, knowing that the work described in the invoice had not been done and knowing that Mr Roberts would exercise his public official functions to dishonestly arrange payment of the invoice.

The Commission is of the opinion that consideration should be given to obtaining the advice of the Director of Public Prosecutions (DPP) with respect to the prosecution of Mr Roberts for the criminal offences of:

- obtaining money by deception from the University of Newcastle for himself and Mr Killalea, contrary to s 178BA of the *Crimes Act 1900* ("the Crimes Act"), (as it was at the time)
- using a false instrument, namely his curriculum vitae, to obtain employment at the University of Newcastle, contrary to s 300 of the Crimes Act (as it was at the time)
- giving false and misleading evidence, contrary to s 87 of the *Independent Commission Against Corruption Act 1988* ("the ICAC Act"), by giving evidence during a compulsory examination that MAPS did work for the University of Newcastle
- fraud, by dishonestly obtaining \$43,065 from the University of Sydney contrary to s 192E of the Crimes Act
- using a false document, namely his curriculum vitae, to obtain employment at the University of Sydney, contrary to s 254 of the Crimes Act
- giving false and misleading evidence, contrary to s 87 of the ICAC Act, by giving evidence during a compulsory examination that MAPS did work for the University of Sydney
- fraud, by dishonestly obtaining \$32,450 from Macquarie University by submitting a false invoice in December 2012, contrary to s 192E of the Crimes Act
- fraud, by dishonestly causing a financial disadvantage of \$10,450 to Macquarie University through iPath Pty Ltd, contrary to s 192E of the Crimes Act

- attempted fraud, by dishonestly attempting to obtain \$93,750 from Macquarie University by submitting three false invoices, contrary to s 192E and s 344A of the Crimes Act
- using false documents, namely a false licensing agreement and concocted emails, to influence the exercise of a public duty by staff members at Macquarie University, contrary to s 254 of the Crimes Act
- using a false document, namely his curriculum vitae, to obtain employment at Macquarie University, and thereby obtain a financial advantage contrary to s 254 of the Crimes Act
- giving false and misleading evidence, contrary to s 87 of the ICAC Act, by giving evidence during a compulsory examination that MAPS did work for Macquarie University.

The Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Killalea for the criminal offences of:

- obtaining money by deception from the University of Newcastle for himself and Mr Roberts, contrary to s 178BA of the Crimes Act (as it was at the time)
- fraud, by dishonestly causing a financial disadvantage of \$32,450 to Macquarie University by collaborating with Mr Roberts with respect to a false invoice that was submitted to the university in December 2012, contrary to s 192E of the Crimes Act
- fraud, by dishonestly causing a financial disadvantage of \$10,450 to Macquarie University, through iPath Pty Ltd, contrary to s 192E of the Crimes Act
- using false documents, namely a false licensing agreement and concocted emails, to influence the exercise of a public duty by staff members at Macquarie University, contrary to s 254 of the Crimes Act.

Chapter 5 of this report sets out the Commission's review of the corruption risks present at the time the conduct occurred. The Commission has made the following recommendations:

Recommendation 1

That the University of Sydney implements measures to safeguard the integrity of vendor banking details when new vendors are created and invoices are processed for payment.

Recommendation 2

That the University of Sydney expands its measures to enhance its ability to detect potential order-splitting.

Recommendation 3

That the University of Newcastle, the University of Sydney and Macquarie University ensure that employment screening checks are performed on preferred applicants in line with the Australian Standard on Employment Screening (AS 4811-2006).

These recommendations are made pursuant to s 13(3)(b) of the ICAC Act and, as required by s 111E of the ICAC Act, will be furnished to the University of Newcastle, the University of Sydney, Macquarie University and the responsible minister, being the minister for education.

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

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

The Commission will publish the responses to its recommendations, any plans of action and progress reports on their implementation on the Commission's website, www.icac.nsw.gov.au, for public viewing.

Recommendation that this report be made public

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

Chapter 1: Background

This chapter sets out background information on how the investigation originated, how it was conducted, and how the investigation falls within the jurisdiction of the NSW Independent Commission Against Corruption (“the Commission”).

How this investigation came about

On 18 November 2013, Christopher Killalea made a complaint to the Commission concerning the conduct of Brett Roberts. He had concerns that Mr Roberts had issued false invoices while employed as an information technology (IT) manager at the University of Sydney and then at Macquarie University.

The complaint raised concerns about the integrity of procurement processes within high-profile educational institutions.

Why the Commission investigated

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

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

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

The role of the Commission is explained in more detail in Appendix 1. Appendix 2 sets out the approach taken by

the Commission in determining whether corrupt conduct has occurred.

The matters brought to the Commission’s attention were serious and could constitute corrupt conduct within the meaning of the ICAC Act.

The Commission has jurisdiction to investigate allegations concerning the conduct of public officials that constitutes the dishonest or partial exercise of the officials’ functions. NSW universities are public authorities for the purposes of the ICAC Act, as they are subject to the powers of the Auditor-General of NSW to inspect, examine or audit their accounts pursuant to s 35 of the *Public Finance and Audit Act 1983*.

A person is a public official where they are employed or otherwise engaged by a public authority. Mr Roberts was a public official, as he was, at all relevant times, either directly employed by a university or contracted to a university at the time of the conduct under investigation.

If Mr Roberts issued false invoices while engaged to work for a university, this could amount to corrupt conduct as it constitutes or involves the dishonest or partial exercise of his official functions under s 8(1)(b) of the ICAC Act.

For the purposes of s 9(1)(a) of the ICAC Act, Mr Roberts’ conduct may constitute a criminal offence, being the offence of fraud pursuant to s 192E of the *Crimes Act 1900* (“the Crimes Act”) involving dishonestly obtaining money belonging to another by deception.

If others were also knowingly involved with Mr Roberts in the issuing of the false invoices, then this could also amount to corrupt conduct as their conduct could adversely affect the honest exercise of Mr Roberts’ official functions under s 8(1)(a) of the ICAC Act.

For the purposes of s 9(1)(a) of the ICAC Act, their conduct may constitute a criminal offence, being the offence of fraud pursuant to s 192E of the Crimes Act involving dishonestly obtaining a financial advantage or causing a financial disadvantage to the universities.

In deciding to conduct an investigation, the Commission also took into account the protracted nature of the alleged corrupt conduct, the fact that it occurred at separate universities and the senior managerial position Mr Roberts held at the universities.

In these circumstances, the Commission decided that it was in the public interest to conduct an investigation to establish whether corrupt conduct had occurred and whether there were corruption prevention issues that needed to be addressed.

Conduct of the investigation

During the course of the investigation, the Commission:

- obtained documents from various sources by issuing 23 notices under s 21 or s 22 of the ICAC Act requiring production of documents
- interviewed and/or took statements from numerous persons
- conducted five compulsory examinations.

During the course of the investigation, the Commission obtained evidence that suggested Mr Roberts had also certified the payment of false invoices at the University of Newcastle (in addition to the University of Sydney and Macquarie University, which were the subject of Mr Killalea's initial complaint). The Commission also obtained evidence suggesting that Mr Killalea had been involved in the issuing of false invoices and that another person, Emiel

Temmerman, had been involved in issuing a false invoice to Macquarie University.

The public inquiry

After taking into account each of the matters set out in s 31(2) of the ICAC Act, the Commission determined that it was in the public interest to hold a public inquiry, for the purpose of furthering its investigation. In making that determination, the Commission had regard to the following matters:

- cogent evidence had been obtained in the course of the investigation up to that time supporting the allegations
- the public interest in exposing corrupt conduct that affects public authorities, particularly where those public authorities are educational institutions that have an international reputation
- the prospect that conducting a public inquiry may encourage the reporting of other instances of similar conduct that highlight inadequacies in procurement processes and assist in the promotion of best practices.

The public inquiry was conducted over three days, from 16 to 18 February 2015. The Hon Megan Latham, Commissioner, presided at the public inquiry. Anthony McGrath SC acted as Counsel Assisting the Commission. Evidence was taken from five witnesses.

At the conclusion of the public inquiry, Counsel Assisting prepared submissions setting out the evidence and identifying the findings and recommendations the Commission could make based on the evidence. The Commission's Corruption Prevention Division also prepared submissions concerning the procurement practices of the

relevant universities. These submissions were provided to the parties and submissions were invited in response. All the submissions received in response have been taken into account in preparing the report. Submissions were not received on behalf of Mr Roberts or Mr Killalea.

Mr Roberts and Mr Killalea

Mr Roberts and Mr Killalea had a close personal friendship.

By 2000, Mr Roberts had established a moderately successful career in the IT field. In that year, he took up a position as a project manager with a large private company. He soon became acquainted with Mr Killalea, who was working as a consultant for an associated company. After working together, Mr Roberts and Mr Killalea struck up a friendship and began to socialise after work. They shared a like-minded approach to work in that they were blunt and did not tolerate fools. In 2002, Mr Roberts was promoted to operations manager and, over the next few years, he regularly engaged the services of Mr Killalea.

In 2005, Mr Killalea became an independent contractor, operating as Management and Professional Services Pty Ltd (MAPS). MAPS' core business was to provide consulting services for procedural improvement or infrastructural enhancement in IT services. Mr Roberts was never employed by, or held a role at, MAPS.

Mr Roberts and Mr Killalea's friendship grew. Up until 2013, Mr Roberts regularly stayed at Mr Killalea's residence in Rozelle when he commuted to Sydney from Newcastle. For convenience, Mr Killalea provided Mr Roberts with a key to his residence. To reciprocate, Mr Roberts bought Mr Killalea meals and beer at a local hotel. On occasion, Mr Roberts' family stayed at Mr Killalea's residence and, on one occasion, Mr Killalea spent Christmas day at Mr Roberts' residence with his family. When Mr Roberts was not staying at Mr Killalea's residence, they stayed in contact every one or two weeks.

Mr Roberts and Mr Killalea also had a financial association. In mid-2005, Mr Killalea lent money to Mr Roberts to purchase equipment for Mr Roberts' employer. Mr Killalea claimed the loan was for \$10,500, while Mr Roberts said the amount loaned was \$2,500. The loan was repaid in October 2005. While the Commission is unable to determine the amount of the loan, on either version, the loan shows Mr Killalea's willingness to assist Mr Roberts in financial matters. Mr Killalea also put a great deal of trust and faith in Mr Roberts. This is borne out by the fact that Mr Killalea appointed Mr Roberts as trustee of Mr Killalea's self-managed superannuation fund.

Issues of credit

Mr Roberts and Mr Killalea both made admissions to the Commission about their involvement in the issuing of false invoices and their attempt to conceal that conduct. Their evidence, however, conflicts about the extent of Mr Killalea's involvement in the improper conduct at the University of Newcastle and Macquarie University. Though those matters will be dealt with in the subsequent chapters, the following comments summarise the approach taken to their evidence.

Where it is disputed, Mr Roberts' evidence is to be treated with caution. This is because, on numerous occasions, he was shown to be dishonest.

Mr Roberts made dishonest statements in his curriculum vitae to gain employment at the University of Newcastle, the University of Sydney and Macquarie University. He did this by claiming to have received an associate diploma in computing studies from the Newcastle College of Advanced Education and a bachelor of science in computing from the University of Newcastle. Mr Roberts had not obtained either of these qualifications. Mr Roberts also dishonestly claimed in his curriculum vitae that he held professional memberships, and misrepresented the nature of his role in previous employment.

Invoice

Invoice

100906
5/11/2010

During the public inquiry, Mr Roberts acknowledged that he was dishonest on other occasions. He said that he made misleading statements during Macquarie University's internal investigation into his conduct. He also said that he gave false evidence during his prior compulsory examination at the Commission. This included statements about whether he ever worked for MAPS and whether MAPS did any work that was the subject of false invoices.

In light of the above, the Commission does not accept the evidence of Mr Roberts unless it has been corroborated by other independent evidence.

Mr Killalea's evidence should also be treated with caution. Although he made the complaint that initiated this investigation, and made admissions concerning his own involvement in inappropriate conduct, Mr Killalea substantially downplayed his role in the relevant conduct.

Chapter 2: The University of Newcastle

Mr Roberts worked at the University of Newcastle from November 2005 to July 2007. He was contracted through a recruitment agency to the position of manager of the work portfolio program. He was engaged to provide IT project management services on several IT infrastructure projects at the university.

Mr Roberts acquired this position after making false statements in his curriculum vitae with respect to his tertiary qualifications, professional memberships and the nature of his role in previous employment.

During the investigation, the Commission sought information from the university as to whether Mr Roberts held a financial delegation in his role as IT manager. The University of Newcastle replied that, as the request dealt with events that occurred in 2006, it could not give any more detail than to say that it is likely that Mr Roberts had a financial delegation commensurate with his position.

There is no dispute that, on 23 November 2006, Mr Roberts, as IT manager, authorised three tax invoices for payment to MAPS by the University of Newcastle. The invoices purported to relate to a project titled "Network Active Equipment Project". Each invoice was marked to Mr Roberts' attention and was written in identical terms except for the invoice numbers and dates.

The invoices were dated 22 September 2006, 29 September 2006 and 6 October 2006. Each invoice authorised payment of \$9,250, totalling \$27,750. Mr Roberts signed each invoice and made a notation of "OK to pay" and a cost code. The invoices were to be paid into a MAPS bank account. Mr Killalea was the only signatory to this bank account and was the only person who had the authority to make withdrawals. Although at his earlier compulsory examination Mr Roberts claimed that MAPS had undertaken work for the university, at the public inquiry it was not disputed by Mr Roberts or Mr Killalea that MAPS did not do any work for the University of Newcastle.

On 21 December 2006, \$27,750 was deposited by the University of Newcastle into the MAPS bank account in payment of the tax invoices. The following day, \$7,000 was withdrawn from the MAPS bank account at a Balmain branch. On 20 February 2007, a further \$8,000 was withdrawn from the MAPS bank account at the same Balmain branch. The Commission was unable to establish whether these were cash or cheque withdrawals. These withdrawals were the only instances where money was withdrawn from the MAPS bank account, around that time, for which the purpose of the withdrawal could not easily be ascertained.

Mr Roberts said that he signed and authorised the payment of the invoices to MAPS. He said that he did so knowing that MAPS did not do any work for the University of Newcastle. Mr Roberts said that he devised the scheme to submit the false invoices and that Mr Killalea created the invoices. He and Mr Killalea were each to take half of the proceeds. A vendor payment form was filled in and submitted by either him or Mr Killalea to the university. This form registered MAPS for contract work at the university and allowed MAPS to be paid for work it did for the university.

Mr Roberts said that, when payment was made, he received his half of the money from Mr Killalea. He did not remember how he received the money, although he was quite sure it would not have been in cash. He said that he engaged in this conduct primarily to benefit Mr Killalea, as Mr Killalea was always looking for work and needed the money. He said he was not aware that Mr Killalea had ample money in his bank account at the time. Mr Roberts accepted that he also needed money at the time and said that he used his half of the \$27,750 to pay for household expenses such as electricity bills.

Mr Killalea told the Commission that he did not have any knowledge or involvement in the issuing of the false invoices. He said MAPS did not do any work for the

University of Newcastle, although he did take part in an unsuccessful tender interview in early 2006. Mr Killalea accepted that \$27,750 was deposited into his MAPS bank account but said that he was not aware of the deposit until he was informed of that fact by the Commission in late 2014. He said that he had no knowledge of the three tax invoices being submitted and paid. He also said that the invoices submitted to the university, purportedly from MAPS, were slightly different from authentic MAPS invoices.

The Commission does not accept Mr Killalea's evidence that he was not involved in the issuing of false invoices to the University of Newcastle. It is not plausible that Mr Killalea was unaware of the deposit of \$27,750 into the MAPS bank account until some eight years after the event. Indeed, he accepts that it was absolutely extraordinary that he would not notice such a deposit, particularly given that he checked his bank account each quarter for tax purposes.

Mr Roberts contradicted Mr Killalea and told the Commission that the submission of the false invoices to the University of Newcastle was part of a joint enterprise entered into by him and Mr Killalea. Mr Roberts' version is supported by the fact that he caused the money to be deposited into a MAPS bank account. Mr Killalea was the sole signatory to this account. Withdrawals could not be made without his consent. Mr Roberts needed Mr Killalea's cooperation to receive any financial advantage from the payment of the false invoices. The Commission is satisfied that there was an agreement between them to submit the false invoices.

Mr Roberts also said that he and Mr Killalea agreed to equal shares of the money obtained from the university. As \$27,750 was obtained from the false invoices, on Mr Roberts' account, both he and Mr Killalea would each receive \$13,875. This is generally consistent with Mr

Killalea withdrawing \$15,000 in two instalments of \$7,000 and \$8,000 from the MAPS bank account.

Mr Killalea gave implausible reasons for the withdrawal of these amounts of money. He said that he withdrew \$7,000 from his MAPS bank account to pay Mr Roberts because he owed Mr Roberts for work that Mr Roberts did on behalf of MAPS. He said this work occurred in August to October 2005 and related to a project involving Mr Roberts' former employer. Mr Killalea provided email correspondence, which suggested that the work was undertaken and that Mr Roberts was involved.

Mr Killalea offered no explanation as to why he paid Mr Roberts the money over a year later, in December 2006, other than to rely on the fact that he was working interstate from January to November 2006. He said that Mr Roberts did not ask for the money at any time prior to his payment. He also said that he recalled telling Mr Roberts at the time he handed over the money that it was the easiest \$7,000 that Mr Roberts would ever make. Mr Roberts said that he did some minor work for MAPS involving a few days of inspections and drafting some email correspondence. He said that he was not paid in cash for this work.

Mr Killalea could have paid Mr Roberts for work he did in 2005 at any time from late 2005 to early 2007, as he had ample money in his bank account and was capable of making an electronic funds transfer. The Commission is satisfied that the withdrawal of \$7,000 by Mr Killalea was for the purpose of paying Mr Roberts part of his share of the money obtained from the University of Newcastle through the submission of the false invoices.

Mr Killalea's explanation for the withdrawal of \$8,000 also lacks credibility. He said that, on 20 February 2007, he withdrew \$8,000 for petty cash purposes. This explanation is not plausible. MAPS is a one-man consulting company that does not have a regular cash turnover. It is inherently

unlikely that MAPS would have as much as \$8,000 available for petty cash purposes.

Mr Killalea also said that he paid some of the \$8,000, in cash, to an associate who did some work for MAPS. Mr Killalea said that the associate did the work in 2006 and that he paid him in November 2007. This explanation also lacks credibility. It is unlikely that Mr Killalea withdrew the money in February 2007 for work done in 2006 and then failed to take any steps to pay the associate until November 2007. Mr Killalea's version is also directly contradicted by the associate who gave credible evidence at the public inquiry and was adamant that he has never received a cash payment from Mr Killalea.

In light of these matters, the Commission is satisfied that there was an agreement between Mr Roberts and Mr Killalea that they would share the payments made by the university. Mr Killalea collaborated with Mr Roberts to issue the false invoices, knowing that MAPS did not do any work for the university.

The Commission is further satisfied that Mr Killalea received \$27,750 from the university and, in accordance with the agreement he had with Mr Roberts, gave part of this money to Mr Roberts.

Corrupt conduct

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

First, the Commission makes findings of relevant facts on the balance of probabilities. The Commission then determines whether those facts come within the terms of s 8(1) or s 8(2) of the ICAC Act. If they do, the Commission then considers s 9 and the jurisdictional requirements of s 13(3A) of the ICAC Act.

In the case of s 9(1)(a), the Commission considers whether, if the facts as found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that the person has committed a particular criminal offence.

Mr Roberts

Mr Roberts admitted that, on 23 November 2006, he authorised the payment of \$27,750 by the University of Newcastle to MAPS, knowing that MAPS did not do any of the work the subject of the three invoices which led to this payment. He also admitted receiving half of this money. The Commission is satisfied that, in making these admissions, Mr Roberts was telling the truth.

Mr Roberts' conduct in November 2006, in dishonestly exercising his public official functions by authorising the payment by the University of Newcastle of three MAPS invoices totalling \$27,750, for work he knew not to be done, in order to obtain a financial benefit, is corrupt conduct for the purposes of s 8(1)(b) of the ICAC Act. This is because, in authorising the payment of the invoices, he dishonestly exercised his public official functions as a contracted IT manager at the University of Newcastle.

Mr Roberts' conduct also comes within s 9(1)(a) of the ICAC Act. The Commission is satisfied that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Roberts committed the criminal offence of obtaining money by deception under s 178BA of the Crimes Act (as it was at the time of the conduct).

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

Mr Killalea

Mr Killalea's conduct, in November 2006, in collaborating with Mr Roberts to issue three MAPS invoices to the University of Newcastle, totalling \$27,750, for work Mr Killalea knew had not been done and which would be dishonestly authorised for payment by Mr Roberts, in order to obtain a financial benefit, is corrupt conduct for the purposes of s 8(1)(a) of the ICAC Act. This is because Mr Killalea's conduct adversely affected the honest exercise of Mr Roberts' public official functions.

Mr Killalea's conduct also comes within s 9(1)(a) of the ICAC Act. The Commission is satisfied, that if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Killalea committed the criminal offence of obtaining money by deception under s 178BA of the Crimes Act (as it was at the time of the conduct).

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

Section 74A(2) statement

In making a public report, the Commission is required by the provisions of s 74A(2) of the ICAC Act to include, in respect of each “affected” person, a statement as to whether or not in all the circumstances, the Commission is of the opinion that consideration should be given to obtaining the advice of the Director of Public Prosecutions (DPP) with respect to the prosecution of the person for a specified criminal offence.

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

The Commission is satisfied that Mr Roberts and Mr Killalea are “affected” persons.

Mr Roberts

Mr Roberts gave his evidence subject to a declaration made pursuant to s 38 of the ICAC Act. The effect of this declaration is that his evidence cannot be used against him in any criminal prosecution other than a prosecution for an offence under the ICAC Act.

There is, however, other admissible evidence that would be available. This includes records obtained from the University of Newcastle, such as signed invoices, statements from relevant university staff members, MAPS records, banking records and email correspondence, as well as the potential evidence of Mr Killalea.

The Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Roberts for the criminal offences of:

- obtaining money by deception from the University of Newcastle for himself and Mr Killalea, contrary to s 178BA of the Crimes Act (as it was at the time)
- using a false instrument, namely his curriculum vitae, to obtain employment at the University of Newcastle, contrary to s 300 of the Crimes Act (as it was at the time)
- giving false and misleading evidence, contrary to s 87 of the ICAC Act, by giving evidence during a compulsory examination that MAPS did work for the University of Newcastle. During the public inquiry, Mr Roberts admitted that his evidence at the compulsory examination was false.

Mr Killalea

Mr Killalea gave his evidence subject to a declaration made pursuant to s 38 of the ICAC Act. The effect of this declaration is that his evidence cannot be used against him in any criminal prosecution other than a prosecution for an offence under the ICAC Act.

There is, however, other admissible evidence that would be available. This includes records obtained from the University of Newcastle, such as signed invoices, statements from relevant university staff members, MAPS records, banking records and email correspondence.

The Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Killalea for the criminal offence of obtaining money by deception from the University of Newcastle for himself and Mr Roberts, contrary to s 178BA of the Crimes Act (as it was at the time).

Chapter 3: The University of Sydney

In September 2009, Mr Roberts took up the position of transition manager in the Information and Communications Technology Division of the University of Sydney. As with his employment at the University of Newcastle, he acquired this position after making false statements in his curriculum vitae with respect to his tertiary qualifications, professional memberships and the nature of his roles in previous employment. Mr Roberts stopped working for the University of Sydney in April 2011, when his contract expired.

On 4 November 2010, following a suggestion by Mr Roberts, Mr Killalea submitted a form to the university to make MAPS an accredited supplier. The “vendor create” form allowed MAPS to be paid for any work it did for the university. The form included MAPS’ bank account details. Mr Roberts told the Commission that his purpose in arranging for MAPS to become an accredited supplier was to enable him to obtain money from the university.

On 10 December 2010, Mr Roberts certified that nine invoices were to be paid. Each of the invoices was in the name of MAPS, marked for his attention, related to “Building Upgrades”, and allowed for the payment of \$4,785 to MAPS. After certifying the invoices for payment, Mr Roberts gave them to his supervisor who held a financial delegation. The supervisor, in turn, authorised the payment of the invoices.

On 24 January 2011, the university made one payment of \$43,065 based on the nine invoices. The money was paid directly into a bank account managed by Mr Roberts. This is because each invoice nominated payment to Mr Roberts’ bank account, rather than the MAPS’ bank account. During his earlier compulsory examination at the Commission, Mr Roberts claimed that MAPS had done work for the university. At the public inquiry, however, it was not disputed by Mr Roberts or Mr Killalea that each of

the invoices was false and that MAPS did not do any work for the university.

Mr Roberts told the Commission that he created the false invoices and certified that they be paid into his bank account. He said that he devised the plan by himself and asked Mr Killalea to submit a vendor payment form to the university for the sole purpose of using MAPS invoices to execute his plan. He said that Mr Killalea had no knowledge of the scheme. Mr Roberts said he was motivated to do this as he was in financial distress and had spent the \$43,065 he received on household expenses.

Mr Killalea told the Commission that he did not have any knowledge of, or involvement in, the issuing of the false invoices nor did he receive any money from the ensuing payment. He said he submitted a vendor payment form to the university in the expectation, raised by Mr Roberts, of potential work but no work was ever forthcoming. Mr Killalea said that the only knowledge he had of these events was when he was emailed remittance advice from the university around December 2010. He said that he spoke to Mr Roberts about the remittance advice and Mr Roberts told him to delete it as it was sent in error. Mr Killalea deleted the email. Mr Killalea referred to the remittance advice, and the suspicions it raised about Mr Roberts’ conduct, in his initial complaint to the Commission. He also said that the invoices submitted to the university, purportedly from MAPS, were slightly different from the invoices he was using at the time.

The Commission is satisfied that Mr Killalea was not involved in the scheme to submit false invoices to the University of Sydney.

Corrupt conduct

Mr Roberts

Mr Roberts' conduct, in December 2010, in dishonestly exercising his public official functions by certifying payment by the University of Sydney of nine invoices totalling \$43,065, which he knew to be false, in order to obtain a financial benefit, is corrupt conduct for the purposes of s 8(1)(b) of the ICAC Act. This is because, in certifying the payment of the invoices, he dishonestly exercised his public official functions as an IT manager at the University of Sydney.

Mr Roberts' conduct also comes within s 9(1)(a) of the ICAC Act. The Commission is satisfied that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Roberts committed the criminal offence of fraud under s 192E of the Crimes Act.

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

Section 74A(2) statement

The Commission is satisfied that Mr Roberts is an "affected" person for the purposes of the ICAC Act.

Mr Roberts gave his evidence subject to a declaration made pursuant to s 38 of the ICAC Act. The effect of this declaration is that his evidence cannot be used against him in any criminal prosecution other than a prosecution for an offence under the ICAC Act.

There is, however, other admissible evidence that would be available. This includes records obtained from the

University of Sydney, such as signed invoices, statements from relevant university staff members, MAPS records, banking records and email correspondence, as well as the potential evidence of Mr Killalea.

The Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Roberts for the following criminal offences:

- fraud, by dishonestly obtaining \$43,065 from the University of Sydney, contrary to s 192E of the Crimes Act
- using a false document, namely his curriculum vitae, to obtain employment at the University of Sydney, contrary to s 254 of the Crimes Act
- giving false and misleading evidence, contrary to s 87 of the ICAC Act, by giving evidence during a compulsory examination that MAPS did work for the University of Sydney. During the public inquiry, Mr Roberts admitted that his evidence at the compulsory examination was false.

Chapter 4: Macquarie University

Mr Roberts was employed by Macquarie University from July 2012 to December 2013. As with his previous employment, he acquired this position after making false statements in his curriculum vitae with respect to his tertiary qualifications, professional memberships and the nature of his role in previous employment.

Mr Roberts was employed as the experience director in the Informatics Office of the Department of Delivery, Operations and Logistics at the university. This position provided Mr Roberts with a financial delegation and required him to work, with minimal supervision, for “the cost effective provision and subsequent efficient management of the university’s information technology products and services”. He was responsible for 40 full-time staff, as well as a significant casual workforce, with an operating budget of \$3 million and a capital budget in the order of \$1 million.

While working at Macquarie University, Mr Roberts:

- created a false MAPS invoice for \$32,450, in December 2012, which was submitted to the university
- used MAPS to dishonestly obtain money from the university through another company called iPath Pty Ltd
- created three false MAPS invoices in early 2013, each for \$32,450, which were submitted to the university but not paid
- attempted to conceal the falsity of these MAPS invoices by creating a false licensing agreement and concocting false emails.

At his earlier compulsory examination, Mr Roberts claimed that MAPS had done work for the university. During the public inquiry, however, he admitted that MAPS did not do any work for Macquarie University.

Mr Killalea was involved in each of the instances of false invoices, although there is an issue as to the extent of his involvement.

The submission of three invoices, each in the amount of \$32,450, in the absence of any agreement with MAPS, raised the suspicion of university staff responsible for processing invoices. In June 2013, Macquarie University commenced a formal internal investigation into Mr Roberts’ conduct. The investigation concerned these invoices and other matters. As a consequence, Mr Roberts’ employment was suspended, with pay, on 5 September 2013 and suspended, without pay, from 4 October 2013. At the conclusion of its investigation, Macquarie University terminated his employment on 13 December 2013.

The December 2012 invoice

On 18 December 2012, Macquarie University processed an invoice from MAPS. The invoice was dated 7 December 2012 and marked for the attention of Mr Roberts. It was in the amount of \$32,450 for work described as “Licensing and maintenance of MAP Pro-Technology – Scoping and Management Module inclusive of Asset Assessment Tool and Methodology Option”. An accompanying recommendation-for-purchase form was signed by Mr Roberts on 18 December 2012. No such work had been done by MAPS.

On 21 December 2012, the university deposited \$32,450 into the MAPS bank account in payment of the invoice. It is not disputed that \$20,000 of this money was then withdrawn by Mr Killalea for the benefit of Mr Roberts. Mr Killalea deposited \$10,000 into Mr Roberts’ personal bank account and another \$10,000 into a third person’s bank account to pay off a debt incurred by Mr Roberts. Mr Killalea kept the balance of the money, although, in March 2014, he repaid \$32,450 to Macquarie University.

Mr Roberts told the Commission that the invoice was created for the sole purpose of dishonestly obtaining money from Macquarie University. Although he said that any university staff member could have signed the accompanying recommendation-for-purchase form, he signed it in order to have the false invoice processed and paid. He said that the invoice was entirely false, in that no work was done and that there was never a prospect of MAPS doing any work for Macquarie University.

Mr Roberts said that he had conversations with Mr Killalea about the prospect of work for MAPS at the university. He told Mr Killalea that this involved Mr Roberts collecting data for Mr Killalea to draft a business process improvement report. He also claimed that he spoke to Mr Killalea about the prospect of work involving project governance and storage allocation, and gave relevant documents to Mr Killalea for that purpose. Despite these conversations, he said that he never intended MAPS to actually obtain any work from the university.

Mr Killalea confirmed that he had discussions with Mr Roberts about MAPS doing work for the university, which would have involved Mr Roberts' collection of data for Mr Killalea to complete a process improvement report. For his assistance, Mr Killalea said that Mr Roberts was to receive half of the money to be paid to MAPS by the university.

Mr Killalea said that, on 30 November 2012, before MAPS did any work, both he and Mr Roberts created the \$32,450 MAPS invoice. He said that Mr Roberts had convinced him that the invoice should be submitted prior to the work being done for reasons to do with the university budget. Mr Killalea said that he anticipated that, over the ensuing three months, he would be allocated around 30 days of work, which would cover the amount charged in the invoice. He said he created the invoice knowing that such conduct was improper, as the work had not been done and that he had every intention of

completing the work but had to wait until Mr Roberts gave him the data. He said that Mr Roberts told him around that time that the data had been partially collected.

The Commission is satisfied that Mr Killalea created an invoice for work that had not been performed, although for the reasons set out below, this was not the invoice ultimately submitted for payment.

Mr Killalea's account of the circumstances surrounding the creation of the invoice lacks credibility. It is not believable that Mr Killalea would complete work for the university but then give half of the money for that work to Mr Roberts. Mr Killalea knew that Mr Roberts was an employee of the university and did not work for MAPS. Mr Killalea must have been suspicious of the fact that Mr Roberts was to receive half of the amount on the invoice for merely carrying out his duties at the university.

The submitted invoice referred to "product licensing", which was not among the services provided by MAPS. If Mr Killalea created that invoice, then he must have known that the submitted MAPS invoice could not be legitimate. Mr Roberts said that he provided the wording for Mr Killalea to draft the submitted invoice, although he did not recall the specifics of how this came about.

Mr Killalea asserted that he created a different invoice from the one that was submitted. He said that he had not seen the submitted invoice until it was shown to him by the Commission, and that the invoice that was submitted is in a subtly different format from the one he created. Mr Killalea's explanation of those differences was credible. There is no reason why Mr Killalea would not use the usual MAPS formatting for all invoices that he created and submitted. It is, therefore, more likely that Mr Killalea did not create the invoice that was finally submitted. The only other credible explanation, on the evidence before the Commission, is that Mr Roberts created an altered invoice

after 30 November 2012 and submitted the altered invoice to the university. The Commission is satisfied that Mr Roberts created the invoice that was finally submitted.

After considering each of the factors above, the Commission is satisfied that Mr Killalea was involved in the creation of an invoice that was to be used to acquire payment for work that had not been done. Mr Killalea also received payment knowing that MAPS was not entitled to any payment as the work described in the invoice had not been done. The Commission is satisfied that he did this knowing that what he was doing was improper and dishonest.

The iPath Pty Ltd invoice

In late 2012, Mr Roberts was also involved in the fabrication of an invoice submitted to the university by iPath Pty Ltd. The facts of this scheme are not in dispute.

From 2000, Mr Temmerman and his business partner established iPath Pty Ltd as an IT consultancy business. The Sydney-based company specialises in designing and installing wireless networks for large corporations and educational institutions. Prior to seeking work at Macquarie University, iPath Pty Ltd had completed projects at the University of Newcastle and the University of Sydney. On these occasions, Mr Temmerman dealt with Mr Roberts. There is no evidence that anything improper occurred with respect to the projects at these universities.

In September 2012, Mr Roberts invited Mr Temmerman to do some work for Macquarie University. Accordingly, Mr Temmerman registered iPath Pty Ltd as a contractor at the university. In late November 2012, Mr Roberts asked Mr Temmerman for some assistance. He said that MAPS was undertaking some work for the university but was not an accredited contractor and, therefore, could not be paid directly for the work it was doing. He then asked that iPath Pty Ltd invoice the university for the work MAPS was doing. MAPS would then invoice iPath Pty Ltd for the same amount. The effect of the proposed arrangement was that iPath Pty Ltd would be an intermediary for payment of the work done by MAPS. Mr Temmerman agreed to help.

On 30 November 2012, Mr Temmerman sent an iPath Pty Ltd invoice to Macquarie University. The invoice was for \$10,450 for "WLAN Detailed Design Service". Soon after, Mr Roberts told Mr Temmerman to cancel the invoice as the university required a related statement of works or purchase order. Mr Temmerman cancelled the invoice on 11 December 2012.

In November, Mr Roberts had spoken to Mr Killalea about MAPS invoicing iPath Pty Ltd. On 21 December 2012, Mr Killalea sent an invoice to Mr Temmerman requiring payment of \$10,450. The invoice was dated 30 November 2012, concerned "Storage Consolidation",

and, in particular, "Consultancy Services – Project Scoping and Delivery of Storage Consolidation across NAS and SAN Infrastructure". On 9 January 2013, Mr Temmerman sent a new iPath Pty Ltd invoice to Macquarie University, copying the work description used in the MAPS invoice. The next day, Mr Roberts raised and signed a recommendation-for-purchase form requesting \$10,450 be paid for "iPath Consultancy Services". He provided this form to the university's chief operating officer, who approved the payment. A university staff member processed the iPath Pty Ltd invoice. On 14 February 2013, the university paid iPath Pty Ltd the amount of \$10,450, which was on-paid in full by Mr Temmerman to MAPS the following day. Mr Killalea kept \$1,000 himself for tax reasons and forwarded the balance of \$9,450 to Mr Roberts. This transaction was completed by 7 March 2013, after a delay caused by Mr Killalea, who mistakenly paid the money into the wrong account. Mr Roberts withdrew the \$9,450 from his bank account the following day.

Mr Roberts told the Commission that he orchestrated the entire charade involving iPath Pty Ltd in order to dishonestly gain money for himself. While he said he could not recall the exact details of the relevant conversations, Mr Roberts accepted that he falsely told Mr Temmerman that MAPS was undertaking work for the university. He also accepted that he instructed Mr Killalea to send an invoice to iPath Pty Ltd and to deposit the money received into his own bank account.

The Commission is satisfied that Mr Roberts dishonestly caused Macquarie University to pay iPath Pty Ltd \$10,450, and that he received a benefit of \$9,450 from this scheme.

Mr Killalea referred to MAPS' dealings with iPath Pty Ltd in his initial complaint to the Commission in November 2013. While he underplayed the seriousness of the matter by referring to it only as an "irregularity" he also acknowledged that "in hindsight, the illegitimacy of this behaviour is blatantly obvious". Mr Killalea told the Commission that he drafted the false MAPS invoice for iPath Pty Ltd on 30 November 2012, at the same time he drafted a false \$32,450 MAPS invoice referred to earlier in this chapter. He said he did so either in Mr Roberts' company or on his specific instructions. He also said that he kept \$1,000 for tax purposes and that he foolishly went along with Mr Roberts' plan as he wanted to assist a friend.

The Commission is satisfied that Mr Killalea dishonestly sent an invoice to iPath Pty Ltd knowing that the described work had not been done and gave \$9,450 to Mr Roberts knowing he had no entitlement to the money. He also must have known that Macquarie University was the source of the money he received from iPath Pty Ltd and that Mr Roberts acted dishonestly in his position as experience director to cause that money to be paid.

Mr Temmerman told the Commission that he sent the iPath Pty Ltd invoice to the university and that he did so on Mr Roberts' instructions. He reluctantly accepted that sending an invoice to Macquarie University, knowing that the work described in that invoice had not been done, was dishonest and improper. He said that at the time he sent the invoice he did not know of MAPS or Mr Killalea. Mr Temmerman denied that he assisted Mr Roberts in the expectation that iPath Pty Ltd would receive further work from the university.

The Commission is satisfied that Mr Temmerman knowingly submitted a false invoice to Macquarie University. The invoice was false as the work described in the invoice had not been done by iPath Pty Ltd. The Commission, however, notes that Mr Temmerman did not receive any financial benefit. In addition, he submitted the false invoice in the expectation that the work would be completed by MAPS and that the university would not suffer any financial detriment. This expectation would have been heightened by the previous legitimate dealings Mr Temmerman had with Mr Roberts at other educational institutions.

Three further invoices

In early 2013, three MAPS invoices were submitted to Macquarie University. The invoices were nearly identical to the false invoice successfully submitted to the university in December 2012. Each invoice sought payment of \$32,450 for work described as "Product Licensing and Maintenance of MAP Pro-Technology – Scoping and Management Module inclusive of Asset Assessment Tool and Methodology Option". The invoices were dated 31 January 2013, 28 February 2013 and 29 March 2013. Like the invoice from December 2012, these invoices were false, in that MAPS had not done any of the work described in them.

There is a dispute as to who created the three 2013 invoices. Mr Killalea and Mr Roberts each blame the other for their creation. Mr Killalea said that he first became aware of the existence of the invoices when he received a telephone call from a Macquarie University staff member around 17 May 2013, alerting him to their existence. He said that he had not seen the invoices until the Commission showed them to him.

Mr Roberts said that he did not create the 2013 invoices, but that he discussed their creation with Mr Killalea. He said that the three invoices were contemplated by him and Mr Killalea in November 2012, when they were creating the false invoice submitted in December 2012. He said that Mr Killalea must have created them, as the first time he knew that they had been submitted to the university was when a university staff member showed them to him around 17 May 2013. He said he was surprised that

the invoices laid claim to \$32,450 per month, as the arrangement he and Mr Killalea discussed was only to claim that amount per quarter.

The Commission does not accept Mr Roberts' evidence that he did not submit the false invoices. A university staff member said that Mr Roberts was the person who handed over the three 2013 invoices for payment on 16 May 2013. The staff member refused to process the payments and sought further information from Mr Killalea and Mr Roberts regarding the work described in the invoices. This led to the telephone conversation of 17 May 2013 that Mr Killalea recalled. The staff member did not give evidence at the public inquiry. Her statement was included in a brief of evidence made available to Mr Roberts and all interested parties. No application was made to cross-examine the staff member or contest her evidence.

The Commission is satisfied that Mr Roberts physically handed over the three false invoices to the staff member.

Mr Roberts said that he was unaware of the amounts of money claimed in the false 2013 invoices. This is inconsistent with him handing those invoices to the staff member for processing, as he had time to read the invoices and, if he had concerns with their content, withdraw or alter them. As he did not, and handed the invoices to the staff member for processing, it is more likely that he was comfortable for the invoices to be submitted in the form they were received. His evidence, that he was surprised at the amounts claimed in the three 2013 invoices, is not convincing and undermines the credibility of his evidence about their creation.

The Commission notes that the 2013 invoices are nearly identical to the false invoice of December 2012 and distinct from other invoices submitted by MAPS. As noted above, the Commission is satisfied that Mr Roberts, rather than Mr Killalea, created the earlier invoice. The similarity between the December 2012 invoice created by Mr Roberts with the other three false invoices supports the conclusion that Mr Roberts was responsible for the three invoices submitted in early 2013.

The Commission is satisfied that Mr Roberts created and submitted the three 2013 invoices knowing that MAPS had not done any work for the university and that they were false.

Attempts to conceal the false invoices

By 17 May 2013, Macquarie University staff started querying the three 2013 invoices purporting to show that MAPS had completed work for the university. As part of these enquiries, a university staff member contacted Mr Roberts and Mr Killalea in separate communications. As a consequence of those enquiries, a false agreement purporting to substantiate the work done by MAPS, as described in the false invoices, was submitted to the university. The agreement was signed by Mr Killalea and Mr Roberts and backdated to 2 November 2012. Both signatures were purportedly witnessed by Zainal Gunawan. A person of that name manages a cafe near Mr Killalea's residence. Mr Gunawan said that he did not know Mr Killalea and did not witness the signing of the agreement, but did recognise Mr Killalea as a frequent customer at the cafe. The Commission accepts his evidence.

Mr Killalea told the Commission how the licensing agreement was created. He said that he was perplexed and confused when he was contacted by the university about the three 2013 invoices. He said that he had a heated conversation with Mr Roberts about the matter on 20 May 2013. Initially, he thought that some draft invoices he created must have been sent to the university in error. He begged Mr Roberts to cancel or retract the invoices. Mr Roberts dismissed his concerns and told him that "shit happens". Mr Killalea said that, at this point, Mr Roberts suggested that they share the money to be received from the three invoices. Mr Killalea said that, from that time, he believed that Mr Roberts had created the three invoices.

Mr Killalea freely acknowledged that he should then have alerted the university to the dishonesty involving the MAPS false invoices. He did not; instead he agreed with Mr Roberts to create a false licensing agreement in an attempt to justify the false invoices. Mr Killalea said that, in the following days, Mr Roberts gave him copies of other service level agreements and asked him to create a false agreement to legitimise the false invoices.

Mr Killalea drafted a comprehensive, yet false, 11-page agreement and backdated it to 2 November 2012. The agreement was titled "Product Licensing, Maintenance and Support Services Agreement". It purported to represent a 12-month agreement between Macquarie University and MAPS, whereby MAPS would provide specified goods and services for the university in return for a monthly fee of \$29,500 (excluding GST). Mr Killalea said that he thought a person did witness the agreement but said he had only a vague recollection as to how this came about. He said that he gave the agreement to a university staff member in late May 2013. The university staff member

said, in a statement provided to the university during its internal investigation, that she received the signed agreement from Mr Killalea, although she said that this occurred in June or July 2013.

Mr Killalea accepted that the agreement was a complete falsehood, as no agreement was entered into between MAPS and the university. He said, however, that he created the agreement only to justify the December 2012 invoice. Despite this, the agreement which he drafted states that a monthly fee is to be paid to MAPS. An agreement drafted in these terms effectively legitimised all four of the false invoices purporting to be monthly payments from December 2012 to March 2013.

In the circumstances, the Commission is satisfied that Mr Killalea drafted the agreement with this purpose in mind.

Mr Roberts' evidence about the creation of the false licensing agreement lacked clarity. He initially said that the false licensing agreement had been created before he was shown the three false 2013 invoices around 17 May 2013, but later said that it was created in June 2013. Mr Roberts said that he and Mr Killalea first considered the false agreement before the first false invoice was created in December 2012. He accepted that he provided templates to Mr Killalea to create the false agreement, and signed the completed agreement knowing that its contents were false. He said he did not know who witnessed the agreement. Mr Roberts rejected Mr Killalea's evidence of the conversation of 20 May 2013, specifically that he suggested they split the proceeds equally, that he said that "shit happens" and that Mr Killalea asked that the three 2013 invoices be cancelled. He said that Mr Killalea sought the cancellation of the three 2013 invoices only when he learnt of the university's internal investigation into the matter in June 2013.

There are inconsistencies in the evidence of Mr Roberts and Mr Killalea as to when the false agreement was created and conversations they had at that time. For the purposes of this report, it is not necessary to determine the exact circumstances of these events.

Mr Roberts and Mr Killalea both said that they were knowingly involved in the submission of a false licensing agreement to Macquarie University. They both took this course in an attempt to mislead the university into believing that false invoices submitted to the university were legitimate.

The Commission is satisfied that Mr Roberts and Mr Killalea acted dishonestly in signing the false agreement with the intention of submitting it to the university.

It is not disputed that Mr Roberts and Mr Killalea created three false emails to give the impression that work had been done by MAPS for the university. The emails were

created in late June and early July 2013 and provided to Mr Roberts' supervisor who was querying MAPS' work at the university. The emails purported to be communications made in October 2012 and March 2013 between Mr Roberts and Mr Killalea. They were added to existing email chains from other university staff members to give the appearance of authenticity.

Mr Killalea said that, as with the false agreement, Mr Roberts gave him some drafts, which he then completed. They finalised the false emails together. Mr Killalea did suggest that he still expected to do the work for the university for which he had been paid. He said that the emails were created to justify the delay in that work. Despite this, Mr Killalea said that he knew that the false emails were being created to be submitted to the university to give the false impression that MAPS had done work for the university.

Mr Roberts said that he knew that MAPS had not done any work for the university and that the false emails were created to mislead his supervisor into thinking that work had been done.

The Commission is satisfied that Mr Roberts and Mr Killalea were involved in the creation of false emails that were submitted to Macquarie University for the purposes of misleading the university as to work done by MAPS.

Corrupt conduct

Mr Roberts

The Commission is satisfied that the following conduct on the part of Mr Roberts is corrupt conduct.

In December 2012, Mr Roberts engaged in corrupt conduct by dishonestly exercising his public official functions by raising and signing a recommendation-for-purchase form for the purpose of authorising a MAPS invoice for \$32,450, paid by Macquarie University into a MAPS bank account, knowing that MAPS had not done any work for the university and that the invoice was false, in order to obtain a financial benefit.

In January 2013, Mr Roberts engaged in corrupt conduct by dishonestly exercising his public official functions by raising and signing a recommendation for the purpose of authorising payment by Macquarie University of an invoice for \$10,450 submitted by iPath Pty Ltd, knowing that iPath Pty Ltd had not conducted the work described in the invoice, in order to obtain a financial benefit.

In May 2013, Mr Roberts engaged in corrupt conduct by dishonestly exercising his public official functions by submitting three false MAPS invoices, each for \$32,450, to Macquarie University in an attempt to obtain a financial benefit.

Between May and June 2013, Mr Roberts engaged in corrupt conduct by dishonestly exercising his public official functions by creating and signing a false licensing agreement and creating false emails to falsely represent that MAPS had done work for Macquarie University.

In each case, Mr Roberts' conduct comes within s 8(1)(b) of the ICAC Act because it was a dishonest exercise of the responsibilities he held as the experience director at Macquarie University. Mr Roberts' conduct also comes within s 9(1)(a) of the ICAC Act. The Commission is satisfied that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Roberts committed the criminal offences of fraud under s 192E of the Crimes Act.

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

Mr Killalea

The Commission is satisfied that the following conduct on the part of Mr Killalea is corrupt conduct.

In November 2012, Mr Killalea engaged in corrupt conduct by adversely affecting the honest exercise of Mr Roberts' public official functions by collaborating with Mr Roberts to create a false MAPS invoice to be paid by Macquarie University for \$32,450, for work he knew had not been done, knowing that Mr Roberts would use his position at Macquarie University to dishonestly authorise payment of that amount.

In December 2012, Mr Killalea engaged in corrupt conduct by adversely affecting the honest exercise of Mr Roberts' public official functions by, jointly with Mr Roberts, sending a MAPS invoice to iPath Pty Ltd for \$10,450 for work he knew had not been performed by MAPS, knowing that the invoice would be used by iPath Pty Ltd to obtain \$10,450 from Macquarie University to which it was not entitled, and that Mr Roberts would use his position at Macquarie University to dishonestly authorise payment of that amount.

In May and June 2013, Mr Killalea engaged in corrupt conduct by adversely affecting the honest exercise of Mr Roberts' public official functions by collaborating with Mr Roberts to create and submit a false licensing agreement and false emails to falsely represent that MAPS had done work for Macquarie University, knowing that those documents would be used by Mr Roberts to falsely answer queries made of him by staff members of Macquarie University.

In each instance above, Mr Killalea's conduct was corrupt conduct for the purposes of s 8(1)(a) of the ICAC Act. This is because he adversely affected the honest exercise of Mr Roberts' public official functions as experience director at Macquarie University.

Mr Killalea's conduct also comes within s 9(1)(a) of the ICAC Act. The Commission is satisfied that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Killalea committed the criminal offence of fraud under s 192E of the Crimes Act.

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

Mr Temmerman

In January 2013, Mr Temmerman, in accordance with an agreement with Mr Roberts, submitted an iPath Pty Ltd invoice for \$10,450 to Macquarie University, knowing that the work described in the invoice had not been done and knowing that Mr Roberts would exercise his public official functions to dishonestly arrange payment of the invoice. This is corrupt conduct for the purposes of s 8(1)(a) of the ICAC Act. This is because Mr Temmerman adversely affected the honest exercise of Mr Roberts' public official functions as experience director of Macquarie University.

Mr Temmerman's conduct also comes within s 9(1)(a) of the ICAC Act. The Commission is satisfied that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Temmerman committed the criminal offence of fraud under s 192E of the Crimes Act.

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

Section 74A(2) statement

The Commission is satisfied that Mr Roberts, Mr Killalea, and Mr Temmerman are "affected" persons for the purposes of the ICAC Act.

Mr Roberts

Mr Roberts gave his evidence subject to a declaration made pursuant to s 38 of the ICAC Act. The effect of this declaration is that his evidence cannot be used against him in any criminal prosecution other than a prosecution for an offence under the ICAC Act.

There is, however, other admissible evidence that would be available. This includes records obtained from Macquarie University, such as signed invoices and agreements, statements from relevant university staff members, MAPS records, iPath Pty Ltd records, banking records and email correspondence, as well as the potential evidence of Mr Killalea and Mr Temmerman.

The Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Roberts for the following criminal offences of:

- fraud, by dishonestly obtaining \$32,450 from Macquarie University by submitting a false invoice in December 2012, contrary to s 192E of the Crimes Act
- fraud, by dishonestly causing a financial disadvantage of \$10,450 to Macquarie University through iPath Pty Ltd, contrary to s 192E of the Crimes Act
- attempted fraud, by dishonestly attempting to obtain \$97,350 from Macquarie University by submitting three false invoices, contrary to s 192E and s 344A of the Crimes Act
- using false instruments, namely a false licensing agreement and concocted emails, to influence the exercise of a public duty by staff members at Macquarie University, contrary to s 254 of the Crimes Act
- using a false instrument, namely his curriculum vitae, to obtain employment at Macquarie University, contrary to s 254 of the Crimes Act
- giving false and misleading evidence, contrary to s 87 of the ICAC Act, by giving evidence during a compulsory examination that MAPS did work for Macquarie University. During the public inquiry, Mr Roberts admitted that his evidence at the compulsory examination was false.

Mr Killalea

Mr Killalea gave his evidence subject to a declaration made pursuant to s 38 of the ICAC Act. The effect of this declaration is that his evidence cannot be used against him in any criminal prosecution other than a prosecution for an offence under the ICAC Act.

There is, however, other admissible evidence that would be available. This includes records obtained from Macquarie University, such as signed invoices and agreements, statements from relevant university staff members, MAPS records, iPath Pty Ltd records, banking records and email correspondence, and the potential evidence of Mr Temmerman.

The Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Killalea for the following criminal offences of:

- fraud, by dishonestly causing a financial disadvantage of \$32,450 to Macquarie University by collaborating with Mr Roberts with respect to a false invoice that was submitted to the university in December 2012, contrary to s 192E of the Crimes Act
- fraud, by dishonestly causing a financial disadvantage of \$10,450 to Macquarie University, through iPath Pty Ltd, contrary to s 192E of the Crimes Act
- using false instruments, namely a false licensing agreement and concocted emails, to influence the exercise of a public duty by staff members at Macquarie University, contrary to s 254 of the Crimes Act.

Mr Temmerman

The Commission is satisfied that Mr Temmerman acted on Mr Roberts' misrepresentations in submitting a false invoice and did so believing that the university would not suffer any financial detriment. In all of the circumstances, the Commission is not of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Temmerman for any offence.

Chapter 5: Corruption prevention

Effective design of accounts payable systems

Invoice payment is a significant source of dispensed funds for NSW universities. Universities process thousands of invoices a year relating to the provision of a wide range of goods and services. At the University of Sydney, for example, the number of invoices processed each month is estimated to be as high as 8,000. The sheer bulk of invoices processed by universities creates many opportunities for fraudulent payments, representing a major challenge in terms of preventing corruption.

Tight, transparent and robust invoice payment systems can have a strong impact on controlling any potential corruption at universities. This includes using streamlined processes with in-built mechanisms that automatically segregate duties and highlight anomalies, and prioritising the cost-efficient and timely payment of invoices.

To some extent, the implementation of automated workflow systems helps achieve these aims. Since Mr Roberts' conduct took place, the University of Sydney, Macquarie University and the University of Newcastle have implemented electronic purchase payment systems. Electronic systems provide important advantages, including the ability to track purchases, the automatic segregation of duties and in-built delegations, which reduce both the likelihood of errors and coordination costs. An electronic system, however, is only as good as the design of the processes it is automating.

This investigation revealed some weaknesses in the current design of the accounts payable processes in place at the University of Sydney. Accordingly, the Commission has directed corruption prevention recommendations to this university concerning the integrity of its accounts payable system.

The Commission's recently released publication, *Safeguarding public money: The importance of controlling invoice payments*, provides an overview of many of the issues raised in this chapter concerning accounts payable systems and a more extensive consideration of the corruption risks involved in the accounts payable function.

Integrity of the vendor master file

One way universities can protect themselves from fraud is by seeking evidence that a vendor is genuine. Control of the vendor master file (VMF) is a powerful tool within an accounts payable system that can provide a barrier to fraudulent payments. Typically, a vendor must be on a VMF in order to be paid. While the creation of a fraudulent invoice is a relatively straightforward task, a well-controlled VMF may provide an obstacle to the payment of the invoice. The adoption of stringent procedures to verify the details of new vendors that are placed on the VMF and changes to the details of existing vendors can prevent the fraudulent diversion of funds.

The University of Sydney exercised poor controls around the integrity of its VMF. Mr Roberts presented invoices for payment that provided his own banking details. The invoices were paid into his account despite being inconsistent with what is known as the vendor create form (these forms allow vendors to be placed on the VMF), which contained Mr Killalea's account details. By contrast, the MAPS invoices, which were submitted to the University of Newcastle and Macquarie University, were paid into a MAPS bank account.

In 2010, the University of Sydney created new vendors through a paper-based authorisation process that was not strictly enforced. In practice, the relevant officer did not verify the bank account details of suppliers, despite the

requirement that supplier bank statements be attached to vendor create forms. The verification of ABNs was also discretionary. The rendering of invoices with account details that differed from the vendor create form also did not trigger any further investigation. The failure to test the veracity of new vendors' details, and the unquestioning payment of invoices with bank account details that were inconsistent with the VMF, meant that the system was vulnerable to unauthorised changes.

There is still the possibility that fraudulent invoices will be paid at the University of Sydney. Currently, the university requires business unit staff to complete and authorise online vendor create forms for new suppliers. This is the only point in the design of the accounts payable system that affords the opportunity to check banking details prior to the payment of invoices. To some extent, this opportunity is missed. While vendor details are verified, this is primarily limited to the verification of ABNs by accounts staff. A senior officer at the university explained that, despite the relevant policy continuing to state that bank statements should be attached to vendor create forms, in practice, attempts are made to verify bank account details only when a company provides banking details that belong to an individual.

Further, when an invoice is processed for payment by accounts staff at the University of Sydney, the system does not automatically highlight differences between banking details provided on the invoice and the vendor create form prior to the payment of the invoice. Although a monthly report would highlight this discrepancy after payment, staff currently reconcile inconsistencies by adjusting the details on the VMF to match invoices as a matter of routine. The vulnerability that allowed the MAPS invoices to be paid continues to exist because of the ease with which account details can be changed.

The Commission believes that the University of Sydney should take steps to protect the integrity of the information contained in its VMF. This should include checking banking details when new vendors are created. The university should further safeguard itself from fraud by ensuring that changes to vendor banking details are genuine; for example, it could mandate that additional written documentation be provided from vendors when invoices are presented for payment with bank account details that do not match the VMF. An alternate approach would be to require vendors to amend banking details via secure self-service supplier portals.

Recommendation 1

That the University of Sydney implements measures to safeguard the integrity of vendor banking details when new vendors are created and invoices are processed for payment.

Requiring multiple sources of verification for invoices

During 2010, the University of Sydney required purchase orders for expenditure greater than \$5,000 and multiple quotations for expenditure amounts above \$10,001. Nine MAPS invoices were all approved for payment on 10 December 2010. Each invoice was for the amount of \$4,785. The approving officer acknowledged that the MAPS invoices should not have been for the same amount as the buildings differed in size; however, this did not appear to raise any suspicion at the time.

The MAPS invoices may have been subject to scrutiny had Mr Roberts raised purchase orders for the invoices or been required to undertake a competitive process to select MAPS. Such measures allow the veracity of invoices

to be established through providing multiple sources of substantiation.

The University of Sydney's process for requisitioning and raising a purchase order at the time created a possible safeguard against fraud by involving procurement staff who were outside Mr Roberts' business unit and by mandating a requirement for additional documentation. A university staff member stated that, even in 2010, a request to raise a purchase order by a business unit should have been accompanied by a copy of a vendor contract or other documentation relating to the vendor selection process. The university's Procurement Services Department was responsible for establishing and approving all purchasing contracts. The relevant policy also required purchasing teams from the Procurement Services Department to verify that the required quotations, waiver or tender board approval had been obtained. It was also mandated that copies of documents relating to these processes be attached to the purchase order requisition form. These requirements are still in place.

The University of Sydney administers its financial operations by calendar year. The December 2010 deadline afforded a convenient pressure point that facilitated the approval of bulk invoices with few questions. Mr Roberts' supervisor requested that he make sure invoices were processed prior to this deadline. The supervisor acknowledged that it was customary to chase outstanding invoices during this time to ensure they were processed before the new year.

The supervisor also acknowledged that it was common practice to split orders to circumvent requirements relating to purchase orders and expenditure amounts. He stated: "that's how we got things done especially at the end of the year when all invoices needed to be sorted out before the end of the financial year". It was likely that the MAPS invoices were accrued in late 2010, despite being processed by accounts staff in early 2011.

At the time, the process for raising a purchase order was cumbersome and disjointed. It involved finding a paper book, requiring (and physically locating) signatories to sign in triplicate, hand-delivering the purchase order to the relevant section, tracking the requisition number, and waiting for the purchase order to be raised. The end result was a delay of at least a couple of days.

There is little point in designing an invoice payment system that becomes so burdensome that staff actively seek workarounds (ways of working around requirements) in order to meet operational demands. To a significant extent, the adoption of automated accounts payable processes has addressed this concern. Mr Roberts' former supervisor observed that the process is much simpler now.

The University of Sydney now requires purchase orders for expenditure above \$10,000. Although it is within the university's remit to dispense with purchase order requirements in certain cases, the adoption of a \$10,000 threshold may still create a risk that orders will be split in an attempt to fast track the raising of invoices. The widespread adoption of this practice facilitates the payment of fraudulent invoices as multiple sources are not available to verify invoices. The capacity of the system to pre-approve the commitment of expenditure is also undermined by order-splitting.

The University of Sydney has enhanced its ability to detect order-splitting by placing a greater emphasis on compliance with its accounts payable staff. While vigilant and capable staff are a major line of defence against the payment of fake invoices, the quantity of invoices processed by the university means that there is still a residual possibility that split invoices will be paid.

The university has already implemented data analysis reporting processes that highlight invoices for amounts greater than \$10,000 without a corresponding purchase order. The director of business operations acknowledged, however, that in relation to order-splitting, "The reporting is still not as robust as you'd want to call out these companies".

The Commission believes there is merit in the university expanding its measures to detect potential order-splitting by broadening its data analysis program to include order-splitting reports. Particular attention should be paid to pressure points, such as the end of the financial year, where there may be greater incentive to sacrifice purchase order requirements for expediency. This issue is addressed in recommendation 2.

At the University of Newcastle, three MAPS invoices, each to the value of \$9,250, were certified as "OK to pay" by Mr Roberts on 23 November 2006. The invoices were also marked as received by the procurement section on 5 December 2006. The certification of the invoices as a batch did not appear to raise any suspicions that orders were split to avoid the multiple quotation requirements.

More recently, the University of Newcastle has implemented data analytics software to assist with verifying the accuracy and integrity of invoices and to identify potential order-splitting. As such, the Commission has not made a recommendation to this university concerning order-splitting.

Macquarie University paid the initial MAPS invoice for \$32,450, despite the absence of a written agreement with MAPS. The university, however, refused to pay three subsequent MAPS invoices, each for the amount of \$32,450, which were rendered by Mr Roberts on the

same day for payment on 16 May 2013. The absence of documentation relating to the invoices was a significant factor in the university's refusal to process the invoices. University staff were specifically concerned that a purchase order had not been raised and that they did not have a copy of a written agreement with MAPS. In this case, the vigilance of staff involved in invoice processing and the university's own requirements for verification documentation, which provided a link back to the procurement function, created a barrier to the payment of fraudulent invoices.

As discussed, an effective accounts payable system incorporates the principle of segregated responsibility and, at the same time, integrates information that has originated from multiple sources. Macquarie University has recently taken further steps to strengthen the link between its procurement and accounts payable systems. Purchase orders are now not released by its purchasing team until a copy of a contract is obtained. A register of contracts is also maintained to ensure easy accessibility.

In October 2013, Macquarie University also implemented an electronic workflow and invoice payment system to help streamline its processes. For example, an end-user cannot approve the payment of an invoice above \$5,000 without a purchase order. In such cases, invoices are returned to the business unit for corrective action. This feature of the accounts payable system was deliberately designed to ensure that there is no time advantage to be gained by failing to raise a purchase order. The design of the system ensures all expenditure above \$5,000 is pre-approved by leveraging self-interest for compliance, as invoices cannot be processed without a purchase order. An extensive data analysis program has also been implemented to detect order-splitting.

As a result of Macquarie University's existing arrangements regarding the verification of invoices, the Commission does not propose to make any recommendation concerning this issue to the university.

Recommendation 2

That the University of Sydney expands its measures to enhance its ability to detect potential order-splitting.

Limiting and embedding financial delegations

Limiting financial delegations does not remove opportunities for corruption; it does, however, minimise the potential damage from such behaviour. Macquarie University staff queried the three MAPS invoices rendered by Mr Roberts on 16 May 2013 partly because the cumulative value of the invoices exceeded Mr Roberts' delegation.

In order to be an effective control on corruption, delegations must be enforced. Macquarie University has recently enhanced its control over delegations through its workflow system that manages delegations electronically. The authority to approve transactions is linked to user names on the system. Access to the system may only be gained from computers registered with the system manager and is limited to known operators whose user names are linked to passwords, financial unit location and delegation levels. Delegations are embedded in this system to ensure that payments cannot be approved if amounts are higher than an individual's delegation.

In addition to limiting the amounts for which approval can be given, the university has also taken steps to limit the accounts over which the delegate holds responsibility. As a result, users are unable to proceed with expenditure authorisations if the account is outside their delegation.

These new arrangements have eliminated the need to manually check the delegations register as a reference to ensure that officers approving finance transactions have the appropriate delegation to do so. In this case, the implementation of an automated system provides a better practice example that may be of interest to other public sector agencies.

The MAPS invoices rendered to the University of Sydney were approved for payment by Mr Roberts' supervisor. The total invoice amount was within his delegation, which was up to \$50,000. Consequently, failure to enforce delegations did not arise as a corruption risk for the university during this investigation. Furthermore, just as Macquarie University has improved its ability to enforce delegations as part of its online system, the University of Sydney has also implemented similar measures.

Detecting fraudulent curriculum vitae through employment screening practices

Mr Roberts made a number of false assertions in the curriculum vitae he provided to each of the three universities. Mr Roberts admitted he had dishonestly stated he held an associate diploma in computing studies and a bachelor of science in computing. Mr Roberts also admitted that he falsely claimed he held professional memberships at points in time when they had lapsed. His curriculum vitae also claimed that he held the position of IT director at Austrapay Limited between 2000 and 2002. He admitted that he was promoted to this position in his final months of employment.

In addition, Mr Roberts' curriculum vitae asserted under the heading "Robcon Australia" that he had participated in a partnership with three other IT professionals providing "contracting consulting in all facets of IT, including infrastructure, project management, SDLC [software development life cycle], hardware implementation, and telemetry". He made a number of specific claims about his role in Robcon Australia, including that he had spearheaded a team of dedicated IT professionals to assist with a newly consolidated project management office and made recommendations to senior managers on infrastructure utilisation and personnel management that resulted in savings of \$7.6 million. Mr Roberts conceded that he did not get paid for any of this work and that he had worked alone at Robcon Australia.

All three universities incurred costs as a result of Mr Roberts' engagement and the frauds that he perpetrated. Had Mr Roberts' lies about his qualifications and employment history been exposed at the time he applied for the various positions at these universities, it is unlikely that he would have been engaged.

The potential costs of curriculum vitae falsification present a significant risk to NSW universities, including the risk that dishonest applicants will engage in fraudulent activities causing financial loss. The Commission has previously obtained advice that indicates that curriculum vitae fraud is commonplace across the NSW public sector. Given the prevalence of this practice and the damage it can cause, it is important for public sector agencies to protect themselves from dishonest potential contractors and employees.

Ideally, employment screening checks should be conducted on preferred applicants for all university positions. The types of checks conducted will be dependent on the risk profile of the position in question. As Mr Roberts held senior positions at the universities, the information

he provided in his curriculum vitae ought to have been verified, including his previous work history and academic qualifications.

It is also important that universities do not assume that external parties have conducted necessary background checks. Although Mr Roberts was introduced to the universities via external recruitment providers, clear responsibility for all aspects of the recruitment process, including background checks, rested with the universities.

The current Australian Standard on Employment Screening (AS 4811-2006) provides that organisations shall only obtain information about a person for the purpose of employment screening with their knowledge and consent. An obvious way to obtain this consent would be to require potential applicants to consent to checks being undertaken.

Recommendation 3

That the University of Newcastle, the University of Sydney and Macquarie University ensure that employment screening checks are performed on preferred applicants in line with the Australian Standard on Employment Screening (AS 4811-2006).

These recommendations are made pursuant to s 13(3)(b) of the ICAC Act and, as required by s 111E of the ICAC Act, will be furnished to the University of Newcastle, the University of Sydney, Macquarie University and the responsible minister, being the minister for education.

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

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

The Commission will publish the responses to its recommendations, any plans of action and progress reports on their implementation on the Commission's website, www.icac.nsw.gov.au, for public viewing.

Appendix 1: The role of the Commission

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

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

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

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

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

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

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

Appendix 2: Making corrupt conduct findings

Corrupt conduct is defined in s 7 of the ICAC Act as any conduct which falls within the description of corrupt conduct in either or both s 8(1) or s 8(2) and which is not excluded by s 9 of the ICAC Act.

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

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

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

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

- a. a criminal offence, or
- b. a disciplinary offence, or

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

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

Section 9(4) of the ICAC Act provides that, subject to subsection 9(5), the conduct of a Minister of the Crown or a member of a House of Parliament which falls within the description of corrupt conduct in s 8 is not excluded by s 9 from being corrupt if it is conduct that would cause a reasonable person to believe that it would bring the integrity of the office concerned or of Parliament into serious disrepute.

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

The Commission adopts the following approach in determining whether corrupt conduct has occurred.

First, the Commission makes findings of relevant facts on the balance of probabilities. The Commission then determines whether those facts come within the terms of s 8(1) or s 8(2) of the ICAC Act. If they do, the Commission then considers s 9 and the jurisdictional requirements of s 13(3A) and, in the case of a Minister of the Crown or a member of a House of Parliament, the

jurisdictional requirements of s 9(5). In the case of s 9(1)(a) and s 9(5) the Commission considers whether, if the facts as found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that the person has committed a particular criminal offence. In the case of s 9(1)(b), s 9(1)(c) and s 9(1)(d) the Commission considers whether, if the facts as found were to be proved on admissible evidence to the requisite standard of on the balance of probabilities and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that the person has engaged in conduct that constitutes or involves a thing of the kind described in those sections.

A finding of corrupt conduct against an individual is a serious matter. It may affect the individual personally, professionally or in employment, as well as in family and social relationships. In addition, there are limited instances where judicial review will be available. These are generally limited to grounds for prerogative relief based upon jurisdictional error, denial of procedural fairness, failing to take into account a relevant consideration or taking into account an irrelevant consideration and acting in breach of the ordinary principles governing the exercise of discretion. This situation highlights the need to exercise care in making findings of corrupt conduct.

In Australia there are only two standards of proof: one relating to criminal matters, the other to civil matters. Commission investigations, including hearings, are not criminal in their nature. Hearings are neither trials nor committals. Rather, the Commission is similar in standing to a Royal Commission and its investigations and hearings have most of the characteristics associated with a Royal Commission. The standard of proof in Royal Commissions is the civil standard, that is, on the balance of probabilities. This requires only reasonable satisfaction as opposed to satisfaction beyond reasonable doubt, as is required in criminal matters. The civil standard is the standard

which has been applied consistently in the Commission when making factual findings. However, because of the seriousness of the findings which may be made, it is important to bear in mind what was said by Dixon J in *Briginshaw v Briginshaw* (1938) 60 CLR 336 at 362:

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

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

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

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

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



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