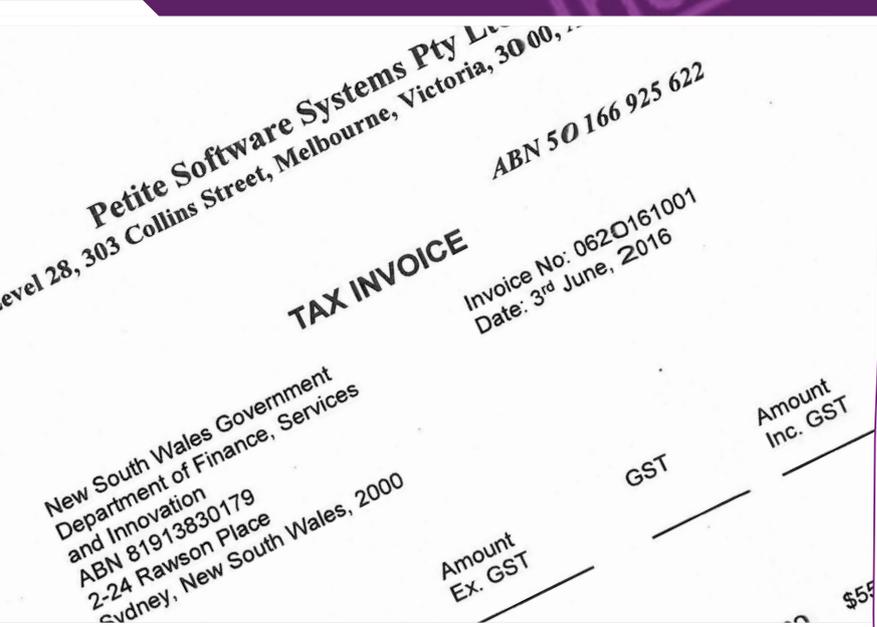


\$50,000.

TOTAL AL
Inc. GST

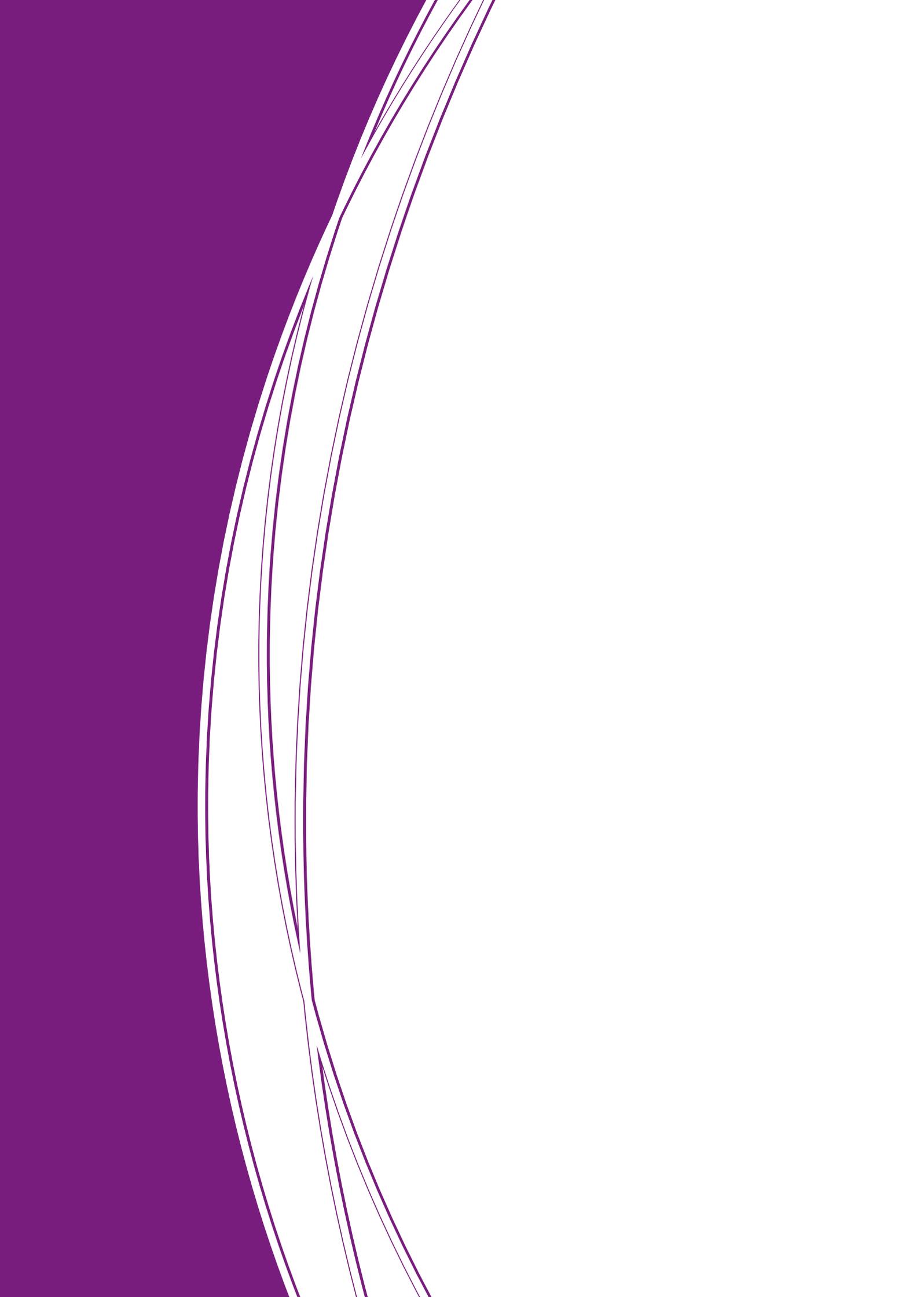


I·C·A·C

INDEPENDENT COMMISSION
AGAINST CORRUPTION
NEW SOUTH WALES

INVESTIGATION INTO THE CONDUCT OF A DEPARTMENT OF FINANCE, SERVICES AND INNOVATION ICT PROJECT MANAGER

**ICAC REPORT
JANUARY 2019**



ICAC

INDEPENDENT COMMISSION
AGAINST CORRUPTION
NEW SOUTH WALES

**INVESTIGATION INTO
THE CONDUCT OF A
DEPARTMENT OF FINANCE,
SERVICES AND INNOVATION
ICT PROJECT MANAGER**

**ICAC REPORT
JANUARY 2019**



This publication is available on the Commission's website www.icac.nsw.gov.au and is available in other formats for the vision-impaired upon request. Please advise of format needed, for example large print or as an ASCII file.

ISBN 978-1-921688-84-3

© January 2019 – Copyright in this work is held by the Independent Commission Against Corruption. Division 3 of the *Copyright Act 1968* (Cwlth) recognises that limited further use of this material can occur for the purposes of “fair dealing”, for example study, research or criticism, etc. However if you wish to make use of this material other than as permitted by the Copyright Act, please write to the Commission at GPO Box 500 Sydney NSW 2001.

I·C·A·C

INDEPENDENT COMMISSION
AGAINST CORRUPTION
NEW SOUTH WALES

Level 7, 255 Elizabeth Street
Sydney, NSW, Australia 2000

Postal Address: GPO Box 500,
Sydney, NSW, Australia 2001

T: 02 8281 5999

1800 463 909 (toll free for callers outside metropolitan Sydney)

TTY: 02 8281 5773 (for hearing-impaired callers only)

F: 02 9264 5364

E: icac@icac.nsw.gov.au

www.icac.nsw.gov.au

Business Hours: 9 am–5 pm Monday to Friday

I·C·A·C

INDEPENDENT COMMISSION
AGAINST CORRUPTION
NEW SOUTH WALES

The Hon John Ajaka MLC
President
Legislative Council
Parliament House
Sydney NSW 2000

The Hon Shelley Hancock MLA
Speaker
Legislative Assembly
Parliament House
Sydney NSW 2000

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 Department of Finance, Services and Innovation ICT project manager.

The Commission was not satisfied that it was necessary to conduct a public inquiry in this matter but was satisfied the matters raised in the investigation could be addressed satisfactorily by way of a public report.

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

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

Yours sincerely



Stephen Rushton SC
Commissioner

Contents

Summary of investigation and outcome	5	The engagement of the ICT contractors	29
Outcome	5	“Petite” is engaged by DFSI	33
Recommendation that this report be made public	8	Petite Software Systems’ invoicing and the extension of the contract	33
Chapter 1: Background	9	Mr Prestage’s explanation of the payments to Petite Solutions	34
How the investigation came about	9	The overspend and the departure of Mr Prestage	35
Why the Commission investigated	9	Corrupt conduct	35
Conduct of the investigation	10	Section 74A(2) statement	36
Decision not to hold a public inquiry	10	Chapter 4: Corruption prevention	38
NSW Department of Finance, Service and Innovation	10	Risks inherent in the engagement of Mr Prestage	38
Principal persons of interest	11	Engagement of “Petite”	40
Chapter 2: Petite Software Systems and the establishment of Petite Solutions	14	Establishment of Petite Software Systems as a vendor	45
Petite Software Systems	14	Management of project finances	46
Petite Solutions	14	Project governance	50
Section 74A(2) statement	16	Appendix 1: The role of the Commission	54
Chapter 3: Mr Prestage and the Clarity Project	18	Appendix 2: Making corrupt conduct findings	55
The Clarity Project	18	Appendix 3:	58
DFSI hires Mr Prestage	18		
Mr Prestage introduces “Petite” to DFSI	22		
Provision of contact details	25		
The “Petite” quote is received by DFSI	26		

Summary of investigation and outcome

This investigation by the NSW Independent Commission Against Corruption (“the Commission”) concerned allegations that in 2016, Steven Prestage, an information and communication technologies (ICT) contractor working on an ICT project at the NSW Department of Finance, Services and Innovation (DFS), dishonestly and partially exercised his public official functions in exchange for a financial benefit.

At the time, Mr Prestage was working as DFS’s project manager on the rollout of an ICT project known as the Clarity Project. It was alleged that, in that capacity, Mr Prestage dishonestly arranged for a company effectively controlled by him to be paid by DFS for system development work performed by a number of ICT contractors.

Outcome

The Commission is satisfied that, in his role as project manager on the Clarity Project, Mr Prestage recommended to DFS that it engage a company known as Petite Software Systems Pty Ltd to undertake ICT work on the Clarity Project.

Michael Turner owned Petite Software Systems. Michael Turner was its sole director and shareholder. However, Petite Software Systems never performed any work for DFS. Michael Turner was unaware that Mr Prestage had “hijacked” Petite Software Systems and was using the name of the company to obtain a financial benefit from DFS.

Mr Prestage was able to orchestrate the appointment of Petite Software Systems as a supplier to DFS. He achieved this by representing to key DFS staff that ICT government-accredited suppliers could not fulfil DFS’s requirements.

Mr Prestage also used the name of Petite Software Systems to disguise the fact that another company,

Petite Solutions Pty Ltd, was paid by DFS in respect of the work carried out by ICT contractors on the Clarity Project purportedly on behalf of Petite Software Systems.

Petite Solutions was a company under Mr Prestage’s effective control. His mother-in-law had registered it on Mr Prestage’s behalf and at his request. She was its sole director, secretary and shareholder. At Mr Prestage’s request, she opened a bank account in the name of the company with the Commonwealth Bank, into which DFS made payments.

The Commission is satisfied that Mr Prestage had Petite Solutions registered for the purpose of securing payments made by DFS for work carried out on the Clarity Project by ICT contractors. He was able to secure payments to Petite Solutions by issuing invoices in the name of Petite Software Systems but which contained the bank account details of Petite Solutions.

In the period from 15 June to 19 October 2016, Petite Solutions received \$569,800 from DFS. After payments from this account to a number of ICT contractors, the balance of \$523,450 was transferred from the Petite Solutions’ account into other accounts controlled by Mr Prestage. The money was then used to make mortgage payments and to meet other expenses. During the same period, Mr Prestage received \$101,980 for his services as project manager.

Mr Prestage used the names Petite Software Systems, Petite Solutions, and “Petite” interchangeably in his dealings with DFS and the ICT contractors. This created uncertainty as to the identity of the supplier of ICT contractors to the Clarity Project and the identity of the party receiving payments from DFS. The Commission is satisfied that this consequence was intended by Mr Prestage. It facilitated his dishonest scheme.

The Commission is satisfied that, from late April 2016, Mr Prestage engaged in serious corrupt conduct by:

- falsely representing to DFSI that Petite Software Systems was the supplier of ICT contractors to the Clarity Project. Unbeknown to DFSI, Mr Prestage had arranged for the supply of ICT contractors using the name of Petite Software Systems
- falsely representing to DFSI that contractors from the prequalified suppliers were not suitable to be engaged for the Clarity Project (he subsequently arranged for the engagement of a number of ICT contractors who had been recommended by a prequalified supplier but had been rejected by him as unsuitable)
- falsely representing to DFSI that “Petite” had the ability, expertise, and personnel to deliver the Clarity Project
- using the name of Petite Software Systems in his communications with DFSI as part of a scheme to secure payment to himself for the work carried out by ICT contractors
- using the assumed names of Roger Turner, Peter Dawson, David Stone and Tracey Freedman in his communications with DFSI and ICT contractors so as to create the impression that Petite Software Systems, or “Petite”, was a legitimate service provider in the ICT space
- establishing Petite Solutions in the name of his mother-in-law for the purpose of concealing his interest in the supply of ICT contractors to the Clarity Project
- issuing invoices to DFSI, charging \$2,000 per day for each “Petite” contractor, knowing it was an inflated rate to that which a government-approved supplier would have charged, being about \$900 per day, and thereby causing a financial disadvantage to DFSI
- issuing invoices to DFSI that falsely represented that Petite Software Systems had an entitlement to payment
- failing to disclose in his communications with DFSI that payment by DFSI against these invoices would result in payment to Petite Solutions and ultimately to himself.
- emails in the names of Roger Turner, Peter Dawson, David Stone, and Tracey Freedman containing representations that they were officers or employees of “Petite” and Petite Software Systems
- a false public liability insurance certificate
- a Justification for Sole Source document and the email to which it was attached, falsely representing that contractors from DFSI’s prequalified suppliers were not suitable to be engaged on the Clarity Project
- a quotation that contained false representations concerning the business address, telephone number, previous clients, and expertise of “Petite”
- each of the 19 invoices issued to DFSI in the name of Petite Software Systems, which falsely represented that Petite Software Systems had an entitlement to payment and which failed to disclose that payment of the invoices by DFSI would be a payment to Petite Solutions and, ultimately, Mr Prestage.

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 Prestage for offences of:

- wilfully preventing or wilfully endeavouring to prevent a witness (Ms Valentova) from attending the Commission, contrary to s 92 of the ICAC Act
- procuring the giving of false testimony (by Ms Valentova) at a compulsory examination, contrary to s 89 of the ICAC Act
- giving false and misleading evidence in relation to the establishment of Petite Solutions and its bank account, contrary to s 87 of the ICAC Act.

The Commission is also of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Prestage for a number of criminal offences of giving false and misleading evidence to the Commission, contrary to s 87 of the ICAC Act. The relevant evidence concerned:

- his work experience at Gold Coast City Council and the Bank of Queensland
- the supply of a public liability insurance certificate to Hays Specialist Consulting (Australia) Pty Ltd
- alleged discussions with Michael Turner in relation to the receipt of curricula vitarum (CVs) from Michael Turner in mid- to late- April 2016
- the involvement of Valdi Gravitis in the drafting of a Justification for Sole Source document

Statements are made in the report pursuant to s 74A(2) of the *Independent Commission Against Corruption Act 1988* (“the ICAC Act”) that the Commission is of the opinion that consideration should be given to obtaining the advice of the Director of Public Prosecutions (DPP) with respect to the prosecution of Mr Prestage for criminal offences of publishing false statements with an intention to obtain a financial advantage contrary to s 192G of the *Crimes Act 1900* (“the Crimes Act”). More particularly, the publication of:

- alleged conversations with Michael Turner in relation to information supplied to Dennis Weitschat in emails from 29 April to 3 May 2016
- the contents of an email of 9 May 2016 concerning alleged interviews with a number of ICT contractors
- the availability and suitability of David Byrne to begin work as an ICT contractor on the Clarity Project
- the availability and suitability of Tinu Babu to begin work as an ICT contractor on the Clarity Project
- an alleged conversation with Michael Turner in relation to the timely payment of ICT contractors
- an alleged conversation with Mr Gravitis concerning the quotation of one daily rate for contractors
- the alleged review of CVs by Mr Prestage and the offer of advice on the implementation of the Clarity Project to Michael Turner for which he received payment
- the registration of Petite Solutions by his mother-in-law
- the reason why Petite Solutions made payments to Mr Prestage.

As Mr Prestage no longer works for DFSI, the issue of whether consideration should be given to the taking of action against him for a disciplinary offence or with a view to his dismissal does not apply.

Chapter 4 of this report concerns the Commission's review of the corruption risks present within DFSI at the time the relevant conduct occurred and DFSI's failure to address those risks.

The Commission has made 14 recommendations, as follows.

Recommendation 1

That DFSI ensures that recruitment companies use better practice-checking methodologies when conducting reference and other checks of applicants.

Recommendation 2

That DFSI develops a framework to ensure that the employment screening checks conducted of contractors are commensurate with the level of risk posed by their respective engagements.

Recommendation 3

That a specialist business unit within DFSI be given responsibility for managing its contingent labour engagements.

Recommendation 4

That DFSI develops a mechanism to verify that a supplier is a member of a specific prequalification scheme prior to being engaged under that scheme.

Recommendation 5

That DFSI ensures that all new suppliers are subject to a due diligence process that enables the detection of red flags indicating that a supplier may not be genuine.

Recommendation 6

That DFSI provides guidance to its staff who hold a financial delegation about red flags on quotations that indicate that a supplier may not be genuine.

Recommendation 7

That DFSI revises its processes surrounding the creation of new vendors to ensure that information supplied about new vendors is verified prior to being entered into its vendor master file, particularly when non-prequalified or newly prequalified suppliers are used.

Recommendation 8

That, wherever possible, DFSI avoids using rate card engagements from the SCM0020 or SCM0005 schemes.

Recommendation 9

That, if a SCM0020 or SCM0005 engagement is used, DFSI ensures that the reasonableness of the relevant rates is verified by an individual who:

- has strong market knowledge
- is not involved in the engagement.

Recommendation 10

That the NSW Procurement Board formally communicates to agencies that the SCM0020 and SCM0005 schemes are not to be used in lieu of the SCM0007 scheme.

Recommendation 11

That DFSI develops a system for reporting and/or escalating red flags related to projects and procurement activities such as:

- the use of multiple purchase orders for the same supplier with respect to the same project or activity
- purchase orders being raised after the receipt of invoices

- purchase orders with dollar values corresponding to amounts that are just below those for which key processes (such as the Procure IT framework) apply.

Recommendation 12

That DFSI provides guidance about red flags on invoices to DFSI officers who either hold a financial delegation or process the payment of invoices.

Recommendation 13

That DFSI revises its invoice approval and accounts payable processes to ensure that invoices are checked for red flags.

Recommendation 14

That DFSI implements data analytic tools to help manage the risks associated with red flags on invoices.

Recommendation 15

That DFSI informs staff involved in the management or governance of projects of the risks associated with contracted project managers and the consequent need to manage these project managers carefully.

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 DFSI and the responsible minister.

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

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

The Commission will publish the response to its recommendations, any plan of action proposed by DFSI and progress reports on its implementation on the Commission's website, www.icac.nsw.gov.au, for public viewing.

Recommendation 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 some background information concerning the investigation conducted by the NSW Independent Commission Against Corruption (“the Commission”), the role of the NSW Department of Finance, Services and Innovation (DFSI) within government, the proposed roll out of Clarity software within DFSI, and the principal persons of interest.

How the investigation came about

By letter dated 20 February 2017, the DFSI secretary reported to the Commission pursuant to s 11 of the *Independent Commission Against Corruption Act 1988* (“the ICAC Act”). This section of the ICAC Act requires the principal officer of a public authority to report to the Commission any matter that the person suspects on reasonable grounds concerns, or may concern, corrupt conduct.

The report stated it had been brought to the secretary’s attention that Steven Prestage may have misused his position as a DFSI contractor in his dealings with a supplier, Petite Software Systems Pty Ltd. The report detailed that Mr Prestage may have had a conflict of interest that was not disclosed when recommending Petite Software Systems for a substantial project. It was also noted that Mr Prestage was instrumental in ensuring Petite Software Systems was appointed directly instead of using a government-approved information and communication technologies (ICT) service supplier. This resulted in DFSI paying significantly more than for a government-approved service. The report claimed that Mr Prestage made false statements in documents to ensure he was engaged by DFSI and that subsequently Petite Software Systems was engaged by DFSI.

Why the Commission investigated

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

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

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

After assessing the information provided by DFSI, the Commission wrote to the secretary on 10 April 2017, advising that the Commission was undertaking a preliminary investigation. During this period, Commission investigators contacted Hays Specialist Consulting (Australia) Pty Ltd (“Hays”), the government-approved employment service that put forward Mr Prestage as a candidate and had received from him various documents relating to his employment.

Commission investigators also spoke to a number of ICT contractors who were interviewed for their positions by persons claiming to be officers or employees of Petite Software Systems. Those interviews and other investigations carried out by the Commission suggested that Mr Prestage may have been involved in a significant fraud upon DFSI and that the fraud may have involved hundreds of thousands of dollars.

The Commission was also concerned that the alleged conduct occurred in an environment of limited supervision

and reporting and, accordingly, there appeared to be systemic issues that needed to be investigated and addressed.

The Commission determined that it was in the public interest to conduct an investigation to establish whether corrupt conduct had occurred, the identity of those involved, and whether there were any corruption prevention issues that needed to be addressed by DFSI. Accordingly, the preliminary investigation was escalated to a full investigation on 2 June 2017.

Conduct of the investigation

During the course of the investigation, the Commission:

- obtained documents from various sources by issuing 37 notices under s 22 of the ICAC Act
- obtained a statement of information and documents by issuing a notice under s 21 and s 22 of the ICAC Act
- interviewed and/or took statements from a number of potential witnesses
- conducted six compulsory examinations following the issue of summonses pursuant to s 35 of the ICAC Act.

Decision not to hold a public inquiry

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

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

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

The Commission determined that it was inappropriate to conclude its investigation by furnishing a report to the minister responsible for DFSI pursuant to s 14(2) of the ICAC Act in lieu of a public report. The Commission concluded that a report under s 14(2) of the ICAC Act would not adequately address the matters unearthed during its investigation. The reasons for reaching this conclusion included that:

- as a result of its investigation, the Commission was satisfied that Mr Prestage had engaged in serious corrupt conduct
- the corrupt conduct involved the expenditure of a significant amount of public funds for private advantage
- a report to the minister pursuant to s 14(2) of the ICAC Act is subject to the secrecy provisions of s 111 of the ICAC Act. The principal functions of the Commission include educating and informing the public about the detrimental effects of corrupt conduct, the promotion of the integrity and good repute of public administration, and the fostering of public support in combatting corrupt conduct. These functions, which are set out in 13(1)(h) to s 13(1)(j) of the ICAC Act, would be undermined absent the issue of a public report.

At the conclusion of the investigation, Counsel Assisting the Commission prepared submissions addressing the evidence and identifying the findings and recommendations that the Commission could make based on that evidence. The Commission's Corruption Prevention Division also provided submissions identifying weaknesses in the systems and practices of DFSI and procedures that enabled Mr Prestage's conduct to occur.

On 28 June 2018, Counsel Assisting's submissions were provided to relevant parties. During July and August 2018, submissions in response were received from DFSI and Mr Prestage.

On 23 November 2018, Counsel Assisting provided additional submissions on a limited number of issues to Mr Prestage. Submissions in response were received on 19 December 2018.

All submissions received in response to the submissions of Counsel Assisting have been taken into account in preparing this report.

NSW Department of Finance, Services and Innovation

DFSI is a NSW Government agency. It is both a service provider and a regulator. DFSI supports major public works and maintenance programs, government

procurement, information and communications technology, corporate and shared services, consumer protection, administration of state taxation and revenue collection, and NSW land and property administration.

DFSI has issued a Code of Ethics and Conduct (“Code of Conduct”) that applies to “All contractors and agency staff engaged to perform work for or on behalf of the Department” amongst others. Relevantly, the Code of Conduct requires that staff of, and contractors to, DFSI:

- act professionally with honesty, consistency and impartiality
- place the public interest over personal interest
- focus on quality while maximising service delivery
- recruit and promote employees on merit
- provide transparency to enable public scrutiny
- be fiscally responsible and focus on efficient, effective and prudent use of resources.

A number of additional policies and procedures govern DFSI and the way it conducts its business.

The *NSW Government Procurement Guidelines* apply to all NSW Government departments and set the minimum standards by which departments must abide. Departments may adopt procurement rules that differ from the guidelines but only if they are more stringent.

DFSI is required to comply with the NSW Government’s prequalification schemes known as SCM0007 for labour hire and SCM0020 for ICT services (see chapter 4). Suppliers in the prequalified scheme must meet a number of requirements before they can be appointed as a prequalified government supplier.

While DFSI can use a non-prequalified supplier, to do so requires an exemption from either NSW Procurement or a delegate of the NSW Procurement Board. A decision to use a sole-source supplier (or non-approved supplier) needs to be approved by either NSW Procurement or a delegate of the NSW Procurement Board via an appropriate procurement strategy template (PST).

Principal persons of interest

Mr Prestage

Mr Prestage was engaged by DFSI through Hays as a project manager to oversee the DFSI’s Clarity Project, which involved the use of proprietary software known as CA Clarity Project Portfolio Management. The software is a project management tool designed to assist businesses to manage products, services, people and finances. The company that sold Clarity within Australia at the

time was Computer Associates Inc. (now known as CA Technologies).

Mr Prestage gave evidence to the Commission at a compulsory examination over two days. During it, he told the Commission that his monthly expenses were approximately \$25,000 and that his gross yearly income over the past few years varied between \$300,000 and \$1,000,000.

In his evidence to the Commission, he claimed that:

nobody stated explicitly to me or in documentation that I was to perform any public official duties or that I would be a public official ... nobody made me aware of what my obligations are as an alleged public official.

In his submissions to the Commission, he submitted that he was of the belief he was not a public official due to DFSI having engaged him through Hays, and Hays having engaged him through his company, Inctive Global Services Pty Ltd. This submission is rejected by the Commission.

Section 3(m) of the ICAC Act defines a “public official” as including:

an employee of or any person otherwise engaged by or acting for or on behalf of, or in the place of, or as deputy or delegate of, a public authority or any person or body described in any of the foregoing paragraphs.

The Commission accepts that Mr Prestage was not an employee of DFSI; however, s 3(m) extends beyond employees. Mr Prestage was a public official within the meaning of s 3(m) because he was, at all relevant times, “engaged by or acting for or on behalf of” DFSI as its project manager on the Clarity Project. Whether or not Mr Prestage understood that he was a public official is irrelevant.

Further, s 8(2A) of the ICAC Act extends the meaning of corrupt conduct to any conduct of any person (whether or not a public official) that impairs, or that could impair, public confidence in public administration and which could involve dishonestly obtaining or assisting in obtaining, or dishonestly benefiting from, the payment of public funds for private advantage.

The Commission is satisfied, to the required standard, that Mr Prestage knew what he was doing was wrong and that his conduct was dishonest. Mr Prestage went to great lengths to conceal his personal interest in the engagement of the ICT contractors who worked on the Clarity Project and the substantial financial benefit he had secured.

The Commission did not consider Mr Prestage to be a credible witness. He consistently tried to distance

himself from any wrongdoing. His explanations in relation to a number of matters adverse to his interests were fanciful. Some of what he said was also inconsistent with documentary evidence and the evidence of other witnesses who the Commission is satisfied were truthful witnesses. The Commission considers that Mr Prestage's evidence needs to be approached with considerable caution and that, absent reliable corroboration, his evidence should not be relied on in relation to any issue of significance to the Commission's investigation.

Martina Prestage Valent

Mr Prestage is married to Martina Prestage Valent (Ms Valent).

Ms Valent lives with Mr Prestage, their two children, and her mother. Her husband is the sole financial provider for the household, including his mother-in-law.

Ms Valent told the Commission that she had a limited understanding of the household finances or the nature of Mr Prestage's work. The Commission accepts this evidence. It was apparent to the Commission that Ms Valent had limited experience in business. She had once worked as a make-up artist but is now fully engaged in raising her children and caring for her mother and husband. English is her second language, her first language being Slovakian.

The Commission considered Ms Valent to be a truthful witness. Her evidence was carefully given and her answers were responsive to the questions asked. She did not equivocate even when the evidence given by her was adverse to her interests and those of her husband, mother and children. It was apparent that she understood her obligations as a witness before the Commission and she did her best to discharge those obligations.

Emilia Valentova

Emilia Valentova is Mr Prestage's mother-in-law and Ms Valent's mother.

Ms Valentova speaks Slovakian and has very limited English. She gave her evidence through an interpreter. Her daughter, Ms Valent, performs the role of interpreter to the extent that Ms Valent needs to communicate in English on a day-to-day basis, which includes communicating with Mr Prestage.

Ms Valentova was the sole director, secretary and shareholder of Petite Solutions. She was also sole signatory to its bank account. Petite Solutions Pty Ltd was a company over which Mr Prestage had effective control. It was incorporated in May 2016 under his direction. It was the vehicle used by Mr Prestage to secure payments from DFSI.

Ms Valentova gave evidence on two occasions. Much of that evidence concerned the circumstances in which she became involved in Petite Solutions and sole signatory to its bank account (see chapter 2).

Ms Valentova admits that she gave untruthful evidence when first called before the Commission. On the second occasion, Ms Valentova informed the Commission that, before giving evidence on the first occasion, she had been told what she should say by Mr Prestage. The evidence of Ms Valent corroborates this.

The Commission is satisfied that the evidence given by Ms Valentova on the first occasion reflected what she had been instructed to say by Mr Prestage.

The Commission considers that, when first called to give evidence Ms Valentova was, and considered herself to be, in a very vulnerable position because of her dependence on Mr Prestage and that a sense of obligation to him subsumed her obligations as a witness. That is unfortunate. Nevertheless, it is to Ms Valentova's credit that she immediately corrected her evidence.

Michael Turner

Michael Turner works in the information technology (IT) industry. He met Mr Prestage in that capacity and worked with him on a number of IT projects. He became a friend to Mr Prestage and his family.

Michael Turner was the sole director and shareholder of Petite Software Systems Pty Ltd. He informed the Commission that the company had been established for the purpose of his superannuation, presumably as trustee, but never operated as such or at all. Michael Turner described Petite Software Systems as the company that had been "hijacked" by Mr Prestage.

The Commission is satisfied that Michael Turner was a truthful witness who gave evidence to the best of his recollection.

Shaun Smith

Shaun Smith was employed as executive director of the Strategic Programs and Performance Management Office (SPPMO) at DFSI at the relevant time. He commenced in that role in 2015. SPPMO's functions included implementing large, complex projects, enterprise risk management, organisational change management, and defining and delivering DFSI's strategy.

The Commission is satisfied that Mr Smith was a truthful witness who gave evidence to the best of his recollection.

Valdi Gravitis

Valdi Gravitis was employed as the director, Corporate Planning, Performance and Portfolio Office at DFSI at the relevant time. He has since left DFSI. He was Mr Prestage's direct supervisor on the Clarity Project. Mr Gravitis reported to Mr Smith.

The Commission is satisfied that Mr Gravitis was also a truthful witness who gave evidence to the best of his recollection.

Chapter 2: Petite Software Systems and the establishment of Petite Solutions

It is important to understand the role of the two companies used by Mr Prestage to secure payments from DFSI.

Petite Software Systems

Petite Software Systems was registered on 25 November 2013. Its registered address is 38 Handel Avenue, Worongary, Queensland. Until recently, this was the residential address of Michael Turner. As noted, Michael Turner is the sole director and shareholder of that company.

Michael Turner's accountant confirmed Mr Turner's evidence that Petite Software Systems had never operated. He informed the Commission that he had never prepared accounts for the company.

Australian Taxation Office records also confirm that Petite Software Systems has never submitted a tax return. Business Activity Statements of Petite Software Systems for the years from 2014 to 2017 record "nil" trading.

The Commission is satisfied that Petite Software Systems did not operate during the period relevant to this investigation. Rather, Mr Prestage used its name without authority.

Petite Software Systems is not listed as a prequalified supplier under any NSW Government scheme.

Mr Prestage gave evidence that he was aware of Petite Software Systems through his relationship with Michael Turner.

At no stage did Mr Prestage advise any DFSI staff of his prior relationship with Michael Turner or that he knew him at all.

Petite Solutions

Petite Solutions was registered on 13 May 2016. Its registered address is 239 Moorindil Street, Tewantin, Queensland. At the time of its registration, Mr Prestage and his extended family resided at this address.

Petite Solutions has never been listed as a prequalified supplier under any NSW Government scheme.

The evidence of Ms Valentova

On 11 December 2017, Ms Valentova was summonsed to give evidence; however, she did not appear at the Commission on that day. It was common ground between Ms Valentova, Mr Prestage and Ms Valent that Ms Valentova's failure to appear on that day was because Mr Prestage told her that a lawyer would appear and she did not need to do so. Her compulsory examination was adjourned to 13 December 2017.

On 13 December 2017, Ms Valentova gave evidence in a compulsory examination. She required the assistance of a Slovakian interpreter. The Commission is satisfied that Ms Valentova had a very limited command of the English language.

Ms Valentova informed the Commission that, in April 2016, "Mike" Turner asked her and her daughter for help in establishing a company. Ms Valentova said that she had known Mike Turner for a period of five years. She said that Mike Turner did not tell her daughter (who acted as an interpreter during this conversation) why he needed their help. When pressed as to why Mike Turner sought her help, Ms Valentova told the Commission, "He needed help so we helped him. We were not delving into it any further".

Ms Valentova confirmed that the address of 239 Moorindil Street, Tewantin, was rented accommodation where she lived with Mr Prestage, her daughter and grandchildren, prior to moving to their current address. She also confirmed that her personal details listed with the Australian Securities and Investments Commission (ASIC), such as her date and place of birth, were provided by her daughter to Michael Turner.

Commission investigations revealed that Petite Solutions had a bank account with the Commonwealth Bank. The sole signatory to that account was Ms Valentova.

Ms Valentova told the Commission that she went to the bank with her daughter to open an account for Petite Solutions because Michael Turner asked her to. She did not know who filled out the bank account application forms but agreed she signed them. Ms Valentova denied ever receiving any money from Petite Solutions or knowing anything further about the company. She also denied ever receiving bank statements in relation to the account.

On 19 March 2018, Ms Valentova was recalled to give further evidence. By this time, she had received her own, independent legal advice.

Ms Valentova informed the Commission that her earlier evidence, of a conversation with Michael Turner in which he asked her for help to establish a company, was not truthful. She said that Mr Prestage asked her to assist with setting up the company and that it was Mr Prestage who accompanied her to the bank to open the bank account. Further, Mr Prestage instructed her to tell the Commission that Michael Turner had asked for her assistance. According to Ms Valentova, Mr Prestage used her daughter to translate “when he explained what I was to tell the Commission during my evidence”. She said that Mr Prestage told her what to say based on what he said was advice he had received from his lawyer. She did so because she trusted Mr Prestage.

Ms Valentova was adamant that she had never received any monies on behalf of Petite Solutions, had never received a bank statement nor had she ever operated the bank account in any way, including by way of online banking.

The evidence of Ms Valent

Ms Valent also gave evidence in a compulsory examination.

When asked about her knowledge of her husband's companies, she said “I know that he use my mum to open company”. She explained that her husband asked

her mother to open a company called Petite Solutions. As Ms Valentova did not speak English, Ms Valent translated Mr Prestage's request.

Ms Valent told the Commission that her husband came to her in April 2016 and said he needed to set up a company and that her mother was going to open it. Mr Prestage gave her no other details as “he never spoke about these things with me”. She said that she asked Mr Prestage if there would be any problems and he told her not to worry. Mr Prestage had some forms he asked her mother to sign. She was present when Mr Prestage requested her mother to sign those forms.

Ms Valent told the Commission that Mr Prestage and Ms Valentova then went to the bank together to open a bank account. Ms Valent thought she might have been in the car while they went into the bank. Ms Valent said that neither she nor her mother had ever accessed the company's account. They never received any bank statements. She said that her mother signed the forms and that was the last they heard of the bank account or the company until becoming aware of the Commission's investigation. Ms Valent said she had never deposited money into the account or made any withdrawals, including by way of online banking.

Ms Valent agreed that there had never been any conversation with Michael Turner about establishing Petite Solutions. She said that she had met Michael Turner through her husband and described him as a good friend of the family. Michael Turner did not speak Slovakian. He had never visited the family homes at either Tewantin or at their current home address.

Ms Valent told the Commission that her husband instructed her to advise her mother to tell the Commission that Michael Turner asked her to open the account and that she (Ms Valent) went to the bank with her. Ms Valent said that Mr Prestage “came at night, it was almost, it was almost midnight, and he said to my mum that she has to

travel in a few hours and come here [the Commission] ... and it was, he told her to say that". While she knew this evidence was untruthful, she "trusted my husband and did not understand the seriousness of the matter".

Mr Prestage denied this conversation took place.

The evidence of Mr Prestage

Mr Prestage gave evidence in a compulsory examination. That evidence included his knowledge of Petite Solutions.

Mr Prestage denied that he had any connection with Petite Solutions. He claimed that Michael Turner had asked Ms Valentova to set up the company "because Michael Turner travels a hell of a lot". He was unable to provide any credible evidence concerning any connection between the frequency of Michael Turner's travel and the need to establish Petite Solutions, let alone any rational reason why it was necessary to involve Ms Valentova. When questioned why the frequency of Michael Turner's travel would require Ms Valentova to set up a company, Mr Prestage said, "Well, because he also has a company that's called Petite... Petite Software Systems". He was unable to explain why this required Ms Valentova to set up a similarly named company on behalf of Michael Turner.

Mr Prestage said that he doubted that Michael Turner spoke Slovakian and agreed that Ms Valentova's English was limited. He thought that the conversation about setting up a company was "probably" conducted through his wife. Later in his evidence, Mr Prestage told the Commission that he was not present when the conversation between Michael Turner and Ms Valentova occurred. However, he was aware that his wife had translated their communications. He denied knowing details of the conversation because he was "really busy with work. I don't sit there and go through all the details of every conversation that my wife has with people".

Mr Prestage told the Commission that Ms Valentova had no active role in the company but Michael Turner did. He agreed that he was aware that his wife and Ms Valentova opened a bank account in the name of Petite Solutions and that Ms Valentova was the sole signatory for that account.

The evidence of Michael Turner

Michael Turner also gave evidence in a compulsory examination.

Michael Turner denied that he had ever asked Ms Valentova to establish a company called Petite Solutions or that he had ever used that company to carry out ICT contract work for DFSI. He never instructed any person to open any bank accounts in the name of Petite

Solutions. He did not have access to bank accounts in the company's name.

Michael Turner was asked if he knew Ms Valentova. He said that he may have met her once at Mr Prestage's house in Sydney. However, he thought that Ms Valentova had passed away because Mr Prestage had asked him and another business colleague for a loan of \$11,000 for her funeral.

Conclusions

Mr Prestage submitted to the Commission that the evidence of Ms Valentova and Ms Valent concerning the establishment of Petite Solutions was false.

The Commission rejects this submission. Further, it does not accept Mr Prestage's account of the establishment of Petite Solutions and the involvement of Michael Turner in that process. His account is inherently unlikely. Other than the untruthful evidence given by Ms Valentova on 11 December 2017, there is no evidence that supports it.

The Commission is satisfied that Petite Solutions was established at the direction of Mr Prestage. The company was established to achieve Mr Prestage's dishonest purpose of securing payments from DFSI in respect of the work carried out on the Clarity Project by a number of ICT contractors.

The Commission accepts that the evidence given by Ms Valentova on 19 March 2018 was truthful evidence. Her evidence is consistent with the evidence of Ms Valent and Michael Turner, whose evidence the Commission also accepts.

The Commission is satisfied that the evidence given by Ms Valentova on 11 December 2017 reflects what she had been instructed to say by Mr Prestage.

Section 74A(2) statement

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

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

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

The Commission is satisfied that Mr Prestage and Ms Valentova are affected persons for the purposes of s 74A(2) of the ICAC Act.

In determining what statement to make under s 74A(2) of the ICAC Act, the Commission takes into account whether there is sufficient admissible evidence to support a prosecution. The Commission has taken into account that Mr Prestage gave evidence following the making of a declaration pursuant to s 38 of the ICAC Act. The effect of such a declaration is that his evidence is not admissible against him in any criminal proceedings or civil proceedings, other than proceedings for an offence under the ICAC Act. The protection afforded to witnesses following the making of a s 38 declaration is not unlimited.

The evidence of Ms Valentova – that Mr Prestage told her that she did not need to attend the Commission on 11 December 2017 and the evidence of Ms Valentova and Ms Valent of the instructions given by Mr Prestage to Ms Valentova in relation to her evidence – would be admissible in proceedings for offences under the ICAC Act. Mr Prestage’s account of the establishment of Petite Solutions and Michael Turner’s involvement in it would also be admissible in any prosecution for offences against the ICAC Act, as would the evidence of Ms Valentova, Ms Valent, Michael Turner and the banking and financial records that formed part of the evidence gathered by the Commission in its investigation.

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 Prestage for offences of:

- wilfully preventing or wilfully endeavouring to prevent a witness (Ms Valentova) from attending the Commission, contrary to s 92 of the ICAC Act
- procuring the giving of false testimony (by Ms Valentova) at a compulsory examination, contrary to s 89 of the ICAC Act
- giving false and misleading evidence in relation to the establishment of Petite Solutions and its bank account, contrary to s 87 of the ICAC Act.

The Commission has considered whether the advice of the DPP should be sought in relation to Ms Valentova’s failure to give truthful evidence when first called before the Commission. The Commission does not propose to seek such advice. The matters that the Commission has taken into account in making this decision include the following:

- The Commission accepts that, when first called to give evidence, Ms Valentova gave a version of events that she had been instructed to give by Mr Prestage and that Mr Prestage told her that he had legal advice that she ought to give evidence in that way. She did not have the benefit of independent legal advice prior to giving evidence. Annette Wood sought authorisation to appear on behalf of Ms Valentova on the first occasion upon which Ms Valentova was to give evidence and she failed to attend. Ms Wood informed the Commission that she had been receiving instructions from Mr Prestage, had only expected to appear for Mr Prestage and had not expected to be appearing for Ms Valentova. She was instructed to do so by Mr Prestage. Ms Wood informed the Commission that she “had not been able to obtain any instructions from her [Ms Valentova] whatsoever”. On the very morning that Ms Valentova was to give evidence, Mr Prestage advised Ms Wood that Ms Valentova would not be appearing. Ms Wood’s instructions were later withdrawn by Mr Prestage.
- Ms Valentova was a vulnerable witness in the sense that she has little command of the English language, has no independent source of income, and is dependent on Mr Prestage for a place to live. The Commission is satisfied that she was susceptible to manipulation by Mr Prestage and that this occurred.
- Upon realising the seriousness of giving untruthful evidence, Ms Valentova gave further evidence. The Commission is satisfied that this evidence was truthful. She has indicated that she is willing to assist the Commission and the DPP in giving evidence if required.
- The Commission retains a discretion in relation to seeking advice from the DPP. Whether a witness has cooperated with the Commission may affect the way in which that discretion is exercised, as might the particular circumstances of a witness at the time of giving evidence. That Ms Valentova initially gave untruthful evidence is regrettable. Nevertheless, the Commission is satisfied that Ms Valentova corrected the record at the first available opportunity and thereafter cooperated with the Commission’s investigation.

Chapter 3: Mr Prestage and the Clarity Project

This chapter examines the allegation that Mr Prestage used the name of Michael Turner's company, Petite Software Systems, to disguise from DFSI the fact that payment for the supply of ICT contractors was made to Mr Prestage's company, Petite Solutions.

The Clarity Project

The Clarity Project was a project to implement Clarity software throughout DFSI.

The need to implement Clarity arose when the DFSI secretary asked Mr Smith, executive director of SPPMO, to improve DFSI's capacity to deliver projects and reforms. One element of this task was enhancing visibility over the progress of projects. It was also envisaged that improving reporting and project assurance would ultimately lead to improved project management.

Mr Smith and Mr Gravitis, director, Corporate Planning, Performance and Portfolio Office at DFSI, compared competing project reporting software solutions and ultimately decided to implement Clarity across DFSI.

Two implementations of Clarity already existed within specific areas of DFSI. The Clarity Project involved combining these into one system, and then modifying this implementation so that it could provide enhanced project reporting and assurance information from across DFSI.

In early 2016, Mr Gravitis was informed by Mr Smith that there was funding available but that there was not much time to implement the Clarity Project because funds were only available up to the end of June.

Following unsuccessful attempts to utilise individuals who had been involved in establishing the existing DFSI Clarity implementations, and the rejection of a quotation received from Computer Associates, Mr Smith and Mr Gravitis decided to engage a labour hire contractor to manage the Clarity Project. This individual would be appointed project

manager and be responsible for engaging other contractors to work on the project.

Mr Gravitis would form a steering committee with others, and oversee the implementation of the Clarity Project. The project manager would have responsibility for the design and build phase of the project. This would take place despite the fact that the Clarity Project would involve the expenditure of a significant amount of public funds, that there was no business case prepared by DFSI, and no detailed scope of works (the scope of works was to be left to the project manager). There was no formal budget or lines of budget reporting.

A relatively short timetable was set for implementation of the Clarity Project, which formally commenced in March 2016. It was intended that it would be fully rolled out by 30 June 2016.

DFSI set aside \$150,000 for the cost of external contractors, with further expenditure expected for the project manager. In total, DFSI expected that the amount spent would be just over \$200,000. The Commission is satisfied that this was little more than a "guesstimate".

DFSI's expectations in relation to costs were not met. Ultimately, the sum of \$569,800 was paid by DFSI into the Petite Solutions bank account. After paying the ICT contractors part of what they were owed, Mr Prestage transferred the balance into the account of Inctive Global Services and his personal bank account. The balance was \$523,450. In addition, DFSI paid Mr Prestage via Hays the sum of \$101,980 in respect of his role as project manager.

DFSI hires Mr Prestage

In March 2016, Lisa Lohan, a Hays senior recruitment consultant, was requested by DFSI to identify a project manager for the Clarity Project. Ms Lohan placed advertisements in a number of different media.

Among the 20-odd applications was a CV from Mr Prestage. Ms Lohan telephoned Mr Prestage, had a short conversation with him and subsequently passed his details on to DFSI.

DFSI advised Ms Lohan that it was interested in interviewing Mr Prestage. Accordingly, Ms Lohan sent Hays documentation to Mr Prestage for completion. The documents included a Candidate Application Form and Terms of Engagement. The Candidate Application Form required the applicant to make a declaration that all information and details included in the application and associated CV were “accurate and true”. Ms Lohan told the Commission that Mr Prestage completed those documents and returned them together with a CV enabling her to complete a Candidate Profile, which she forwarded to DFSI.

Mr Prestage’s CV stated that he had worked for a number of organisations, including the Bank of Queensland between October 2014 and October 2015, and the Gold Coast City Council (GCCC) between January and December 2013. His CV also listed a number of projects he worked on for a company called Progmo Pty Ltd.

Progmo is Michael Turner’s company. It was utilised as the contracting party for ICT assignments carried out by him.

Mr Prestage told the Commission that he could not recall filling out the Candidate Application Form. When shown the form, he said that it was not a document he had seen and he “definitely” did not fill it out.

The Candidate Application Form contained a home address in Pymont, NSW, for Mr Prestage. He claimed not to have lived at that address and did not know how it came to be on the form. It also contained the contact details of an emergency contact, namely his wife. The details consisted of the full name and mobile telephone number of Ms Valent. These details were known to Mr Prestage but are unlikely to have been known to any other person involved in the recruitment process.

The Candidate Application Form also identified “Mike Turner, Director of Projects” at the Bank of Queensland as Mr Prestage’s referee as well as Michael Turner’s mobile telephone number. The application was filled out online. It is inherently unlikely that anyone other than Mr Prestage would have completed the application.

The Commission rejects Mr Prestage’s evidence, accepts Ms Lohan’s evidence, and finds that Mr Prestage completed the Candidate Application Form.

On 30 March 2016, Ms Lohan completed a reference check report based on the answers given by a person she understood to be Mike Turner. She used a standard Hays template. She initially informed the Commission that she had recorded Mike Turner’s responses. The first three questions and two answers are relevant, as is the failure to record an answer in respect of question 3. The questions and responses are extracted below:

1. Describe the nature of the relation with Stephen [sic] (e.g. direct manager).

I have managed Steven [sic] on a variety of Projects, probably from the year 2000 onwards.

2. Confirm employment record, including position, responsibilities, start and finish dates (month/year).

Most recently—Oct 2014–Oct 2015 at Bank of Queensland, where he was responsible for Responsible for [sic] the implementation of Halogen Software

Between Jan 2013–Dec 2013 at Gold Coast City Council and Commonwealth Games, Managed a project implementing CA Clarity (PPM), upgrading SAP HR and Payroll (for Gold Coast City Council) and implementing SAP SuccessFactors (for Commonwealth Games)

3. Confirm remuneration details. Where possible confirm each of the following components: base, superannuation, bonus/ commission

No response is recorded in relation to this last query.

Mr Prestage told the Commission that, during his time at the Bank of Queensland, he worked for Michael Turner's company, Progmo, which had been engaged by the bank. Mr Prestage also told the Commission that he reported to Michael Turner who was the project manager.

In his evidence, Michael Turner said he could not recall speaking to Ms Lohan but noted that he provided reference checks for many people and had previously provided references for Mr Prestage. He told the Commission that, while he did work for the Bank of Queensland as a contractor, he never supervised Mr Prestage nor did they work at the bank at the same time. However, he believed that Mr Prestage told him he had worked at the Bank of Queensland at some point. He understood that Mr Prestage had implemented Halogen Software, although he was not certain whether that was in respect of the Bank of Queensland or the GCCC.

The Bank of Queensland was unable to locate any record that Michael Turner, Progmo, Mr Prestage or Inctive Global Services had been engaged by it. However, after giving evidence, Michael Turner located some payment records, which showed that a recruitment company, Talent International Holdings Pty Ltd ("Talent"), had paid him during the time he claimed to have been working at the Bank of Queensland. He said that he worked at the premises of Bank of Queensland on a joint project between the bank and Hewlett Packard. In response to enquiries made by the Commission, Talent confirmed that it had engaged Michael Turner between 19 February and 30 November 2015. Although his contract was with Hewlett Packard, Talent considered it likely that Michael Turner worked at the Bank of Queensland. The Bank of Queensland confirmed that it had contracted with Talent in relation to the joint project between the bank and Hewlett Packard.

The CV Mr Prestage provided to Hays also stated that he worked at the GCCC for a year in 2013.

Michael Turner told the Commission that GCCC engaged him in 2014–2015. He was mistaken. In 2015, he was working on the Bank of Queensland project. At the Commission's request, Michael Turner reviewed his records following completion of his evidence. He subsequently supplied the Commission with a copy of a letter of 23 May 2013 from Hays regarding his engagement as an infrastructure scheduler for the period from 27 May to 9 September 2013 with GCCC with an option to extend.

Michael Turner agreed that GCCC had engaged Mr Prestage. However, Mr Prestage worked completely independently of him to carry out a minor component of the project. He did not supervise Mr Prestage's work.

Mr Prestage agreed that he and Michael Turner worked together at the GCCC in 2013, as recorded in his CV and that Michael Turner worked as a contractor, not his supervisor.

In his submissions to the Commission, Mr Prestage noted that Michael Turner did not deny that he had spoken to Ms Lohan. He sought to persuade the Commission that the person she spoke to confirmed that Mr Prestage had worked at the Bank of Queensland and that he had supervised Mr Prestage. Mr Prestage claimed that this was reflected in the Reference Check Report.

There is little doubt that Ms Lohan obtained the reference from Michael Turner. He did not suggest otherwise. He informed the Commission that someone enquiring about Mr Prestage's skills had contacted him. He could not say whether that was Ms Lohan. The caller asked Michael Turner whether he was prepared to answer questions in relation to Mr Prestage as a referee. With the exception of the responses given in respect of question 2, he agreed that he might have given the recorded responses. However, the responses given to certain questions did not reflect language used by him. In relation to the Bank of Queensland, Michael Turner suggested that he may have said that he had heard that Mr Prestage had some involvement with the Bank of Queensland. However, the questioner was seeking information in relation to Mr Prestage's skills.

The Commission considers there is another explanation for the wording of the response to question 2; that is, the response recorded what Mr Prestage asserted in his CV rather than recording precisely what Michael Turner said. The Commission sought further information from Ms Lohan as to the wording of the responses to question 2. She had no independent recollection of her conversation with Michael Turner but confirmed that all discussions with referees about a client are structured. She would commence each question with, "My understanding is...". Viewed in this light, it is more likely than not that the responses recorded to question 2 were prompts that recorded Ms Lohan's understanding of the more relevant parts of Mr Prestage's work history in respect of which she was seeking information. The wording of the CV is similar to the responses recorded in respect of the Bank of Queensland. The wording in the CV and the wording of the responses in relation to the GCCC are identical. The relevant parts of the CV are extracted below:

Bank of Queensland
Project Manager (Halogen Software HR
Modules)

October 2014–October 2015

Responsible for the implementation of Halogen Software including eAppraisal, eSuccession and eLearning

...

Gold Coast City Council and Commonwealth Games
Project Manager (SuccessFactors and Payroll Upgrade)

January 2013 – December 2013

Managed a project implementing CA Clarity (PPM), upgrading SAP HR and Payroll (for Gold Coast City Council) and implementing SAP SuccessFactors (for Commonwealth Games)....

Contrary to Mr Prestage's submission, the responses do not record that Michael Turner said he had supervised Mr Prestage at the Bank of Queensland. Question 1 asked for a description of Michael Turner's relationship with Mr Prestage. The response was that he had "managed Stephen [sic] on a variety of Projects". Question 2 sought confirmation of Mr Prestage's employment record. It did not seek details of the projects in respect of which Michael Turner had supervised Mr Prestage. If it were otherwise then the response recorded in respect of GCCC does not make sense. It is common ground that Mr Prestage and Michael Turner had separate roles, and that Michael Turner did not supervise Mr Prestage. Mr Prestage noted in his submissions that, while engaged by GCCC, his supervisor was one Min Tran. Further, if Mr Prestage had been engaged at the Bank of Queensland by Progmo and supervised by Michael Turner, as he claimed was the case, Michael Turner should have been able to respond, at least in part, to question 3. He did not respond.

The Commission is satisfied that the wording of Michael Turner's response to question 2 cannot be accepted as a record of what he said to Ms Lohan. He may have said no more than that he understood that the Bank of Queensland had engaged Mr Prestage at some point and that Mr Prestage was familiar with the use of Halogen software. The Commission is satisfied that the response to question 2 records Ms Lohan's prompt and that whatever response was provided by Michael Turner it satisfied her that the information in Mr Prestage's CV was correct.

The Commission is also satisfied that Michael Turner was engaged on the joint project between the Bank of Queensland and Hewlett Packard between February

and November 2015 and that Mr Prestage's claim that he worked at the Bank of Queensland and was supervised by Michael Turner is untrue.

The fact that Michael Turner and Mr Prestage both worked at GCCC, although on discrete tasks, is common ground.

Mr Prestage was required to provide a number of documents to Hays before he could commence at DFSI.

It is part of Hays' recruitment process that contractors provide evidence of public liability insurance cover.

On 30 March 2016, an administrative officer from Hays emailed Mr Prestage and attached documents for completion by him. On the same day, Mr Prestage replied by email with a link to his "ABN, company and GST details". He attached "my insurances" and "my company's bank account details". The email address used by Mr Prestage was his Gmail account and the bank account details were for an account operated by his company, Inctive Global Services.

The insurance document attached to Mr Prestage's email was provided as proof that Inctive Global Services held public liability insurance. It was a four-page certificate of insurance.

The certificate represented that Inctive Global Services held public liability insurance with Marsh Pty Ltd (a well-known international insurance broking business) and that the limit of indemnity was \$20 million.

The lead compliance officer of Marsh informed the Commission that, to the best of his knowledge, and based on his enquiries, Marsh had no record of a client by the name of Inctive Global Services.

During the course of his evidence, Mr Prestage was questioned about the policy. He claimed he could not recall if Inctive Global Services held public liability insurance.

Mr Prestage was shown the certificate he had emailed to Hays. He claimed the address for Inctive Global Services was incorrect. It was not an address he recognised. He acknowledged, however, that the ABN for Inctive Global Services was correct. Mr Prestage told the Commission that the insurance policy may have been taken out via a broker and that he could have submitted it to Hays as an attachment without having ever opened it.

In submissions, Mr Prestage claimed that he could not recall providing the certificate to Hays. He also denied that he created the document or that it had been created on his behalf.

The Commission is satisfied that the insurance certificate provided to Hays by Mr Prestage is not authentic. It is further satisfied that Mr Prestage created the certificate.

He supplied the certificate to Hays knowing that Hays would rely on it as evidencing the fact that Inctive Global Services had public liability insurance. Mr Prestage's purpose was to enhance his prospects of engagement as project manager of the Clarity Project.

The Commission is also satisfied that Mr Prestage's evidence, that he may have provided the public liability insurance certificate to Hays without having viewed the document, was untruthful. He knew precisely what it contained.

Following the Hays recommendation, a short interview with DFSI staff, and the receipt of the Hays reference reports, DFSI offered Mr Prestage the position of project manager of the Clarity Project. Hays was to be paid \$1,113.75 per day, of which Mr Prestage was to receive \$900 per day.

Mr Prestage began work with DFSI on 4 April 2016.

Mr Prestage introduces "Petite" to DFSI

One of Mr Prestage's first tasks was to produce a project plan for the Clarity Project. His project plan provided his assessment of the number of ICT contractors required to modify the Clarity software and roll it out across DFSI.

On or around 14 April 2016, Hays representatives began sending Mr Prestage the CVs of ICT contractors that it considered had the necessary skills to fill the positions identified by Mr Prestage in the project plan. Hays indicated that each contractor should be paid a daily rate of between \$800 and \$900.

Mr Prestage rejected each of the ICT contractors put forward by Hays as unsuitable.

Towards late April 2016, Mr Prestage represented to Mr Gravitis that he could not find any suitable contractors via NSW Government prequalified suppliers, such as Hays.

Mr Prestage told the Commission that, after his failed attempts to find contractors via Hays and another prequalified supplier, he had discussions with his friend "Roger" Turner about Petite Software Systems providing ICT personnel. He asked Roger Turner if he could "send us some CVs and set up interviews". Mr Prestage said Roger Turner agreed that he would assist.

Mr Prestage informed the Commission that his friend Michael (also known as Mike) Turner used the name "Roger" interchangeably with Michael and Mike. He maintained that Roger and Michael Turner were the same person and that Michael Turner was involved in supplying the CVs of ICT contractors and other services to DFSI.

Michael Turner told the Commission that he never went by the name "Roger" (which is his middle name). Michael Turner claimed that Petite Software Systems had never carried out any work for DFSI. He had not offered to supply CVs to Mr Prestage and had not spoken with him about the Clarity Project. The Commission accepts this evidence. Mr Prestage used the name of Petite Software Systems in his dealings with DFSI without the knowledge of Michael Turner.

On 28 April 2016, Mr Prestage sent an email to Mr Gravitis. He advised Mr Gravitis that "the candidates I interviewed yesterday for the report developer from our existing panel of suppliers do not meet our requirements". He also noted that "On a bright note I met with Petite" and that they had made some suggestions on how to move forward. Mr Prestage further noted, "There are two documents that I am working on for procurement" being the "Requirements document for the supplier" and the "Justification for Sole Source of a supplier". This appears to be the first written reference to "Petite".

The Commission is satisfied that Mr Prestage intended that Mr Gravitis would assume that all references to "Petite" meant Petite Software Systems.

On 29 April 2016, Mr Prestage emailed Greg Grebert and Dennis Weitschat, both of whom worked in the Procurement Division of DFSI. The email was copied to Mr Gravitis.

At the time, Mr Grebert was DFSI's chief procurement officer. Mr Weitschat was a DFSI procurement manager.

Mr Prestage attached three documents to the email; namely, an Initial Project Brief, a Requirements Document and a Justification for Sole Source. He stated, "I had promised to send through to you both the following documents". Mr Prestage asked that the recipients review the documents. He requested that they get back to him if they had any questions. They were to contact Mr Gravitis if there were any issues.

The Justification for Sole Source document noted the Clarity Project requirements as two Clarity developer/business analysts and one specialist report developer to be engaged for 25 working days. Page 3 of the document noted that DFSI had interviewed over 20 people from Infosys, Hays and Datacom; each was a prequalified supplier. The document represented that, for a variety of reasons, none of those interviewed met the project requirement but that DFSI had located a company called "Petite". It also represented that "Petite" was not on the prequalified procurement panel but was in the process of applying for qualification.

The Justification for Sole Source document emailed by Mr Prestage was not a standard DFSI document.

According to Mr Grebert, it appeared to have been created “specifically in relation to the Clarity Project”. The purpose of the Justification for Sole Source document was to justify the engagement of “Petite” in order to provide suitable contractors for the Clarity Project without seeking quotes from alternative service providers. Mr Grebert told the Commission that, although DFSI could seek to procure services from a sole source, the use of this method of procurement did not automatically override the requirement to use prequalified suppliers. He further told the Commission that the Justification for Sole Source document ought not to have been treated as approval to use “Petite”. The document did not contain the information required by the government-approved PST.

Mr Weitschat told the Commission that he had never seen the document. According to Mr Weitschat, it was “very rare to go outside the pre-selection panel to engage contractors”.

Both in his evidence to the Commission and in his submissions, Mr Prestage claimed that he completed the document with the assistance of Mr Gravitis. He told the Commission that he specifically recalled sitting next to Mr Gravitis and asked for advice as to what the document needed to contain. The following exchange took place:

[Commissioner]: When you say “worked on together”, what does that mean?

[Mr Prestage]: I would have sat next to him – because I’d never seen a document like this before, I would have said, “Could you please give me some advice in terms of what needs to go into this?”

Q: When you say you would have, do you actually recall that happening?

A: Sorry?

Q: Do you actually recall that happening?

A: Well, yes.

The Justification for Sole Source document contained the following representations:

There are very few resources with the specialist skills required for this project. DFSI identified a number of companies on the pre-qualified supplier procurement list that might have resources in this area and interviewed resource from each company. DFSI interviewed over 20 people from:

- Infosys

- Hays
- Datacom

For some or all of the following reasons, none of the resources appeared to meet the requirements for DFSI:

- Person is based overseas and not in Australia
- Person has issues with Australian visa and work requirements
- Person is unavailable to commence within the timeframes required by DFSI, without DFSI delaying the project
- Person did not have the minimum skills or competencies
- Person priced well over the budget requirements of DFSI

SOLE SOURCE SUPPLIER

DFSI has located a company:

- That is based in Australia
- With people that have the required Clarity and report development skills and competencies
- That have people that are based in Sydney and in Australia
- Where the people could commence work within a few weeks
- Have the ability to meet DFSI’s requirements

The company is called Petite. Petite is not on the pre-qualified procurement panel. Petite is in the process of applying for this panel. Petite may need assistance from DFSI procurement in order to complete this application.

A number of the representations were untrue.

DFSI did not interview any potential ICT contractors from Infosys or Datacom, the prequalified suppliers. Mr Prestage told the Commission that he did not draft the representation that over 20 people had been interviewed by DFSI. He claimed that he had interviewed no more than 10 potential ICT contractors and that he did not interview anyone from Datacom.

Mr Prestage agreed that Mr Gravitis was not qualified to interview contractors in relation to their suitability to develop and roll out the Clarity Project. He also agreed that it was unlikely that Mr Gravitis interviewed anyone. Mr Prestage told the Commission that Mr Gravitis did not ask him how many people he had interviewed. He could not explain how the number 20 came to be in the document.

Mr Gravitis denied assisting Mr Prestage in the drafting of the Justification for Sole Source document but thought he may have reviewed it after it was drafted. Mr Gravitis said that the reference to interviewing over 20 people was in line with what Mr Prestage had told him previously. He said that he did not interview anyone. That was a task better left to Mr Prestage as the project manager. It was Mr Prestage who had experience with Clarity software. Mr Gravitis also told the Commission that the wording in the document was not wording he would have used. He was satisfied that he did not draft the document. Mr Gravitis gave the following evidence:

[Counsel Assisting]: Did you at any stage sit beside Mr Prestage at a computer and perhaps fill out parts of this form or give Mr Prestage advice on filling out the form?

[Mr Gravitis]: I didn't sit beside him on a computer. I may have answered questions if they, if he had them but— -

Q: All right. But to the best of your knowledge Mr Prestage filled out the details of this form?

A: Yes.

Mr Grebert told the Commission that, after reviewing the document and “as a result of my working relationship with Gravitis, I believe that it is unlikely that he was involved in preparing the Justification for Sole Source document” and that it was far more likely Mr Prestage drafted it and Mr Gravitis accepted it.

Mr Grebert noted that, as the Justification for Sole Source document was not signed or approved, it could not be taken as an approval to conduct a sole-source procurement.

Mr Prestage informed the Commission that the representation contained in the Justification for Sole Source document, that “Petite” was “in the process of applying for” the prequalification scheme, was the product of what he had been told by Mr Weitschat. Mr Weitschat denied having any conversation or other contact with anyone from either Petite Software Systems or Petite Solutions at any time. He also denied providing any such information to Mr Prestage. Mr Weitschat told the Commission that the first time he saw the Justification for Sole Source document was when Mr Prestage emailed it to him on 29 April 2016.

In his submissions to the Commission, Mr Prestage maintained that Mr Gravitis agreed to direct and assist him in drafting the Justification for Sole Source document, as he had no prior experience in completing such documents.

The Commission rejects the evidence of Mr Prestage and his submissions. His own emails of 28 and 29 April 2016 speak to his involvement in the creation of the Justification for Sole Source document. Those emails are consistent with the evidence of Mr Gravitis, Mr Weitschat, and Mr Grebert.

The Commission is satisfied that Mr Prestage created the Justification for Sole Source document and that, to his knowledge, the document contained a number of representations that were untrue. Mr Prestage intended the Justification for Sole Source document to convey to DFSI that, if it wanted the Clarity Project to proceed in a timely manner, there was only one service provider, “Petite”, that could deliver what DFSI required. In an email of 3 May 2016, Mr Weitschat raised a number of queries with Mr Prestage.

The email demonstrates that Mr Weitschat was unfamiliar with the service provider nominated in the Justification for Sole Source document. He relied on what Mr Prestage represented to him. He sought assurances in relation to the suitability of “Petite”. Mr Prestage responded by email later that day.

Mr Weitschat’s queries and Mr Prestage’s responses are set out below. Mr Prestage’s responses commence with the words “My understanding”.

Are you able to provide some information about how the proposed sole source provider, Petite, meets the attached Requirements Document?

e.g. The supplier would need to:

Have a deep knowledge of the software product Clarity

My understanding is that the key people from Petite have been involved with the Clarity product since 2005

Have resources available that can commence work within the next few weeks

My understanding is that they have resource availability can [sic] commence within the next 3 weeks

Have a good understanding of how Government Departments operate

My understanding is that they have completed projects at Queensland Health, Department of Human Services (Australian Federal Government), Department of Education NSW to name a few...

Can provide on-going project/account management to DFSI

My understanding is the head of professional services from Petite will provide ongoing Project and Account Management

Be able to comprehend the DFSI requirements quickly

My understanding is that one of the resources has Clarity business analysis skills and will be able to comprehend our requirements very quickly

Bring other customer experience, case studies and knowledge to DFSI

My understanding is that they have completed projects at Queensland Health, Department of Human Services (Australian Federal Government), Department of Education NSW and will bring those case studies in terms of best practice to set-up the OBS, best practice on ad-hoc and custom reports etc.

Deliver within tight timeframes

My understanding is that Petite will commit 3 resources for 25 days in order to meet our tight timeframes

The representations made by Mr Prestage in this email are untrue. The Commission is satisfied that Mr Prestage made these representations to enhance the prospect that DFSI would appoint Petite Software Systems to the Clarity Project.

There were no “key people” within Petite Software Systems who had been involved with Clarity software, either since 2005 or otherwise. The only person associated with Petite Software Systems was Michael Turner. The company had never traded. Indeed, as has been noted, it was not registered until 25 November 2013. It had never “completed projects” for Queensland Health, the Department of Human Services, the Department of Education or any other government department. Petite Software Systems did not have any “head of professional services” who could provide “on-going project/account management”. The company had no “resource availability”. Nor could it commence work on the Clarity Project “within the next 3 weeks”.

The Commission is satisfied that there were no discussions with Michael Turner, or CVs provided by him, that formed the basis of Mr Prestage’s answers to Mr Weitschat’s queries. He simply made up his responses to further his own ends; namely, to secure payments from DFSI to which he had no entitlement.

Provision of contact details

Mr Prestage continued to mislead DFSI in relation to the proposed engagement of Petite Software Systems.

On 2 May 2016, Mr Gravitis sent Mr Prestage an email. He asked, “Can you send me whatever you have from Petite so I can follow up?”. Mr Prestage replied shortly thereafter, “Roger Turner is the person from Petite. They have made no formal submissions as yet in relation to price etc”. He then supplied contact details with the landline telephone number of (03) 8374 7665, Michael Turner’s actual mobile number, and the email address roger.turner@petite.solutions.

Commission investigators traced telephone number (03) 8374 7665 to an office message service known as Office HQ, based in Sydney. The general manager of Office HQ informed the Commission that, on 30 April 2014, a person called Roger Turner opened an account with Office HQ for the number (03) 8374 7665. The address provided by the account holder was level 28, 303 Collins Street, Melbourne. The account was opened online. It required that all contacts were to be set as “do not disturb”, meaning that they were not to be contacted by telephone. Rather, an automatically triggered message was taken. The contacts attached to that telephone number were listed as Roger Turner, David Stone, Mike, Peter and Tracey.

A number of credit card payments were made for the services of Office HQ. The credit card used was one issued to Mr Prestage by the National Australia Bank (NAB). The card was used to make payments to Office HQ in the period 3 May 2016 to 28 June 2017. Three payments were also made to Office HQ from Mr Prestage’s NAB Classic banking account in the period from 29 February to 30 March 2016. A further payment was made on 10 July 2017 from the joint NAB account belonging to Mr Prestage and Ms Valent. In total, between 29 February 2016 and 10 July 2017, Mr Prestage paid Office HQ \$5,393.30.

The Commission is satisfied that Mr Prestage established and paid for the Office HQ account.

The Commission’s investigation established that the Petite Solutions website was hosted by a company called GoDaddy.

GoDaddy (among other domain name registers) provides a service to protect the contact details of the person/organisation who purchase a domain name. In providing this service, GoDaddy uses its own contact details. Consequently, a “whois” lookup will not result in disclosure of contact details of the person, company or organisation that purchased the domain name.

GoDaddy also hosted email services for email addresses that contained the “@petite.solutions” affix, such as roger.turner@petite.solutions.

The Commission traced the IP address of two emails sent from the roger.turner@petite.solutions email address during Mr Prestage’s engagement on the Clarity Project. Telstra issued those IP addresses.

The first email was sent on 1 July 2016 from the roger.turner@petite.solutions email address. It had an IP address linked to an account with Telstra in the name of Ms Valent. The account holder’s address was the home address belonging to Mr Prestage and Ms Valent. The billing address was stevenprestage@gmail.com.

The second email was sent on 8 July 2016 from the roger.turner@petite.solutions email address. It also had an IP address linked to an account with Telstra in the name of Ms Valent. Again, the billing address was stevenprestage@gmail.com.

In both emails, Roger Turner was identified as “Professional Services Manager, Petite”.

Ms Valent gave evidence that she and her mother had mobile telephones and that she also had a computer. Telstra was their internet and mobile telephone service provider. Although listed as the account holder, her husband paid the account. When there were difficulties with the account, or the internet failed, her husband would deal with Telstra.

Ms Valent was shown the two emails. She denied ever sending emails on behalf of her husband’s companies. She further denied sending the emails from the roger.turner@petite.solutions email address. Ms Valent informed the Commission that she had never heard of a company called Petite Solutions.

As previously noted, Ms Valentova lived at the same address as Mr Prestage and her daughter, Ms Valent. She denied ever sending an email pretending to be Roger Turner.

The Commission accepts the evidence of Ms Valent and Ms Valentova.

The Commission is satisfied that Mr Prestage established the GoDaddy account and used it to send emails in the name of Roger Turner; one of a number of fictitious names used by Mr Prestage.

The Commission is also satisfied that the GoDaddy and Office HQ accounts were established by Mr Prestage to further conceal both his involvement in the supply of ICT contractors to DFSI and the fact that he would financially benefit from the arrangement. Establishment of the Office HQ account meant that:

- DFSI would never have any verbal communication with anyone purporting to be Roger Turner
- Mr Prestage could communicate with DFSI via email in various names, including Roger Turner, and he did so.

The “Petite” quote is received by DFSI

On or about 5 May 2016, Mr Gravitis received a quote from a company identified only as “Petite”. The quote was 22 pages in length and was addressed to “Valdi Gravititas [sic]”. It was signed in the name of “Roger Turner, Professional Services Manager, Petite”. Roger Turner’s contact details were provided as roger.turner@petite.solutions and the telephone number (03) 8374 7665. The address of “Petite” was listed as level 28, 303 Collins Street, Melbourne. This is the same address as supplied by Mr Prestage to Office HQ when establishing an account with that business.

Regus Australia Management Pty Ltd leased the property located at level 28, 303 Collins Street, Melbourne. Its area manager, Bhushan Anvekar, informed the Commission that the company had not sublet any part of the property to any company that used the name “Petite”. He also noted that all telephone numbers connected to the property commenced with the four digits: 9678. The number (03) 8374 7665 was not such a number. Mr Anvekar told the Commission that the Regus Group had similar properties in Hong Kong, New York and London. A search of the Petite Solutions website demonstrated that “Petite” was also falsely using these addresses as places of business. The Commission accepts Mr Anvekar’s evidence. Neither Petite Software Systems nor Petite Solutions occupied any part of the property located at 303 Collins Street, Melbourne.

The “Petite” quotation was awash with misrepresentations. The Commission is satisfied that Mr Prestage intended that the misrepresentations would persuade DFSI to engage Petite Software Systems for the Clarity Project.

“Petite” claimed in the quote to be a leading supplier of Clarity solutions and services and that it had been so since 2001. This was over a decade prior to the incorporation of Petite Software Systems. It also claimed to have a large number of Australian and international clients of substance. Australian clients included ANZ, Optus, Downer, NAB, Wesfarmers, Bunnings, Ausgrid, Department of Agriculture and Fisheries of Queensland, SA Health, Australia Post and the Perth Mint. Its international clients included Microsoft, Credit Suisse, Xerox, HBOS Plc and Philips.

Commission investigators spoke to a number of the companies and departments referred to above, all of whom denied having ever engaged any company with the name “Petite”.

The “Petite” quotation contained an offer to supply three contractors for 25 days at \$2,000 (plus GST) per day for each contractor.

Michael Turner was shown the “Petite” quote during the course of his evidence. He said he had not previously seen the quote and the signature above the signature block was not his signature. He also said that the email address was not his email address and that his company never had an office in Melbourne. He had not heard of Mr Gravitis. The Commission accepts Michael Turner’s evidence.

Mr Prestage’s evidence was unconvincing. He claimed that someone at “Petite” had drafted the quote, although he could not identify that person. He agreed that it was impossible to tell from the document which “Petite” company it referred to – Petite Software Systems or Petite Solutions. During his evidence, the following exchange took place:

[Counsel Assisting]: That’s a document you’ve seen previously?

[Mr Prestage]: Yep.

[Q]: And do you know who drafted this document?

[A]: Petite.

[Q]: And when you say Petite, that’s an entity. Do you know which individual?

[A]: No.

[Q]: And when you say Petite, which company are we referring to?

[A]: I don’t know.

[Q]: Right. Because there’s nothing on this document that tells you whether it’s Petite Software- - -?

[A]: I don’t know.

[Q]: - - - Systems or Petite Solutions is there?

[A]: I don’t, I don’t know.

[Q]: Is there anything in the document that says it refers to Petite- - -?

[A]: I’d have to- - -

[Q]: - - - Software Systems?

[A]: I’d have to read through the whole thing line by line. Is that what you want me to do or- - -

[Q]: Well, you were the person who introduced Petite to DFSI. Is that correct?

[A]: Yes.

[Q]: And which Petite did you believe you were dealing with when you introduced Petite to DFSI, your mother-in-law’s company or Mr Turner’s company?

[A]: Mr Turner.

[Q]: Right. Do you know what the name of Mr Turner’s Petite- - -?

[A]: Petite Software Systems.

[Q]: Right. So did you assume then that this document was a quotation from Petite Software Systems?

[A]: Yes, I assume so although it’s not from what you’ve said blatantly written here.

The Commission is satisfied that Mr Prestage created the quote and supplied it to DFSI. In it, he represented that “Petite” would supply ICT contractors to the Clarity Project in return for the quoted sum. The representation was false. Mr Prestage was personally arranging for the engagement of the ICT contractors. He never intended that Petite Software Systems would be involved in the Clarity Project other than as a front. Unbeknown to DFSI, if the Petite quote were accepted, the company established by Ms Valentova at the direction of Mr Prestage, Petite Solutions, would receive the contract sum.

The quote also identified the ICT contractors who would work on the Clarity Project. One of the three put forward was David Byrne. Another was Tinu Babu. The daily rate, after applying a 10% discount, was \$2,000 (plus GST) per day per person. The significance of Mr Prestage’s choice of Mr Byrne and Ms Babu is addressed later in this report.

On any view, the rates quoted were extravagant. In contrast to the figures quoted, Hays was to be paid \$1,113.75 per day in respect of the engagement of Mr Prestage as project manager of which he would receive \$900. It will also be recalled that Hays had offered contractors at the rate of \$800 to \$900 per day.

Michael Turner had many years of experience in ICT work. He informed the Commission that, in 2016, ICT contractors engaged on the Clarity Project would have been expected to earn in the vicinity of \$800 per day and no more than \$1,000 per day. This is consistent with the daily rate quoted by Hays.

On 9 May 2016 at 5.03 pm, Mr Gravitis sent an email to Mr Prestage as follows:

So I was thinking, given the fact that Petite will cost \$160k and Shaun [Smith] found the \$80k of this proposal unreasonable.... What do we do?

Should you use CA to provide the work instead?

The “proposal” referred to by Mr Gravitis was a quote provided by Computer Associates to roll out the Clarity Project.

Mr Prestage did not send a response to this email in his own name. However, the Commission is satisfied that, 40 minutes later, Mr Prestage sent an email via the roger.turner@petite.solutions email address. Using the name of Roger Turner, Mr Prestage sought to deceive Mr Gravitis into believing that “Petite” was a high-quality service provider, that “Petite” was very much in demand by large corporate clients, that the work of Computer Associates was substandard and, if “Petite” were to meet the “aggressive timetable” of DFSI, a decision had to be made immediately. The email, sent at 5.43 pm on 9 May 2016, was as follows:

Valdi

Given your aggressive timeframe, we could start work on Wednesday this week. Steven interviewed approximately 7 of our people, I do not know which are Steven's preferred people, if he can get back to me, then I can develop a resource schedule for both of our purposes and try and ensure that those people are available. I am keen to meet your aggressive timeframes, provide the resources that Steven thinks you need, deliver with quality and I hope we can have a long term relationship with you. So that you are aware, we have other clients like Vodaphone, Optus, Westpac, ANZ who want the same resources and I have held them off. Petite wants to have a long term relationship with a new client (DFSI) and so I have taken you at your word. All of the proposed people are based in Sydney. They will not disappoint you, we get called to fix other companies problems. Example and please keep this to yourself, Rio Tinto who is a massive client of CA, we are asked to fix CA's configuration and reporting mess. At Westpac we were asked and I personally ran the entire program for the training of all the users (project managers, managers etc.), because Westpac did not trust any

other supplier to conduct the training. We are working on your previous email and will have a response back to you ASAP

Regards

Petite

Roger Turner

Professional Services Manager

Office Telephone 03 8374 7665

Email roger.turner@petite.solutions

The email was copied to Mr Prestage's DFSI email address, steven.prestage@finance.nsw.gov.au.

Much of the email was untrue. Mr Prestage had not interviewed “7 of our people”. Petite Software Systems had no employees of its own or any relationship with ICT contractors.

Mr Prestage gave evidence in relation to this email. He maintained that he interviewed a “bunch of people” but could not recall if it was seven in total. He said that he interviewed them over the telephone on his own and then made recommendations to Mr Gravitis. Although Mr Prestage did interview Ms Babu and Mr Byrne, Hays put them forward for interview. Mr Prestage rejected them as unsuitable. The Commission does not accept Mr Prestage's evidence.

Vodafone, Optus, Westpac, ANZ, and RIO Tinto were not clients of the company. Petite Software Systems had no clients.

Mr Gravitis told the Commission that he thought the rate of \$2,000 per person, per day, was “ridiculously, exorbitantly high” but he felt DFSI had no other option because “Steven [Prestage] had tested the marketplace and there was nobody available that could do the work other than these guys [‘Petite’]”. Mr Gravitis also said he believed that Mr Smith knew of the amount proposed and did not object to paying it.

Mr Smith told the Commission that either Mr Gravitis or Mr Prestage advised him that Government Property NSW's experience with Computer Associates was not a positive one and “the view from Valdi and Steven was that Petite were equally capable and had the resources available”. He said that he rejected the Computer Associates' proposal on the advice of either Mr Prestage or Mr Gravitis.

Mr Prestage told the Commission that Mr Smith insisted on doing the procurement in-house. Mr Smith did not want Computer Associates involved because Government Property NSW (a division within DFSI)

had introduced them as a possible supplier rather than Mr Smith's division. He further told the Commission that, in his view, DFSI should have negotiated harder with Computer Associates for a discount but DFSI did not want to do that.

In both his evidence and in his submissions, Mr Prestage maintained that the daily rate of \$2,000 per person, per day, was agreed because initially "Petite" wanted to charge different rates for every person they supplied; some as high as \$3,500 per day. When he raised this with Mr Gravitis, Mr Gravitis told him to ask "Petite" for their best rate and to charge the same rate for everyone "because I'm not going to, I don't want to have to go and justify someone at three and half thousand dollars a day versus someone at fifteen hundred dollars a day".

Mr Gravitis denied ever having a conversation with Mr Prestage in which he requested that "Petite" should charge the same rate for each contractor without regard to their skills or experience. The Commission is satisfied that the conversation between Mr Prestage and Mr Gravitis did not take place.

The engagement of the ICT contractors

During the course of the Commission's investigation, persons using the names of Peter Dawson, David Stone and Tracey Freedman also emerged as having a possible association with Petite Software Systems and Petite Solutions.

The evidence given by Mr Prestage in relation to these names was particularly vague. This is reflected in the evidence extracted below:

[Commissioner]: *During the course of this contract did you ever deal with a Mr David Stone from Petite?*

[Mr Prestage]: *Possibly. I don't know.*

[Q]: *Do you know a Mr Stone?*

[A]: *I, I don't know a Mr Stone personally, no. I've never met a Mr Stone.*

[Counsel Assisting]: *All right. But you don't remember having business dealings with Mr Stone from Petite?*

[A]: *Not that I can recall.*

[Q]: *Did you ever have any dealings with Tracey Freedman?*

[A]: *The name rings a bell but I don't know her personally.*

[Q]: *No, but did you have business dealings with her?*

[A]: *I may have had a conversation or an email from her.*

[Q]: *Right. And she works for Petite?*

[A]: *I believe so.*

The Commission has been unable to locate any persons having these names who had any association with either Petite Software Systems or Petite Solutions. However, the Commission is satisfied that Mr Prestage was associated with those names. He created and used them.

A number of emails were sent by, and to, a Peter Dawson email address. Peter Dawson was identified in communications with DFSI and others as the contract manager of "Petite". He had the email address of peter.dawson@petite.solutions.

As previously noted, the "@petite.solutions" email services were hosted by GoDaddy including roger.turner@petite.solutions.

The business address of Peter Dawson identified in emails to DFSI and others was level 28, 303 Collins Street, Melbourne, being part of the property leased by Regus Australia Management. The Commission is satisfied that no person using the name Peter Dawson ever occupied any part of the property.

Mr Dawson's telephone number was (03) 8374 7665. This is the number that connected with the Office HQ account. The Commission has found that Mr Prestage established and paid for the Office HQ account.

The Commission is satisfied that Mr Prestage created and then used the Roger Turner and Peter Dawson email addresses. It is further satisfied that he created and used email addresses in the names of David Stone and Tracey Freedman. The email addresses were david.stone@petite.solutions and tracey.freedman@petite.solutions. Mr Prestage used these email addresses in a number of communications with DFSI and the ICT contractors engaged on the Clarity Project. Mr Prestage's use of these email addresses, and the names associated with them, was intended by him to create the false impression that Petite Software Systems or "Petite" was a legitimate service provider and to conceal that he had no interest in it.

There is evidence that, on one occasion, a person using the name Tracey Freedman made contact with one of the ICT contractors via the Office HQ telephone number.

However, having regard to the whole of the evidence considered by the Commission in relation to Mr Prestage's scheme to secure payments from DFSI, it is satisfied that the person claiming to be Tracey Freedman was known to Mr Prestage and was, wittingly or unwittingly, used by him as part of his scheme.

As has been noted, Mr Prestage put forward Mr Byrne and Ms Babu to DFSI as suitable ICT contractors. However, he failed to disclose the background to their proposed engagement. More particularly, Mr Prestage concealed that he had previously considered the suitability of Mr Byrne and Ms Babu for the Clarity Project but had informed Hays that they were unsuitable.

The Commission is satisfied that Mr Prestage never intended to engage any ICT contractors through Hays or any other recruitment agency. Rather, he intended to put forward ICT contractors in a manner that would conceal the fact that he would secure a significant financial benefit. His use of the name Petite Software Systems and the names Roger Turner, Peter Dawson, David Stone and Tracey Freedman achieved that end.

It was in April 2016 when Hays provided the CVs of Mr Byrne and Ms Babu to Mr Prestage. Hays also arranged telephone interviews.

On 14 April 2016, Ms Lohan of Hays emailed Mr Byrne's details to Mr Prestage. In her email, Ms Lohan advised that Mr Byrne was contracted to another organisation and was required to give two weeks' notice. Mr Byrne was to be interviewed by telephone that afternoon at 4.30 pm.

On 22 April 2016, Rhys Binney of Hays emailed Ms Babu's details to Mr Prestage. He advised that Ms Babu was returning from maternity leave. Ms Babu was to be interviewed on 26 April 2016.

Mr Prestage told the Commission that Mr Byrne was not suitable because he had informed Mr Prestage that he was comfortable in his current role. According to Mr Prestage, he did not "want someone to come in half-hearted doing this work". Mr Prestage later added that Mr Byrne did not have the appropriate skills for the Clarity Project.

Mr Prestage maintained this position in his submissions to the Commission.

Mr Byrne told the Commission that, in April 2016, he saw a job advertised by Hays for a position with DFSI. He applied for that position and was interviewed by a Hays employee. He did not hear back from Hays. Mr Byrne said that, in May 2016, a person who identified himself as Peter Dawson contacted him in relation to the same position at DFSI. Mr Dawson said he represented a company called Petite Software Systems. Shortly after

that call, he received another call from a person who identified himself as Roger Turner, who interviewed him by telephone for the job. Mr Byrne informed the Commission that both Mr Dawson and Roger Turner "were both very pushy and keen for me to take the job". The Commission is satisfied that the person identifying himself as Peter Dawson and Roger Turner was Mr Prestage. The evidence of Mr Prestage assuming the name of another (namely, David Stone) in verbal communications is addressed later in this report.

Mr Byrne stated that, a short time after the interview with Roger Turner, he received an electronic copy of an offer of employment from Petite Software Systems, which he ultimately decided to decline. The offer was in the form of a draft agreement dated 11 May 2016. Petite Software Systems and Mr Byrne were identified as parties to the agreement, although the signature block merely referred to "Petite".

Mr Prestage told the Commission that Ms Babu was unsuitable because, despite the email from Hays stating she was available immediately, this was not the case when he interviewed her on 26 April 2016.

Ms Babu informed the Commission that, two days after her telephone interview, she followed up with Hays but was advised that she had been unsuccessful. A few days later, a person who identified himself as Peter Dawson from "Petite" made telephone contact with Ms Babu. Mr Dawson indicated to Ms Babu that he had her CV, that there was a position available at DFSI, and that a colleague would call her to conduct an interview.

On 10 May 2016, Ms Babu received an email from Roger Turner setting up an interview. Later that evening, she had a telephone interview with a person she understood to be Roger Turner. He asked her similar questions to those previously asked by Hays representatives and Mr Prestage. Ms Babu was aware that this position was the same position in respect of which she had previously been unsuccessful.

On 11 May 2016, Ms Babu received an email attaching a draft employment agreement. The email was from Roger Turner. Ms Babu and Petite Software Systems were named as parties to the agreement, although the signature block referred to "Petite". She signed the agreement and started work for DFSI on 12 May 2016. Her contract sum was a pro-rated rate of \$80,000 per year.

The Commission is satisfied that, although Ms Babu understood that a Roger Turner had interviewed her on 10 May 2016, Michael Turner conducted the interview. The Commission is further satisfied that Michael Turner did not represent to Ms Babu that he was Roger Turner. Ms Babu's belief was most likely based on the following:

- the email from Roger Turner on 10 May 2016 in which he indicated a desire to interview her that evening
- the email sent in the name of Roger Turner the following day that attached the draft agreement
- the representations in those emails that Roger Turner was “Petite’s” professional services manager and was accordingly responsible for the engagement of ICT contractors and arranging payment of their salaries.

The Commission has not identified any credible evidence that suggests that Michael Turner had any reason to misrepresent his identity. He readily acknowledged that he had conducted interviews on behalf of Mr Prestage. He also informed the Commission that he never used or identified himself by using his middle name and had no knowledge of, or involvement in, the use of the roger.turner@petite.solutions email address. There is no evidence that Michael Turner was part of, or benefited from, Mr Prestage’s scheme.

Call charge records establish that Michael Turner interviewed Ms Babu on 10 May 2016 at 20:13 hours.

Michael Turner told the Commission that he interviewed Ms Babu for her role on the Clarity Project. He interviewed her as a favour to Mr Prestage and did not engage her via his company Petite Software Systems. Michael Turner said that he had previously interviewed people for Mr Prestage in respect of other projects. Michael Turner was familiar with Clarity software and understood this to be the reason why Mr Prestage asked him to conduct the interviews with Ms Babu.

Michael Turner informed the Commission that, following the interview, he recommended to Mr Prestage that he not hire Ms Babu.

The Commission traced payments to Ms Babu for her work as originating from the Petite Solutions account rather than any account in the name of Petite Software Systems. The Commission is satisfied that the identification of Petite Software Systems as a contracting party in her employment agreement, rather than Petite Solutions, was intended by Mr Prestage to conceal his involvement in the transaction from the ICT contractors and DFSI. Naming Petite Solutions as a contracting party would have created a risk of exposure.

Ultimately, Ms Babu had difficulty recovering moneys due to her. On a number of occasions, she attempted to contact Mr Dawson on a mobile telephone number listed in his email signature block, thus circumventing the Office HQ automatic messaging service. On occasion, a woman answered her calls who identified herself as Tracey Freeman. Mr Dawson never returned any of her calls.

On 1 June 2016, Ms Babu sent an email to the Roger Turner and Peter Dawson email addresses enquiring when she would receive payment of her salary. She received no reply. On 4 August 2016, Ms Babu sent a further email to the Roger Turner and Peter Dawson email addresses in relation to the same subject matter. It was not until 8 September 2016 that Ms Babu received a response. It was an email from the Peter Dawson email address, in which the author claimed that “Petite” had paid her salary and superannuation. On 26 October 2016, Ms Babu resigned.

Michael Turner also interviewed another contractor, Mladen Valcic, via telephone on behalf of Mr Prestage. Call charge records confirm that this occurred on 27 May 2016 at 14:59 hours. Michael Turner used his mobile telephone.

Mr Valcic informed the Commission that, in late May 2016, a person who identified himself as either Roger Turner or Peter Dawson telephoned him. He was told that “Petite” was employing ICT contractors in relation to a project involving the installation and set up of Clarity software and the training of DFSI staff in the use of that software. Mr Valcic was to be tasked with building what are known as Jasper Reports. He had no familiarity with this software tool but had extensive knowledge of a similar product known as Crystal Reports.

Again, the Commission is satisfied that Michael Turner did not represent to Mr Valcic that he was Roger Turner. Mr Valcic was unable to recall whether it was the person purporting to be Roger Turner or Peter Dawson who conducted the interview.

The Commission is satisfied that the person identifying himself as Peter Dawson or Roger Turner was Mr Prestage.

Following the interview, Mr Valcic received via email a draft employment agreement dated 27 May 2016. Once again, the employer was identified as Petite Software Systems. Mr Valcic was to be paid \$60,000 per annum pro-rated. As was the case with Ms Babu, Petite Solutions rather than Petite Software Systems subsequently paid Mr Valcic his salary. He commenced work on the Clarity Project on 31 May 2016.

Mr Valcic told the Commission that Petite Software Systems was very slow to pay his salary, and that he believed he was still owed money. He attempted to make contact a number of times with Tracey Freedman and Peter Dawson, which the Commission understands to have been made via the Office HQ number and email, but was unsuccessful. Mr Valcic said he complained about the situation to Mr Prestage, who told him that he was also trying to contact “Petite” but was having the same problem.

On 16 August 2016, Mr Valcic sent two registered letters of demand; the first to Peter Dawson and the second to Tracey Freedman. Both letters were addressed to level 28, 303 Collins Street, Melbourne. The letters were returned unopened to Mr Valcic.

On 24 August 2016, Mr Valcic obtained a current company extract of Petite Software Systems which disclosed its registered address in Queensland and that its sole director and shareholder was Michael Turner. On the same day, he sent a letter of demand to Petite Software Systems.

Mr Valcic informed the Commission that he had telephoned Roger Turner in late August 2016 but was informed by him that he “no longer worked for Petite”. The number used by Mr Valcic was Michael Turner’s mobile telephone number.

The Commission is satisfied that Mr Valcic called Michael Turner in late August 2016. Mr Valcic had his number because Michael Turner had used it when he interviewed Mr Valcic in May 2016.

Michael Turner informed the Commission that he received calls from three ICT contractors concerning outstanding money. However, the Commission is satisfied that Michael Turner did not say to Mr Valcic that he “no longer worked for Petite”. Rather, having been informed by Mr Valcic that Mr Prestage was claiming that Michael Turner was a “principal of the company”, he informed Mr Valcic that he was not a principal. Michael Turner also offered to follow up the matter with Mr Prestage. When he did so, Mr Prestage claimed that the ICT contractors were “liars”.

On 8 September 2016, Mr Valcic sent an email to the Peter Dawson email address. He noted that he had received legal advice and demanded payment of what he claimed was owing to him. On the same day, an email response was sent to Mr Valcic via the Peter Dawson email address in which it was claimed that Mr Valcic’s salary and superannuation had been paid. However, Mr Valcic was not paid the full sum that he understood was owing to him.

On 13 September 2016, Mr Valcic sent an email to the Peter Dawson email address tendering his resignation.

Jerson Cruz was another ICT contractor engaged on the Clarity Project.

Mr Cruz informed the Commission that, in May 2016, he received a call from a person who identified himself as Peter Dawson. At the time, Mr Cruz was working in the Philippines.

Mr Dawson identified himself as being from a company named Petite Solutions and indicated to Mr Cruz the

company’s interest in employing him on a project with DFSI. He also told Mr Cruz that a person by the name of Roger Turner would call him and conduct an interview for the job.

A couple of days later, he had an interview via a conference call with Mr Dawson and a male identifying himself as Roger Turner. The call charge records for Michael Turner do not contain any entries recording that he made the call. The Commission is satisfied that he did not do so. It is further satisfied that, if two persons other than Mr Cruz participated in the call, one of those persons was Mr Prestage. It is possible that Mr Prestage impersonated both.

Approximately two days later, Mr Cruz received a further call from a person identifying himself as Roger Turner who offered him the job.

On 11 May 2016, Mr Cruz received an email from the Roger Turner email address. The email, which was also copied to the Peter Dawson email address, attached a draft employment agreement. The employer was Petite Software Systems.

Mr Cruz was to be engaged at a pro-rated rate of \$110,000 per year, although this was increased when he was later promoted to team leader. He commenced work on 27 May 2016. Once more, salary was paid from the bank account of Petite Solutions.

Mr Cruz informed the Commission that he did not receive all of his entitlements. He made a number of telephone calls trying to track down Roger Turner and Mr Dawson. Since he did not have mobile telephone numbers, he called the Office HQ number, but without success.

In late July 2016, Mr Cruz received a telephone call from a person identifying himself as David Stone. Mr Stone advised Mr Cruz that he had taken over from Roger Turner as operations manager of “Petite” and that Roger Turner had left the company.

Mr Cruz believed that Mr Stone was in fact Mr Prestage. Having worked with Mr Prestage daily, he informed the Commission that both Mr Prestage and the person identifying himself as Mr Stone had the same husky voice. His belief was reinforced by the fact that, although Mr Prestage claimed that he had no association with “Petite”, he seemed able to contact both Peter Dawson and Roger Turner by telephone to raise the concerns of the ICT contractors that they were not being paid what was due to them.

Mr Cruz said that he received a number of emails from the Roger Turner, Peter Dawson and David Stone email addresses. The authors of those emails blamed the payment delays on late payment by DFSI to “Petite”.

Emails sent via the David Stone email address were copied to the Peter Dawson and Tracey Freedman email addresses.

The Commission is satisfied that David Stone did not exist. As with Roger Turner, Peter Dawson and Tracey Freedman, Mr Prestage used the name of David Stone to keep the ICT contractors on side for as long as possible while he secured payments from DFSI into the Petite Solutions bank account.

Mr Prestage was asked whether the ICT contractors ever complained to him that they were not being paid. He agreed that they had done so. He said that, when this occurred, he contacted Michael Turner and said, "Pay your people on time please". He claimed Michael Turner agreed to do so.

The Commission does not accept this evidence. It is satisfied that Mr Prestage never believed that Michael Turner was responsible for payments to the ICT contractors. To the extent that they received payments, they were paid by Mr Prestage from the Petite Solutions bank account.

"Petite" is engaged by DFSI

On 10 May 2016, an email was sent to Mr Prestage via the roger.turner@petite.solutions email address, and copied to Mr Gravitis. A short-form ICT contract, in which Petite Software Systems and DFSI were identified as the contracting parties, was attached to the email. The business address of the Petite Software Systems included in the contract was level 28, 303 Collins Street, Melbourne. The telephone number was the Office HQ number. The company contact was Peter Dawson. He was described as contract manager. His email address was peter.dawson@petite.solutions.

The Commission is satisfied that Mr Prestage sent this email to himself and to Mr Gravitis.

On 10 May 2016, Mr Gravitis executed the contract on behalf of DFSI and Peter Dawson purported to do so on behalf of Petite Software Systems.

The Commission is satisfied that Mr Prestage signed the document in the name of Peter Dawson. There is no other reasonable inference.

The contract provided for a commencement date of 12 May 2016, with the contract to expire on 31 July 2016. For a total contract price of \$150,000 (excluding GST) Petite Software Systems was to provide two Clarity developers and one report developer for a total of 25 days to DFSI. Among the nine "specified personnel" listed were Mr Byrne, Ms Babu and Mr Valcic.

Petite Software Systems' invoicing and the extension of the contract

The first invoice from Petite Software Systems was sent to DFSI on 17 May 2016. It was for the sum of \$4,400. That invoice included banking details that identified the payee as "Petite". The account details referred to a NAB bank account. However, the BSB and bank account details were for the Commonwealth Bank account opened by Ms Valentova on 16 May 2016 in the name of Petite Solutions.

On 20 May 2016, a further invoice was sent to DFSI for the sum of \$11,000. The bank account details were the same.

Mr Prestage told the Commission that, on receipt of "Petite" invoices, Mr Gravitis showed them to him and asked if they were correct. Mr Prestage had no delegation to sign off on the invoices but he would confirm that they were accurate before Mr Gravitis gave his approval. At no time did Mr Prestage inform Mr Gravitis that the payments were being made into the Petite Solutions account or that Petite Solutions was a company over which he exercised effective control.

On 27 May 2016, an email was sent to Mr Gravitis via the roger.turner@petite.solutions address. The email was copied to Mr Prestage. It annexed a further short-form ICT contract in the name of DFSI and Petite Software Systems for the period from 30 May to 31 July 2016. Pursuant to the contract, Petite Software Systems was to provide two additional report developers for a period of 24 days at a total contract price of \$96,000 excluding GST (being \$2,000 per person, per day). The email also contained the following message:

Steven said that you need 2 more developers to start Monday so that you can complete by end of June. Attached is an agreement for that. Please sign I will countersign and the guys can start Monday.

The Commission is satisfied that Mr Prestage sent the email.

Mr Prestage told the Commission that the contract extension occurred following a conversation he had with Mr Gravitis, in which he advised that the project could not be completed in the required timeframe. According to Mr Prestage, Mr Gravitis told him to extend the scope. Mr Prestage said that, after Mr Gravitis gave his approval, he contacted Michael Turner to request two more developers.

Mr Gravitis gave a very different version of events. He told the Commission that he had been on leave in May 2016. When he returned, Mr Prestage told him

that he had discussed the matter with Mr Smith and that Mr Smith had approved the extension of the contract.

Mr Smith told the Commission that he had never approved any extension of the contract while Mr Gravitis was on leave.

The Commission accepts the evidence of Mr Gravitis and Mr Smith. It is satisfied that Mr Prestage saw an opportunity to increase the payments made into the Petite Solutions account, most of which was for his benefit. He took advantage of the fact that Mr Gravitis was on leave.

The addition of two contractors under the extended contract increased the weekly invoices from \$33,000 to \$55,000.

From 17 May to 14 September 2016, 19 invoices totalling \$569,800 were issued in the name of Petite Software Systems. All payments made by DFSI against these invoices went into the Petite Solutions account.

During his evidence to the Commission, Michael Turner was shown an invoice dated 3 June 2016 issued in the name of Petite Software Systems for the sum of \$55,000. He noted that the address listed under the company name was not his address, although he thought that Mr Prestage may have had a serviced office at that address. Michael Turner said that he had never issued the invoice and noted that the bank details listed on the invoice were not of a bank account that he controlled. He confirmed that he had never received \$55,000 from DFSI.

The Commission is satisfied that each of the 19 invoices issued in the name of Petite Software Systems was created by Mr Prestage and were intended by him to secure payment into the Petite Solutions account. The sum of \$463,450 was transferred to the bank account of Inctive Global Services. A further sum of \$60,000 was transferred to an account in Mr Prestage's own name.

Mr Prestage's explanation of the payments to Petite Solutions

Mr Prestage denied that he ever received any benefit from the DFSI contract with Petite Software Systems.

He provided a number of explanations in respect of the transfer of \$463,450 into the Inctive Global Services bank account and \$60,000 into his personal bank account.

First, he claimed Petite Solutions paid the money to his company and to him because he gave general advice to Michael Turner in respect of hiring people, software implementation, and software support. Michael Turner would provide him with copies of CVs and he would

provide advice as to their capabilities. The advice was provided to Michael Turner in respect of the Clarity Project.

The effect of this evidence is that, while being paid a salary by DFSI, Mr Prestage used his skills to advise Michael Turner in relation to the very matters which, on Mr Prestage's version of events, Michael Turner's company, Petite Software Systems, was contractually bound to provide DFSI. On this version of events, Michael Turner, Petite Software Systems or Petite Solutions received nothing for their alleged involvement in the Clarity Project. All amounts paid by DFSI to Petite Solutions were transferred to the ICT contractors and the balance was transferred to Inctive Global Services and Mr Prestage. Michael Turner, Petite Software Systems and Petite Solutions received no benefit whatever from the Clarity Project.

The Commission rejects this explanation, and considers it fanciful.

The second explanation advanced by Mr Prestage concerned the \$60,000 transferred into his personal bank account. He claimed that this was money owing to him by Michael Turner for work he had completed in relation to a project in respect of which the Queensland Department of Health had engaged Michael Turner. Mr Prestage said that he worked on that project after hours from April to October 2016. He maintained this explanation in his submissions to the Commission.

Michael Turner informed the Commission that the only work he carried out for the Queensland Department of Health was in 2006. Mr Prestage did not do any work on this project, and he did not pay Mr Prestage.

The Commission accepts the evidence of Michael Turner. It rejects Mr Prestage's explanation.

The third explanation proffered by Mr Prestage was that the payments made to Inctive Global Services and to him represented loans from Michael Turner.

Michael Turner was questioned about a series of payments made to Mr Prestage from his Progmo company account during the period 28 June to 29 December 2017 that totalled \$62,950. Michael Turner said that, during this period, Mr Prestage told him that he had a lucrative IT contract with the Abu Dhabi Bank pursuant to which he would receive \$7.4 million. Michael Turner and a colleague subcontracted to Mr Prestage to work on the project. Michael Turner informed the Commission that Mr Prestage never paid either man for their work. Mr Prestage claimed that the ANZ Bank had withheld the \$7.4 million because he could not recall his secure account and personal identification number to access the account into which the funds had been paid. Mr Prestage showed

Michael Turner a bank document that appeared to confirm that \$7.4 million was transferred to his account.

Subsequently, Mr Prestage requested a number of loans from Michael Turner and his colleague for various expenses, including food, accommodation, and funeral costs incurred by Mr Prestage following the death his mother-in-law, Ms Valentova. Ms Valentova is alive.

Mr Prestage also sought money from Michael Turner and his colleague in respect of legal fees and medical expenses that he claimed were owing for the treatment of his son following a car accident.

Michael Turner informed the Commission that he loaned the sum of \$62,950 to Mr Prestage with the expectation that he would be repaid once the \$7.4 million was released. He understood that he would also receive a \$100,000 commission for the work to be carried out by him. The loans were not repaid and Michael Turner never received the commission promised by Mr Prestage. Michael Turner further told the Commission that Mr Prestage never loaned him money as claimed by Mr Prestage in his evidence.

The Commission is satisfied that Michael Turner did not make loans to Mr Prestage in the manner described by Mr Prestage. The source of the money in the Petite Solutions account was DFSI. The source of the \$62,950 paid to Mr Prestage by Michael Turner was Progmo.

The Commission is satisfied that none of the transfers from Petite Solutions to Inctive Global Services and to Mr Prestage had anything to do with Michael Turner. The payments were made as the final step in Mr Prestage's scheme to dishonestly secure payments from DFSI to which he was not entitled.

The overspend and the departure of Mr Prestage

In late July 2016, Mr Smith became aware that the Clarity Project was overspent by about \$300,000. He instructed Mr Gravitis and Mr Prestage to develop options to produce the "minimum viable product". Mr Smith directed that a number of the ICT contractors should not carry out any further work on the project. Mr Prestage's contract as project manager was due to end on 31 July 2016 and he worked until that date.

Mr Smith told the Commission that a specific budget would not necessarily have identified the overspend in a more timely manner, as financial reporting was usually carried out on a monthly basis. The overspend occurred over a relatively short period.

Deficiencies in DFSI's practices and procedures in respect of the Clarity Project are addressed in chapter 4.

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 having due regard to the gravity of the consequences which may flow from such findings, including reputational damage. The Commission then determines whether those facts come within the terms of s 8(1), s 8(2) or s 8(2A) of the ICAC Act. If they do, the Commission turns to a consideration of s 9 of the ICAC Act and the jurisdictional requirements of s 13(3A). In the case of subsection 9(1)(a), the Commission considers whether, if the facts as found were to be proved on admissible evidence to the criminal standard of proof and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that the person has committed a criminal offence.

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

Steven Prestage

The Commission finds that, from late April 2016, Mr Prestage dishonestly and impartially exercised his official functions by:

- a) falsely representing to DFSI that Petite Software Systems was the supplier of ICT contractors to the Clarity Project
- b) falsely representing to DFSI that contractors from the prequalified suppliers were not suitable to be engaged for DFSI's Clarity Project
- c) falsely representing to DFSI that "Petite" had the ability, expertise and personnel to deliver the Clarity Project.

Mr Prestage's conduct was, in each case, corrupt conduct. This is because his conduct could have adversely affected, either directly or indirectly, the honest or impartial exercise of his official functions within the meaning of s 8(1)(a) of the ICAC Act. It was also conduct that constituted or involved the dishonest and partial exercise of his official functions within the meaning of s 8(1)(b) of the ICAC Act. Finally, it was conduct that involved a breach of public trust within the meaning of s 8(1)(c) of the ICAC Act.

Section 8(2A) of the ICAC Act extends the meaning of corrupt conduct to any conduct of any person (whether or not a public official) that impairs, or that could impair, public confidence in public administration and that could involve dishonestly obtaining, or assisting in obtaining, or dishonestly benefiting from, the payment of public funds for private advantage.

The Commission is satisfied that the conduct referred to in (a) – (c) in the list above is also corrupt conduct within the meaning of s 8(2A) of the ICAC Act, as is the following conduct in which Mr Prestage engaged:

- using the name of Petite Software Systems in his communications with DFSI as part of a scheme to secure payment to himself for the work carried out by ICT contractors
- using the assumed names of Roger Turner, Peter Dawson, David Stone and Tracey Freedman in his communications with DFSI and the ICT contractors so as to create the impression that Petite Software Systems, or “Petite”, was a legitimate service provider in the ICT space
- establishing Petite Solutions in the name of his mother-in-law for the purpose of concealing his interest in the supply of ICT contractors to the Clarity Project
- issuing invoices to DFSI, charging \$2,000 per day for each “Petite” contractor, knowing it was an inflated rate to that which a government-approved supplier would have charged, being about \$900 per day, and thereby causing a financial disadvantage to DFSI
- issuing invoices to DFSI that falsely represented that Petite Software Systems had an entitlement to payment
- failing to disclose in his communications with DFSI that payment by DFSI against these invoices would result in payment to Petite Solutions and ultimately to himself.

Mr Prestage engaged in this conduct in order to disguise from DFSI that he would obtain a financial benefit from DFSI through the provision of labour services to the Clarity Project.

For the purpose of s 9(1)(a) of the ICAC Act, it is relevant to consider s 192G of the *Crimes Act 1900* (“the Crimes Act”). This section provides:

A person who dishonestly makes or publishes, or concurs in making or publishing, any statement (whether or not in writing) that is false or misleading in a material particular with the intention of:

(a) obtaining property belonging to another, or

(b) obtaining a financial advantage or causing a financial disadvantage,

is guilty of an offence.

Maximum penalty: Imprisonment for 5 years.

The falsity of a statement may arise, not only because a fact set out in the statement is falsely alleged, but because the statement, by omitting material facts, creates a false impression.

The publishing of statements, either orally or in writing, to facilitate the conduct listed above is conduct that may satisfy the elements of s 192G of the Crimes Act.

The Commission is satisfied that, in each case, for the purpose of s 9(1)(a) of the ICAC Act, if the facts were proved on admissible evidence to the criminal standard of proof, and accepted by an appropriate tribunal, they would be grounds on which such a tribunal could find that Mr Prestage committed offences of publishing false statements, with intent to obtain a financial advantage under s 192G of the Crimes Act.

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

The Commission is satisfied that Mr Prestage’s conduct was serious corrupt conduct within the meaning of s 74BA of the ICAC Act. It involved a considerable degree of pre-planning and deceit. By such conduct, Mr Prestage secured himself a sizeable financial benefit.

Section 74A(2) statement

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

In determining what statement to make under s 74A(2) of the ICAC Act, the Commission takes into account whether there is sufficient admissible evidence to support a prosecution. As has already been noted in chapter 2, the Commission has taken into account that Mr Prestage gave evidence following the making of a declaration pursuant to s 38 of the ICAC Act. The effect of such a declaration is that his evidence is not admissible against him in any criminal proceedings, other than proceedings for an offence under the ICAC Act.

Accordingly, Mr Prestage’s evidence is not admissible against him for any offences pursuant to s 192G of the Crimes Act. However, there is other available evidence, including that of Ms Valentova, Ms Valent, Mr Smith, Mr Gravitis, Mr Weitschat, Mr Grebert and Michael Turner, as well as documentary material, including invoices, banking records and emails.

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 Prestage for criminal offences of publishing false statements with an intention to obtain a financial advantage contrary to s 192G of the Crimes Act. More particularly, the:

- publication of emails in the names of Roger Turner, Peter Dawson, David Stone and Tracey Freedman, containing representations that they were officers or employees of “Petite” and Petite Software Systems
- the publication of the fake Marsh public liability insurance certificate
- the publication of a Justification for Sole Source document and the email to which it was attached, falsely representing that contractors from DFSI’s prequalified suppliers were not suitable to be engaged on the Clarity Project
- the publication of a quotation that contained false representations concerning the business address, telephone number, previous clients, existence and expertise of “Petite”
- the publication of each of the 19 invoices issued to DFSI in the name of Petite Software Systems, which falsely represented that Petite Software Systems had an entitlement to payment and which also failed to disclose that payment of the invoices by DFSI would be a payment to Petite Solutions and ultimately to Mr Prestage.
- an alleged conversation with Michael Turner in relation to the timely payment of ICT contractors
- an alleged conversation with Mr Gravitis concerning the quotation of one daily rate for contractors
- the alleged review of CVs by Mr Prestage and the offer of advice on the implementation of the Clarity Project to Michael Turner for which he received payment
- the registration of Petite Solutions by his mother-in-law
- the reason why Petite Solutions made payments to Mr Prestage.

As Mr Prestage no longer works for DFSI the issue of whether consideration should be given to the taking of action against him for a disciplinary offence or with a view to his dismissal does not apply.

The Commission is also of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Prestage for a number of criminal offences of giving false and misleading evidence to the Commission, contrary to s 87 of the ICAC Act. The relevant evidence concerns:

- his work experience at GCCC and the Bank of Queensland
- the supply of a public liability insurance certificate to Hays
- alleged discussions with Michael Turner in relation to the receipt of CVs from Michael Turner in mid- to late- April 2016
- the involvement of Mr Gravitis in the drafting of a Justification for Sole Source document
- alleged conversations with Michael Turner in relation to information supplied to Mr Weitschat in emails from 29 April to 3 May 2016
- the contents of an email of 9 May 2016 concerning alleged interviews with a number of ICT contractors
- the availability and suitability of Mr Byrne to begin work as a contractor on the Clarity Project
- the availability and suitability of Ms Babu to begin work as a contractor on the Clarity Project

Chapter 4: Corruption prevention

Mr Prestage facilitated over \$500,000 worth of corrupt payments in a five-month period. Both the quantum of these corrupt payments and the fact they were made over such a short period of time strongly call into question DFSI's control framework.

Mr Prestage's corrupt conduct was facilitated by numerous control failings. There were multiple points at which his corrupt conduct could have been, and should have been, stopped. For instance:

- Mr Prestage was hired in spite of the existence of readily discoverable online information that he had previously engaged in misconduct (discussed further below)
- DFSI used a sole-source procurement methodology to engage a company that had never operated
- DFSI made payments to a different company than the one it believed it had engaged
- DFSI ultimately paid this company almost four times what it had originally set aside for its engagement
- DFSI only noticed this overspend when it had reached approximately 200% of the original contract sum.

These control failings are of particular concern to the Commission because they occurred in circumstances in which it would have expected high-quality procurement and project management to have occurred because:

- DFSI is the department with overall responsibility for the NSW procurement system, including the prequalification schemes relevant to this investigation
- the project in question was overseen by a project management office.

This chapter explores the cause behind these control failings. It begins by providing some contextual information about the Clarity Project that Mr Prestage was managing.

Risks inherent in the engagement of Mr Prestage

As has already been noted, when DFSI decided to hire a labour hire contractor, Mr Prestage, to manage the Clarity Project, it approached the recruiting firm, Hays, to provide candidates. It did so under the terms of the NSW Government contingent labour prequalification scheme. This scheme is mandated for all labour-hire engagements within NSW Government agencies and is often referred to as the SCM0007 scheme.

Engaging a contractor to project manage an ICT-related project is a high-risk engagement. In relation to project management in general, there is always the risk that problematic relationships develop between a project manager, and suppliers and/or contractors working on a project. This risk is enhanced in a heavily networked industry such as ICT, making ICT projects more vulnerable to being impacted by such relationships. Making a contractor an ICT project manager is especially risky because of potential conflicts of interest that might arise through this contractor's past or potential future work. It can be difficult to determine whose interest such an individual is serving.

Indeed, as reported in a Commission publication on ICT contractors,¹ a number of organisations have informed the Commission that they will not engage contractors to fill project manager roles because of the associated risk.

¹ NSW Independent Commission Against Corruption, *Managing IT contractors, improving IT outcomes*, August 2013.

Because of the high-risk nature of the engagement, careful due diligence should be conducted prior to contracting an ICT project manager. As discussed in a Commission publication on employment screening,² the pre-employment screening conducted on a labour hire contractor should be proportional to the risk they pose to the public authority.

DFSI did not engage in adequate employment screening when engaging Mr Prestage.

Hays provided two candidates that were interviewed by a DFSI ICT director, Andrew Cooper, and another DFSI employee. These employees recommended that Mr Prestage be hired. Mr Prestage was subsequently engaged after meeting Mr Gravitis.

Following these interviews, there was an initial attempt to finalise the engagement of Mr Prestage. This was despite the fact that no reference checks had been completed on him and Hays was obliged to complete them under the terms of the SCM0007 scheme. Mr Prestage ultimately did undergo reference checks prior to being engaged, but only because other DFSI officers insisted that he could not be engaged until Hays had completed the checks on him.

Mr Prestage was hired on the basis of questionable reference checks

One of Mr Prestage's nominated referees was Michael Turner but, as has been noted in chapter 3, the reference check was of questionable validity. The Commission is satisfied that, in relation to past work history, the Hays report reflected what Mr Prestage asserted in his CV rather than what Michael Turner said to Ms Lohan. That is, the response to Hays' question 2 was a prompt drawn from Mr Prestage's CV, which would have been preceded by Ms Lohan saying, "My understanding is...".

Michael Turner's evidence is addressed in chapter 3 of this report. As has been noted, he gave evidence that some of the information contained in Hays' report of the reference check with him was "not the answers I would have given" if he had been approached for a reference. Exactly what Michael Turner said in his response to question 2 is unknown. It is unlikely that he would have responded in a way that was almost word perfect with Mr Prestage's CV. For example, in relation to the Bank of Queensland he may have said no more than it was his understanding that Mr Prestage had worked there. This was something that Mr Prestage had informed him of at some point.

The questionable validity of the reference check calls into question the methodology that Hays used to conduct it.

Hays used the mobile telephone number provided by Mr Prestage to contact Michael Turner. This approach does not constitute better practice in conducting referee checks. As discussed in the Commission's publication on employment screening,³ one better practice element includes contacting the switchboard or HR department of the organisation(s) to which the reference applies to verify the relationship between the referee and the applicant. In this case, this would have involved contacting organisations such as the Bank of Queensland and GCCC, as these were organisations relevant to Michael Turner's reference for Mr Prestage.

The use of this substandard methodology, however, was not inconsistent with the terms of the SCM0007 scheme, which does not specify any methodology for recruitment companies to use when conducting reference checks. Consequently, such methodological details should be specified by DFSI when engaging suppliers under the SCM0007 scheme.

² NSW Independent Commission Against Corruption, *Strengthening employment screening practices in the NSW public sector*, February 2018.

³ *Ibid*

Recommendation 1

That DFSI ensures that recruitment companies use better practice-checking methodologies when conducting reference and other checks of applicants.

DFSI has advised the Commission that it intends to implement this recommendation as part of substantial changes it is making to the way it engages labour hire contractors. Two relevant elements of these changes are:

- utilising a specialist company to verify a candidate's references and undertake "a broad suite of pre-engagement checks" on behalf of DFSI
- building key performance indicators relating to reference and other pre-employment checks into its contracts with recruitment companies.

Mr Prestage's prior misconduct was not detected

It is unlikely that Mr Prestage would have been hired had his history of prior misconduct been discovered.

Evidence that Mr Prestage had previously engaged in misconduct is readily discoverable. If "Steven Prestage" is entered into the Google internet search engine, prominent among the results returned is a July 2014 article about a company belonging to Mr Prestage (Forte Alpha Operations) being ordered by a New Zealand court to pay over \$NZ100,000 to a New Zealand worker because Mr Prestage had failed to pay his wages. Given the date of publication of this article, it would have been available online when Mr Prestage was hired by DFSI; indeed, it was discovered by Mr Smith once he began investigating the Clarity Project overspend. It should also be noted that Mr Prestage's CV made no reference to Forte Alpha Operations. Failing to list recent past employment is a CV red flag.

This failure to engage in adequate employment screening appears to have arisen from a lack of awareness among DFSI officers of the risks associated with contracting an ICT project manager. The lack of awareness was further demonstrated by the following:

- Mr Prestage only had a minimal induction that did not include discussion of conflicts of interest or the DFSI code of conduct, despite the fact that he was a contracted project manager managing other contractors – an arrangement that carries substantial risk of conflicts of interest
- some DFSI officers initially tried to finalise Mr Prestage's engagement without obtaining any references (as discussed earlier)
- Mr Prestage was given a "free hand" in terms of how he managed the Clarity Project and hired other labour hire contractors (as discussed later).

If DFSI had an employment screening framework, it would be more readily able to conduct risk-appropriate employment screening on labour hire contractors. DFSI may find it more efficient to have one framework that includes both employees and labour hire contractors.

Recommendation 2

That DFSI develops a framework to ensure that the employment screening checks conducted of contractors are commensurate with the level of risk posed by their respective engagements.

DFSI has advised the Commission that it intends to implement this recommendation as part of the changes to how it engages labour hire contractors. One element of these changes is the development of a "suite of validation checks based on risk factors and specific role types".

To be effective, such a framework requires that knowledgeable judgments be made regarding the risks associated with different engagements; that is, appointments like Mr Prestage's need to be considered high risk.

A specialised business unit would be in a better position to gauge the risks associated with different labour hire engagements.

Recommendation 3

That a specialist business unit within DFSI be given responsibility for managing its contingent labour engagements.

DFSI has advised the Commission that it has begun implementing this recommendation. It is currently creating a "one-stop shop" for all ongoing and contingent labour as one element of the changes to its contingent labour processes.

Engagement of "Petite"

As discussed in chapter 3 of this report, a key element of the corrupt conduct found in this investigation involved the way that different "Petite" entities were used; for example:

- the initial quotation created by Mr Prestage simply referred to the company as "Petite"
- at all relevant times, DFSI thought that it was doing business with the legal entity "Petite Software Systems Pty Ltd" with ABN 50 166 925 622, as this was "Petite's" name on the SCM0020 order form DFSI used to engage it. This company was formed on 25 November 2013. While Mr Prestage had no office-holding or shareholding in this company, he knew that it was owned by Michael Turner

- funds paid to “Petite” for providing Clarity Project contractors were paid into a bank account belonging to the legal entity “Petite Solutions Pty Ltd” with ACN 612 386 991. This company was formed on 13 May 2016 for the express purpose of engaging in corrupt conduct. Mr Prestage’s mother-in-law is its sole director, secretary and shareholder but, essentially, it was his company.

Because of these circumstances, this chapter refers to “Petite” in the following ways:

- any discussion related to the SCM0020 order form used to engage “Petite” refers to it as “Petite Software Systems”
- any discussion related to payments made to “Petite” refer to it as “Petite Solutions”
- any other references to “Petite” refer to it as “Petite”, including cases where its name was deliberately obfuscated and cases where it is simply unclear which entity applies.

In his statement to the Commission, Mr Gravitis indicated that, once Mr Prestage commenced working on the Clarity Project, he was given considerable latitude in relation to how he managed it:

...I gave Mr Prestage a free hand believing he knew what he was doing and was capable to do the job properly, he was engaged to run the project. I relied upon him because I am not an IT project manager and he initially appeared to have the skills, knowledge and experience to do the work required of him and deliver the project...

This free hand began with Mr Prestage being given the choice of either hiring a company to perform project-related tasks under his supervision or hiring a team of labour hire contractors to deliver the project.

Mr Prestage was given too much discretion when hiring contractors

Mr Prestage ultimately chose to hire a team of contractors and was asked to conduct a recruitment exercise. Mr Gravitis’ free hand extended to how Mr Prestage conducted these labour hire processes. Mr Gravitis simply relied on Mr Prestage’s word about which recruitment companies he had approached, whom he had interviewed and which interviewees should be hired.

As noted in chapter 3, Mr Prestage reported to Mr Gravitis that he had interviewed over 20 candidates supplied by either Infosys, Datacom and Hays, but that none of these candidates were acceptable. Mr Gravitis did not participate in any of the interviews. This report was false. While it is unclear which companies Mr Prestage actually approached and how many candidates he

interviewed, he did not approach Datacom on behalf of DFSI and, as explained below, at least some of the individuals interviewed were acceptable.

By giving Mr Prestage a free hand to recruit contractors, Mr Gravitis demonstrated a failure to understand the risks associated with a contracted ICT project manager, even though DFSI was aware of them.

This issue of limited-risk awareness has already been addressed by an earlier recommendation to give responsibility for managing labour hire engagements within DFSI to a specialist business unit. Consequently, the Commission does not make any additional recommendations to address the issue of Mr Prestage’s unwarranted control over contingent labour engagements.

“Petite” was not a genuine sole-source supplier

Following the initial attempt to obtain contractors from Hays, Mr Prestage prepared a Justification for Sole Supplier document, indicating that a company called “Petite” was able to supply the relevant candidates and should be engaged as a sole supplier. Furthermore, either Mr Prestage or Mr Gravitis (presumably acting on Mr Prestage’s advice) advised Mr Smith that “Petite” was an equally capable supplier to Computer Associates.

While this document was ultimately used to allow for a sole-source procurement of “Petite”, Mr Grebert told the Commission that a sole-source procurement methodology should have instead been approved via a DFSI PST document. He added that there were multiple reasons why the Justification for Sole Supplier document was inadequate as an alternative for the PST, namely that it:

- lacked key information, such as a section for industry analysis
- did not demonstrate that advice had been sought from Computer Associates about possible service providers for Clarity or whether Computer Associates could itself perform the services
- was not signed and hence could not be taken as an approved document.

Moreover, in his statement to the Commission, Mr Grebert indicated that there were further issues regarding the engagement of “Petite” as a sole supplier:

While the failure to use the procurement strategy template did not comply with DFSI processes, the more important issues in relation to the engagement of Petite were that Petite was neither a real sole source supplier nor a prequalified supplier.

As has been noted in chapter 3, there is further evidence showing that “Petite” should not have been engaged as a sole supplier, as indicated below.

- “Petite” put forward some of the same candidates that had been earlier supplied by Hays. Ms Babu and Mr Byrne were rejected by Mr Prestage when put forward by Hays but hired when put forward by Mr Prestage in the “Petite” quotation.
- When Mr Prestage, acting as “Petite”, was not recycling Hays’ candidates, he was obtaining candidates by searching online career sites. For instance, a purported “Petite” employee told Mr Cruz that he had been found via LinkedIn. Furthermore, Mr Valcic had been unemployed for about three years when a purported “Petite” employee contacted him. Given that he had left his mobile telephone number on sites such as Seek and LinkedIn, he was not surprised by this call.
- In his statement to the Commission, Mr Cooper indicated that he has always been able to find appropriate contractors from the SCM0007 and SCM0020 schemes. Mr Cooper told the Commission that his practice was to make further approaches to scheme companies if an initial approach had failed to identify any appropriate contractors.
- In his statement to the Commission, Mr Grebert indicated that global companies, such as Computer Associates, usually have Australian partners that specialise in implementing their software. While it is very likely that Computer Associates had Australian implementation partners at the time of the Clarity Project, there is no evidence that any efforts were made to seek out these partners. There is also no evidence that any effort was made to approach Computer Associates to provide a quotation based on contractor rates. Such an approach would have been warranted, given the initial quotation obtained from it was for an outcome-based deliverable and therefore was not comparable to the quotation obtained from “Petite”.

Based on this evidence, the acceptance of the false claim, that “Petite” was a genuine sole supplier, was due to insufficient oversight of Mr Prestage’s work and lack of market knowledge.

Both of these issues are addressed by an earlier recommendation to give a specialist business unit within DFSI responsibility for managing labour hire engagements. Because of this, the Commission does not make any separate recommendations to address the issue that “Petite” was falsely accepted as a sole supplier.

“Petite” was not a prequalified supplier

As noted above, a major issue in relation to the engagement of “Petite” was that it was not a prequalified supplier.

The requirement to use prequalified suppliers arose because DFSI’s procurement framework was aligned with the corresponding whole-of-NSW-Government framework. This requirement applied even if a sole source procurement methodology had been approved. An exemption allowing the use of a non-prequalified supplier could only be obtained from either NSW Procurement or a delegate of the NSW Procurement Board. Such an exemption was never sought nor obtained in relation to the Clarity Project.

The two prequalification schemes relevant to this investigation are the:

- SCM0007 scheme, which, as discussed earlier, was mandatory for labour hire engagements
- NSW Government ICT services prequalification scheme, which was mandatory for all ICT services engagements, and usually referred to as the “SCM0020 scheme”.

For the purposes of the investigation, the key differences between the two schemes are as follows. The SCM0007 scheme:

- is designed to be used to engage labour hire contractors (such as those used on the Clarity Project), whereas the SCM0020 scheme is designed to contract ICT services
- is designed for engagements based on daily or hourly rates, whereas the SCM0020 scheme is designed for outcome-based engagements (although, as discussed below, it does have provisions allowing contracts based on hourly or daily rates)
- has fixed, lean visible margins whereas the SCM0020 scheme has margins that are hidden, and may be variable or substantial.

Similar to his own engagement, Mr Prestage’s initial approach to Hays to obtain contractors was under the terms of the SCM0007 scheme.

When Mr Prestage falsely reported that he had been unable to find any candidates as a result of this process, Mr Gravitis and Mr Smith decided to approach an ICT services company from the SCM0020 scheme. Mr Smith indicated that the rationale for this was that such a company might have specialist knowledge of Clarity, while a recruitment firm would not. This would also allow the company to more easily bring resources on and off the project as necessary.

Despite this rationale, Mr Gravitis believed that “Petite” was just supplying contractors as if it were a supplier from the SCM0007 scheme. Moreover, “Petite” was not engaged under an outcome-based contract as would be

typical for a SCM0020 engagement. In his statement to the Commission, Mr Smith indicated that a rates-based contract was used to engage “Petite” because of the limited scoping that had been conducted on the Clarity Project at the time “Petite” was engaged:

If an ICT services firm is hired to deliver an outcome, then an outcome-based contract is usually a more appropriate type of engagement than a contract based [sic] on hourly/daily rates per person. The reason why Petite was not engaged on an outcome-based contract was that the scope for the project was not fully defined and there was clarification required regarding stakeholder expectations and priorities for the final project output.

Other evidence that the Clarity Project had not been sufficiently planned to allow an outcome-based contract is found by the absence or incomplete nature of key project governance documents. As noted in chapter 3, there was no business case, and the project had no detailed scope at the time that Mr Prestage was appointed. Moreover, an Initial Project Brief only contained a “High Level Scope”, with five numbered dot points. This document also listed items such as the “Project brief”, “Functional specification” and “Technical specification” as key deliverables. Given Mr Prestage had already been nominated as the project manager in this document, it must have been prepared after he was hired.

Had DFSI prepared key project governance documents, such as a business case and detailed scope prior to approaching an ICT services company, it would have been able to use an outcome-based contract as intended by the SCM0020 scheme.

DFSI has advised the Commission that it has improved its ICT project governance since the time of the Clarity Project. For instance, “projects with standard methodologies” require business cases and key project documentation to be completed prior to their approval and kick-off.

As a result of this improved ICT project governance, the Commission does not make any recommendations regarding the lack of Clarity Project governance documents when “Petite” was engaged.

Petite Software Systems was ultimately engaged using a SCM0020 scheme order form. However, the fact that “Petite” was never registered under the SCM0020 scheme calls into question whether it was bound by any scheme conditions that were not explicitly stated on the order form.

DFSI sometimes requests quotations from suppliers who are not on a relevant prequalification scheme. A condition of response, however, is that the supplier applies to join the prequalification scheme. Additionally, the supplier

must be a full member of the prequalification scheme before they actually enter into a contract with DFSI.

When Mr Prestage recommended “Petite”, Mr Gravitis was aware that it was not a prequalified supplier. Mr Gravitis requested that “Petite” join the SCM0020 scheme and then forward him confirmation of its submission. However, “Petite” never applied to be a member of the SCM0020 scheme, let alone gain membership of it.

The DFSI officer who executes an agreement with a supplier on its behalf is responsible for ensuring that it is prequalified under any scheme under which it is required to be prequalified. DFSI’s procurement business unit is able to provide guidance to this individual regarding whether a given supplier needs to be prequalified and whether they are prequalified under a given scheme.

Mr Gravitis signed the instrument to engage “Petite” Software Systems on behalf of DFSI. He gave evidence to the Commission that he thought that “Petite” being approved as a sole supplier “superseded” the need for prequalification. As a result, he did not bother chasing up whether or not its proposed application for prequalification had been accepted.

As discussed earlier, Mr Gravitis’ position does not correspond to DFSI policy, as permission to use a non-prequalified supplier must be obtained from either NSW Procurement or a delegate of the NSW Procurement Board even if a sole-source procurement methodology has been approved.

Establishing a mechanism to verify that suppliers are prequalified before they are engaged under a prequalification scheme would allow DFSI to ensure that its policy requirements are met even if specific DFSI officers are confused about them.

Recommendation 4

That DFSI develops a mechanism to verify that a supplier is a member of a specific prequalification scheme prior to being engaged under that scheme.

DFSI has advised the Commission that it intends to implement this recommendation. It has implemented Contractor Central, an online, centralised portal for managing contingent labour engagements, which will be used to ensure that labour hire contractors can only be engaged if a supplier belongs to a relevant prequalification scheme.

While the Commission notes DFSI’s actions, the improper use of non-prequalified suppliers can apply to engagements other than contingent labour or professional services engagements. For instance, corrupt conduct

found in the Commission's Operation Yancey investigation report⁴ involved the use of non-prequalified suppliers in relation to minor construction works.

The Commission's recommendation therefore proposes a mechanism that is applicable for all prequalification schemes. One possibility is that the need for prequalified suppliers might be flagged in DFSI's finance system, perhaps when a purchase order is raised, resulting in a workflow requiring a DFSI officer to verify that the relevant supplier is prequalified via a specified process.

DFSI engaged a supplier that had never traded

A quotation was requested from "Petite", and this ultimately resulted in Petite Software Systems being engaged by DFSI under the terms of the SCM0020 scheme. Mr Prestage caused this quotation to be provided to DFSI and dishonestly allowed DFSI to believe that it was an authentic document. In any case, Petite Software Systems, the entity that DFSI thought it was dealing with, had never traded.

Engaging Petite Software Systems, despite the fact it had never traded, raises the question of what due diligence checks had been performed.

There were a number of red flags in "Petite's" quotation that should have been uncovered by a due diligence process. For instance, "Petite's" quotation did not include its ABN, always referred to itself as "Petite" and never as "Petite Software Systems",⁵ and the email address of "Petite's" professional services manager was listed as roger.turner@petite.solutions – that is, the suffix referred to "Petite Solutions" not "Petite Software Systems".

Obtaining the ASIC record of Petite Software Systems and comparing it with "Petite's" quotation would have identified further red flags, as follows.

- In its quotation, "Petite" lists its address as level 28, 303 Collins St, Melbourne. By contrast, Petite Software Systems' ASIC record lists its registered office and principal place of business as 38 Handel Avenue, Worongary, Queensland, 4213.
- In its quotation, "Petite" claimed that it had been providing services since 2001. Given that Petite Software Systems was registered with ASIC on 25 November 2013, this is not possible.

⁴ NSW Independent Commission Against Corruption, *Investigation into the conduct of a senior officer of the NSW Department of Justice and others*, August 2017.

⁵ This is irregular as legitimate companies typically put their formal name somewhere on quotations they produce (even if only to introduce an abbreviated name).

- "Petite's" quotation claimed a large number of high-profile Australian and international companies as clients. Given that Petite Software Systems was established in 2013, this was highly implausible.

It is likely that following up these red flags would have identified that the quotation contained false information about Petite Software Systems. The Commission approached a number of the purported clients of "Petite" that were referred to in its quotation. They were Virgin Australia Airlines, University of Technology Sydney, Tourism Australia, Perth Mint, Bunnings Group Limited, Chevron Australia and Hydro Tasmania. The Commission's enquiries found that none of these companies had ever engaged "Petite".

Had basic due diligence been conducted on Petite Software Systems (for example, by someone in DFSI's finance or procurement business units), it would never have been engaged. As described above, a simple comparison of the quotation with the relevant ASIC record would have raised a number of serious red flags.

While there was some due diligence conducted on "Petite", it was insufficient to verify whether it was a genuine supplier. Mr Gravitis gave evidence to the Commission that the main things that he would check prior to engaging a supplier were whether it was a legal entity, whether it was on the relevant prequalification panel and why DFSI would want to engage it if it were not on this panel.

In relation to Petite Software Systems, Mr Gravitis did do an ASIC company search on "Petite" to establish that it was a legal entity and a "Pty Ltd" company. However, he did not obtain the ASIC record for Petite Software Systems that would have revealed the inconsistencies with "Petite's" quotation because there was a cost associated with obtaining this record.

Additionally, since "Petite" was supplying developers and not implementing a Clarity system, Mr Gravitis did not consider relevant any information provided by "Petite" regarding the companies at which it had implemented Clarity. Such thinking ignores both the original rationale for using a SCM0020 engagement and the need to conduct due diligence on new suppliers.

Recommendation 5

That DFSI ensures that all new suppliers are subject to a due diligence process that enables the detection of red flags indicating that a supplier may not be genuine.

DFSI has advised the Commission that it intends to implement this recommendation. Currently, it undertakes a due diligence process when a company applies to become a member of a prequalification scheme for

“professional services” (for example, SCM0007 and SCM0020), and will develop guidelines and due diligence checks to be conducted in the engagement of non-prequalified suppliers of professional services.

While the Commission notes DFSI’s current and proposed actions, it comments that its recommendation is targeted at all new suppliers, not just those who provide professional services. In a number of its investigations involving a variety of public authorities, the Commission has observed poor supplier due diligence facilitating corrupt conduct in relation to the procurement of other types of goods or services.

Recommendation 6

That DFSI provides guidance to its staff who hold a financial delegation about red flags on quotations that indicate that a supplier may not be genuine.

DFSI has advised the Commission that it intends to implement this recommendation as part of broader changes to its procurement and SAP (Systems, Applications and Products) systems. This will involve an integrated approach of guidelines, process prompts and attestations that relevant red flags have been checked, together with advice on how to respond if such red flags are identified. These process prompts and attestations will occur at various points in the procurement process, such as raising purchasing orders and approving the payments of invoices.

In summary, prior to the delivery of any service by “Petite”, DFSI allowed a recently appointed contractor (Mr Prestage), who was also not properly screened or inducted, to:

- select his own approach to delivering and staffing the project
- conduct interviews of potential contractors by himself
- recommend an unknown supplier – that was not on any existing prequalification scheme, had never traded and that had numerous red flags – using an unsigned, non-conforming sole source process.

Establishment of Petite Software Systems as a vendor

The vendor master file (VMF) is a critical control in preventing various types of corrupt conduct. This is because it is the VMF that is used to determine how payments to suppliers are actually made (for example, into which bank account). Indeed, placing false information on the VMF is often a precursor to fraud.

This risk was realised in the current investigation, as DFSI did not actually pay the company it believed it had contracted, Petite Software Systems, but unknowingly paid the relevant funds to an unrelated company, Petite Solutions. It was registered three days after the contract between Petite Software Systems and DFSI was signed.

Once DFSI’s agreement with Petite Software Systems had been signed, Mr Gravitis instructed another DFSI officer to raise a request that Petite Software Systems be added to DFSI’s VMF. Mr Gravitis provided her with the information about Petite Software Systems to be included with the request and approved the request as per his DFSI delegation.

Once this form was completed, it was sent to DFSI’s shared services provider, GovConnect, to be entered. The officer nominated by DFSI to answer questions about VMF processes, did not know what processes (if any) were used by GovConnect to validate the information contained in the request.

Regardless of the process for verifying supplier information, false information about Petite Software Systems was entered onto the VMF. This included false information about its bank details, address and contact email.

The bank account for Petite Software Systems entered into DFSI’s VMF was an account at the Melbourne branch of the NAB with a BSB number of 064439. However, this BSB number belongs to the Tewantin, Queensland, branch of the Commonwealth Bank, a fact that can be easily verified on a number of websites. Moreover, the sole director of Petite Software Systems, Michael Turner, gave evidence to the Commission that he had never set up a bank account for Petite Software Systems. The bank account entered into DFSI’s VMF actually belonged to Petite Solutions and was controlled by Mr Prestage.

Petite Software Systems’ address was entered into DFSI’s VMF as level 28, 303 Collins Street, Melbourne. Petite Software Systems’ registered office and principal place of business is 38 Handel Avenue, Worongary, Queensland, 4213. Moreover, Michael Turner gave evidence to the Commission that the company had never had a registered office in Melbourne.

The contact email address for Petite Software Systems was entered into DFSI’s VMF as peter.dawson@pitite.solutions. This is different from the email listed in the contract between Petite Software Systems and DFSI, namely peter.dawson@petite.solutions. While this was merely a typographical error, it points to carelessness around entering vendor details.

Entering false information about a vendor’s address, bank account and contact email addresses into the VMF can

facilitate fraud. This is because, once entered into the VMF, those details become the “official details” for that vendor. For instance, once Petite Software Systems’ details were entered into the VMF, those details were used to make all payments, regardless of what bank details were on its invoices.

This false information about Petite Software Systems should not have been permitted to be entered into the VMF, especially given that its falsity was relatively easy to detect.

Recommendation 7

That DFSI revises its processes surrounding the creation of new vendors to ensure that information supplied about new vendors is verified prior to being entered into its vendor master file, particularly when non-prequalified or newly prequalified suppliers are used.

DFSI has advised the Commission that it intends to implement this recommendation by reviewing the process by which vendors are added to the VMF to ensure information supplied about vendors is correct. Among other things, this should include checks on vendors with similar names and other identifying characteristics, and a process for verifying a vendor’s bank account details.

Management of project finances

DFSI ultimately paid “Petite” a value that was approximately 3.8 times the size of its original \$150,000 contract. This invites the questions of why the engagement cost so much and how payments to “Petite” were approved.

“Petite” made excessive profits

“Petite” charged DFSI extremely large mark-ups on its contractors. DFSI was charged \$2,000 per day for each contractor that “Petite” supplied, but these contractors were paid nowhere near this amount. For instance, Mr Valcic was paid approximately \$230 per day, meaning that “Petite’s” mark-up was about 770%. Similarly, Ms Babu was paid approximately \$307 per day, meaning that “Petite’s” mark-up was about 551%.

Further evidence of the extravagant nature of “Petite’s” mark-ups is found by comparing “Petite’s” proposed rate for Mr Byrne with Hays’ proposed rate for him.⁶ “Petite” offered Mr Byrne approximately \$538 per day, meaning that “Petite’s” proposed mark-up was 272% based on the \$2,000 per day it charged DFSI for each contractor. By contrast, Hays indicated that the cost of providing Mr Byrne would be between \$800 and \$900 per day,

when it was offering potential DFSI contractors between \$650 and \$750 a day, meaning that Hays’ proposed mark-up would have been less than 25%.

This enormous difference between “Petite’s” and Hays’ proposed mark-up for Mr Byrne demonstrates that most of “Petite’s” mark-ups reflected pure profit, as opposed to costs associated with sourcing and managing the contractors it supplied.

Moreover, “Petite’s” true profit would have been even higher than that suggested by the size of its mark-ups because the contractors provided by “Petite” were underpaid. The underpayment of contractors was achieved by:

- “Petite” staff not responding to emails or telephone calls to the “Petite” landline as it was just an answering service
- “Petite” staff not providing mobile telephone numbers to contractors
- the contractors provided by “Petite” never meeting any “Petite” staff in person
- “Petite” not always providing documents such as payslips and payment summaries to contractors.

Mr Gravitis was aware that “Petite” was charging \$2,000 per day for each developer. He thought that this was very expensive but that he had no choice, as “Petite” was the only company who could do the work. Early in the project, Mr Smith queried the \$2,000 per day that was being charged by “Petite”, and was told by Mr Prestage and Mr Gravitis that this rate was comparable to the rate charged by Computer Associates.⁷

Mr Gravitis felt that he had no option but to pay the rate “Petite” charged for each contractor because of Mr Prestage’s advice that he had tested the market and found no one else that could implement Clarity at DFSI. As discussed previously, this claim was false.

While there was awareness within DFSI of the rate charged by “Petite”, there appears to have been no awareness of the profit margin that “Petite” obtained. For instance, Mr Smith was not aware that Hays had offered the same contractors as “Petite” for \$900 per day and there is no evidence to suggest that Mr Gravitis knew either.

This lack of awareness regarding “Petite’s” profit margin arose at least in part from “Petite’s” engagement under the SCM0020 scheme. Suppliers under this scheme are not subject to fixed margins and are not required to declare the margins that they charge. By contrast, the initial

⁶ These are all proposed rates and mark-ups because Mr Byrne was never actually engaged.

⁷ As discussed earlier, the quote previously obtained from Computer Associates was not comparable to “Petite’s” quotation because it was for an outcome-based deliverable, as opposed to being based on contractor rates.

approach to Hays to provide contractors was made under the SCM0007 scheme, which has profit margins that are fixed, visible and fairly lean.

Despite the SCM0007 scheme being mandated for contingent labour engagements, it was possible to engage contractors from “Petite” via the SCM0020 scheme because there is a provision for a “rate card” engagement under this scheme, whereby an engagement could be made based on hourly or daily rates. This provision exists despite the fact that the SCM0020 scheme is specifically intended for contracts with specific deliverables as opposed to hourly rates.

Such a rate card engagement is also possible under the Performance and Management Services prequalification scheme, which is usually referred to as the SCM0005 scheme.

Banning the use of rate-card arrangements under the SCM0020 or SCM0005 schemes could be unnecessarily restrictive. However, there is merit in restricting the use of rate-card arrangements under these schemes in order to encourage the use of the SCM0007 scheme.

Recommendation 8

That, wherever possible, DFSI avoids using rate card engagements from the SCM0020 or SCM0005 schemes.

Recommendation 9

That, if a SCM0020 or SCM0005 engagement is used, DFSI ensures that the reasonableness of the relevant rates is verified by an individual who:

- has strong market knowledge
- is not involved in the engagement.

Recommendation 10

That the NSW Procurement Board formally communicates to agencies that the SCM0020 and SCM0005 schemes are not to be used in lieu of the SCM0007 scheme.

DFSI has advised the Commission that it has taken steps towards implementing these recommendations. For instance, it is “severely restricting” the use of rate card engagements using the SCM0020 and SCM0005 schemes. Such engagements are monitored by its ICT project management office, which seems reasonable, given that most of these engagements are for highly specialist ICT professional services.

There was no project budget

While the magnitude of “Petite’s” profit margin may help explain why the total amount paid to “Petite’s” was almost

four times the amount initially agreed, it does not explain how the payment of these funds was approved. Further, it does not explain why payments to “Petite” continued after its \$150,000 contract value had been reached.

One factor that facilitated this overspend was that there was no separate budget established for the Clarity Project. Funds spent on the project came out of the general budget for the SPPMO. While the Clarity Project was not the only DFSI project without a budget during this period, it was not common for DFSI projects conducted during this period to lack budgets.

There were two reasons why the Clarity Project did not have a dedicated budget. First, it was not a formal project and had to be completed quickly. Secondly, it was cumbersome to set up a budget for a small project in DFSI’s finance system, as this required the establishment of a separate cost centre for the project, which necessitated the involvement of DFSI’s finance team and possibly DFSI’s shared services provider.

While Mr Gravitis accepted that it was his responsibility to monitor expenditure against budget, he commented that the Clarity Project was not set up to facilitate this, given that it was trying to deliver an outcome without a specific budget.

Subsequent to the Clarity Project, DFSI has made improvements to its finance system to more easily assign budgets to projects.

As a result of these enhancements to DFSI’s finance system, the Commission does not make any recommendations to address the issue of the Clarity Project not having a formal budget.

Multiple purchase orders were raised

Regardless of the existence or absence of a budget, expenditure on the Clarity Project still needed to be approved by a DFSI officer with the appropriate delegations.

Since Mr Prestage was a contractor and had no financial delegation, it was Mr Gravitis who approved Clarity Project expenditure. He did this via approving purchase orders to “Petite” and Hays, which respectively covered expenditure on contractors supplied by “Petite” and expenditure on Mr Prestage himself.

Monitoring of payments made to “Petite” against these purchase orders could have prevented expenditure on “Petite” contractors from exceeding the approved value of \$150,000. For instance, DFSI’s finance business unit could have notified relevant individuals, such as the project sponsor, Mr Smith, that the funds attached to “Petite’s” initial purchase order had been exhausted.

While Mr Smith was unaware that the funds attached to the initial “Petite” purchase order had been exhausted, Mr Gravitis was aware of this fact. This is because he approved subsequent purchase orders covering further expenditure on “Petite” contractors. Each time an invoice was received from “Petite”, Mr Gravitis would raise a new purchase order.

The approval of purchase orders after the relevant services were supplied also occurred in relation to the engagement of Mr Prestage via Hays. Mr Prestage commenced working on 4 April 2016 but the relevant purchase order was dated 27 June 2016. Moreover, the order form used to engage Mr Prestage via Hays did not have a purchase order number recorded in the relevant box.

Approving purchase orders after the relevant goods or services have been supplied is not good practice, as it increases the risk of inappropriate purchases. While post-hoc approval may occasionally be unavoidable (for example, in genuine emergencies), it should be discouraged as routine practice.

Using multiple purchase orders to cover expenditure on the same goods or services is also poor practice, as it makes it easy to engage in order-splitting to overcome delegation and process limits.⁸ This is particularly relevant to the Clarity Project, as it would have been required to use the Procure IT framework had the initial value of the project exceeded \$150,000. The Commission is not, however, suggesting that there was any deliberate attempt to avoid using the Procure IT framework; merely, that it would have been required had the true cost of the project been known.

Mr Smith was not aware that further purchase orders covering expenditure on “Petite’s” invoices had been approved and there was no system to tell him that the original purchase order had been exhausted:

[Counsel Assisting]: All right. So if we had weekly Petite invoices coming in for \$55,000, as they were, and there was no purchase order, is there an alarm system, would somebody know and say why are we paying these people, they're not outside the exception?

[Mr Smith]: Is there a systematic alarm, no, not to my understanding. It would be on the officer who is receiving the purchase orders to understand- - -

[Q]: Receiving the invoices?

[A]: Sorry, receiving the invoices. My apologies.

[Q]: No, no, that's all right.

[A]: On the officer who is receiving the invoices to understand where they're up to in terms of the project and their budget and the contract, and not raise an additional purchase order or seek authorisation to raise an additional purchase order if it was outside their delegation.

If Mr Smith had been made aware that multiple purchase orders had been approved in relation to “Petite”, he would have been aware of the budget issues with the Clarity Project far earlier and the ultimate cost of “Petite’s” engagement to DFSI may have been markedly reduced.

Recommendation 11

That DFSI develops a system for reporting and/or escalating red flags related to projects and procurement activities such as:

- **the use of multiple purchase orders for the same supplier with respect to the same project or activity**
- **purchase orders being raised after the receipt of invoices**
- **purchase orders with dollar values corresponding to amounts that are just below those for which key processes (such as the Procure IT framework) apply.**

DFSI has advised the Commission that it intends to implement this recommendation as part of broader changes to its procurement and SAP systems. As noted earlier, this will involve elements such as advice and guidelines, process prompts and attestations at key points in the procurement process.

Red flags on “Petite’s” invoices were not detected

In addition to approving “Petite’s” purchase orders, Mr Gravitis also approved the payment of “Petite’s” invoices. However, this was done on the recommendation of Mr Prestage.

There were three red flags on “Petite’s” invoices; namely, that they were consecutively numbered, contained inconsistent information about the company (including inconsistent banking details), and sometimes did not list the names of the relevant contractors.

Consecutively numbered invoices are a well-known red flag, especially when a company claims to have multiple

⁸ Order-splitting refers to the inappropriate treatment of one transaction as multiple smaller transactions.

clients and/or the invoice numbers in question are low. This is because they tend to indicate that a company has, in fact, only one client.

“Petite’s” invoices were consecutively numbered by month. They were always of the form “MMYYYY100#”, where MM referred to the month and YYYY referred to the year. The value of # varied from 1–5, where # was the #th invoice sent to DFSI that month. For instance, “Petite” Invoice 0520161002 was the second invoice “Petite” sent to DFSI in May 2016.

The consecutive numbering of “Petite’s” invoices was noticed by DFSI officers, as the numbering system created difficulties in determining whether or not a given invoice had been paid. There is no evidence to suggest that any relevant DFSI staff understood that such consecutively numbered invoices were a red flag.

Mismatched and inaccurate information on an invoice is a red flag for fraud. Legitimate suppliers are usually careful about such information for both compliance and brand-related reasons.

“Petite’s” name was not consistently recorded on its invoices, namely the:

- invoice letterhead referred to it as “Petite Software Systems Pty Ltd”
- bank account name was listed as “Petite”
- contact email address had a suffix of “petite.solutions”.

“Petite’s” invoices also contained false information about its address. These invoices listed its address as level 28, 303 Collins St, Melbourne. By contrast, Petite Software System’s ASIC record lists its registered office and principal place of business as 38 Handel Avenue, Worongary, Queensland, 4213.

“Petite’s” invoices also contained false information about its bank account. Early “Petite” invoices listed a bank account that was supposedly held at the NAB but had a BSB number that corresponded to a Commonwealth Bank branch. In later invoices, however, this mismatch was corrected, as the correct bank for the relevant BSB number was now listed.

There is no evidence that relevant DFSI staff detected either the initial mismatch between the BSB and bank of “Petite’s” bank account or that “Petite’s” bank changed in later invoices without a corresponding change of its BSB. This may be, in part, because it was the false banking details that were entered into DFSI’s VMF that were used to pay “Petite”, regardless of any banking details it subsequently provided on its invoices.

Another red flag was that several “Petite” invoices did not list named resources but instead just referred to the type of role that was being performed. Listing named resources is standard for labour hire invoices. Indeed, the SCM0020 order form used to engage “Petite” listed specified personnel who were supposed to perform the relevant work.

Had these red flags on “Petite’s” invoices been detected, it is possible that DFSI would have launched enquiries that would have resulted in the cessation of payments to “Petite”, markedly reducing the quantum of funds DFSI ultimately paid “Petite”.

Both DFSI officers approving invoices for payment and those processing these payments are in a position to detect such red flags. The likelihood that they do detect these red flags can be improved through both increased awareness and procedural requirements.

Recommendation 12

That DFSI provides guidance about red flags on invoices to DFSI officers who either hold a financial delegation or process the payment of invoices.

Recommendation 13

That DFSI revises its invoice approval and accounts payable processes to ensure that invoices are checked for red flags.

DFSI has advised the Commission that it intends to implement the above two recommendations as part of broader changes to its procurement and SAP systems. As noted earlier, this will involve elements such as advice and guidelines, process prompts and attestations at key points in the procurement process.

Recommendation 14

That DFSI implements data analytic tools to help manage the risks associated with red flags on invoices.

DFSI has advised the Commission that it intends to implement this recommendation. It is currently working to standardise its procurement and finance systems across all of its entities and agencies, as disparate systems have resulted in fragmented data sets requiring manual collation for reporting and tracking purposes. Once this harmonisation has been completed, DFSI will be in a better position to develop meaningful data analytics surrounding procurement activities.

Project governance

The Clarity Project overspend was quite substantial by the time it was detected. Although no formal budget was allocated to the Clarity Project, there was a notional budget of \$150,000 for expenditure on “Petite” contractors (because this was the amount of the first purchase order placed with “Petite”). However, “Petite” had been paid approximately \$450,000 by the time that Mr Smith, the project sponsor, first became aware of any overspend. This meant that the project was 200% over the original purchase order before any overspend was detected.

This calls into question the project governance for the Clarity Project, which, as acknowledged by Mr Smith, was insufficient for even a relatively small project.

The Clarity Project was never officially established

One factor that led to inadequate project governance of the Clarity Project was its timeframe. Mr Gravitis gave evidence to the Commission that it was a very rushed endeavour.

[Counsel Assisting]: ... So early in 2016 the project gets the go-ahead, and what's the next step that you recall?

[Mr Gravitis]: Yeah. So, and it's a classic one of these emergency projects, there's no, there's no budget, there's no funding, but Shaun – because he was in charge of all of the transformational projects within the organisation, I guess there's – and the organisation was underspending across the board, there was a big underspend that year, so he's like, we've got plenty of money, let's get it in and get it done now before the end of the financial year while we've got money.

[Q]: All right. So you said it was an emergency project. Why was it suddenly— -?

[A]: Well, probably, well, it was just a rushed project. It was, we needed it, we didn't have resources to do what, continue what we were doing, something needed to be implemented and it was just, we had money there to do it so— -

[Q]: All right. So what I'm trying to unpick here is, was the urgency about

the need to have a reporting tool or was it about the budget spend?

[A]: I think it was both.

[Q]: It was both.

[A]: Yeah.

[Q]: All right.

[A]: Well, no, well, no, I mean we don't – if the money didn't get spent, the money didn't get spent, it was more that there was money available for it this year but if we didn't build it then there may not be money available for it next year.

Given it was so rushed, it is perhaps unsurprising that there was a clear lack of formality surrounding the establishment of the Clarity Project. The Clarity Project was never formally established as a project and did not have several key governance mechanisms, such as:

- formal project roles
- a formal budget
- a business case
- a detailed scope at its commencement.

Since the period applicable to the Clarity Project, DFSI has improved its framework surrounding the establishment of new projects. It has introduced yearly ICT delivery plans and the Clarity Project would have come under the scope of such a plan, had it existed at the time the project was conducted. DFSI has also developed new governance and documentation standards for projects.

As a result of the introduction of yearly ICT delivery plans and new project governance and documentation standards, the Commission does not make any recommendations to address the issue of the Clarity Project not being formally established as a project.

The project steering committee was ineffective

Despite not having many of the features of a formal project, the Clarity Project did have a project steering committee, which first met on 24 May 2016. Mr Gravitis chaired this steering committee and Mr Prestage reported to it.

Unfortunately, the steering committee was unable to perform a key governance role regarding the project. There were three reasons for this.

First, prior to the budget overspend being identified, the project sponsor, Mr Smith, did not attend steering committee meetings. When asked about this, Mr Smith

gave evidence to the Commission that he did not believe that a steering committee existed until after June 2016. While he was aware of meetings that occurred before this time, he did not consider them to be steering committee meetings.

Secondly, the steering committee stopped having regular meetings soon after it formed. Following meetings on 24 May, 31 May and 7 June, the steering committee does not appear to have met until August. This was despite the fact that the Clarity Project was being conducted under a tight timeframe, meaning that potential issues with the project could quickly escalate.

Thirdly, project finances were not discussed at steering committee meetings. More generally, at the time of the Clarity Project, project reporting did not involve input from DFSI's finance staff regarding project expenditure. This is because the project reporting was predominantly concerned with progress, not finances.

Subsequent to the Clarity Project, DFSI has introduced improved processes surrounding project steering committees. For instance, guidelines for ICT project steering committee members have been prepared, and the attendance or non-attendance of the project sponsor at steering committee meetings is now recorded.

As a result of these improved steering committee processes, the Commission does not make any recommendations to address the issue of how the Clarity Project steering committee operated.

Project reporting did not include sufficient financial information

While Mr Smith did not attend steering committee meetings, each week he received a slide discussing the status of the Clarity Project, along with a similar slide for each of his projects and other operational responsibilities. Each of these slides was a series of bullet points about the project or activity in question. Mr Smith would review these reports and forward them to the secretary of DFSI.

Unfortunately, this weekly reporting slide did not include information about the expenditure on the Clarity Project to date. Mr Smith commented that there would have been better visibility over the Clarity Project had there been a chart produced each week that showed how much had been spent on the project to date and how this tracked against budget.

Since the Clarity Project, DFSI has improved its project reporting; ironically, via the use of Clarity. With the consolidated reporting that now exists within DFSI, red flags would have been raised about the progress of the Clarity Project if it were being conducted now.

In relation to financial reporting, DFSI now engages in monthly expenditure tracking of capital expenditure relating to ICT projects. This financial information comes directly out of DFSI's SAP implementation and variances are subject to "change control".

As a result of this improved financial reporting, the Commission does not make a recommendation regarding the lack of financial information in Clarity Project reporting.

Oversight of Mr Prestage

Adequate management of project managers is an important project control because there are a variety of risks that are related to poor project management. For instance, project managers may be incentivised to hide issues with their projects to avoid criticism of their performance.

In his statement to the Commission, Mr Gravitis indicated that Mr Prestage was not a good project manager. Mr Gravitis was not alone in his criticism of Mr Prestage's management of the Clarity Project. For instance:

- in a statement to the Commission, Mr Cruz indicated that he would do Mr Prestage's work for him
- witness accounts, and an examination of his entry and exit card records, indicate that Mr Prestage misrepresented the hours he worked
- in statements to the Commission, Ms Babu and Mr Cruz both indicated that Mr Prestage did not have good technical knowledge regarding Clarity despite knowledge of Clarity being one key reason why he was hired.

As discussed earlier, Mr Gravitis was responsible for managing Mr Prestage and gave him a free hand to perform his work.

In his submissions to the Commission, Mr Prestage rejected that he was not a good manager. He said his submissions were supported by the fact that his contract was extended for a three-month period by DFSI. He further rejected that Mr Cruz would complete his work. Mr Prestage said that Mr Cruz did not have the requisite skills for him to complete project management work, nor was there any written evidence that this occurred. He submitted that he did have a good technical knowledge of Clarity as proven by his previous role as Managing Director Asia Pacific for Clarity. He said that in any event, DFSI did not require him to have that knowledge and skills, but rather the supplier to have them.

Mr Prestage also rejected the assertion that he misrepresented the hours he worked. He said that he had been given authority to work remotely and was told by Mr Gravitis to do what had to be done to get the job completed.

The Commission does not accept those submissions. Mr Cruz, Mr Gravitis and Ms Babu all gave evidence that Mr Prestage's technical skills were not strong. Michael Turner told the Commission that Mr Prestage was a "salesman" for Clarity, stating "He did actually have a good knowledge of Clarity. He couldn't set it up and be a user; he was more the sales person and figurehead..."

Mr Smith told the Commission that Mr Prestage did not have authority to work from home but acknowledged that he would need to attend external meetings from time-to-time. Mr Gravitis confirmed that Mr Prestage "maybe once on occasion" worked from home but was generally expected to be in the office. Witness statements and swipe card access records support the Commission's finding that Mr Prestage was often absent.

In addition to facilitating the corrupt engagement of "Petite", this free hand ultimately increased the amount of funds that DFSI paid "Petite". For instance, limited supervision of Mr Prestage allowed him to hire more "Petite" contractors and use "Petite" contractors in a manner that resulted in them working more hours than necessary.

As noted in chapter 3, when Mr Gravitis returned to work following a period of sick leave, Mr Prestage told him that Mr Smith had said that he was unhappy with the project progress and had approved a variation allowing more contractors to be hired. Mr Gravitis accepted that Mr Smith had approved this variation without confirming it with him, as he knew that Mr Smith was unhappy with the look and feel of the project. In fact, Mr Prestage had never approached Mr Smith about hiring extra contractors, let alone received any approval to hire them.

When discussing user requirements with a stakeholder, Mr Prestage would take all of the "Petite" contractors to the meeting in question. Mr Gravitis disagreed with Mr Prestage's approach in this regard, as he thought that only one contractor should come. While Mr Gravitis informed Mr Prestage that he disagreed with his approach and thought that it was an expensive way to do stakeholder consultation, he nevertheless allowed Mr Prestage to keep doing this. Mr Smith also thought that this approach was not a productive use of the contractors' time.

Given Mr Prestage's hidden interest in "Petite", he stood to gain from maximising the number of contractors engaged and the number of hours each contractor worked.

Mr Gravitis' efforts to supervise Mr Prestage were made more difficult by that the fact that Mr Prestage and the "Petite" contractors were located on level nine of DFSI's

premises, whereas Mr Gravitis and Mr Smith were located on level 23. Nevertheless, Mr Gravitis did make an effort to supervise them, as it was his practice to visit the contractors every day to ensure that they were there and the project was progressing.

To an extent, Mr Gravitis' excessive trust facilitated Mr Prestage's corrupt conduct. Mr Gravitis giving Mr Prestage a free hand meant that he simply accepted that Mr Prestage was performing his duties in a competent and ethical manner, despite the existence of potential warning signs, such as Mr Prestage being absent from his desk and the risks associated with a contracted project manager.

Recommendation 15

That DFSI informs staff involved in the management or governance of projects of the risks associated with contracted project managers and the consequent need to manage these project managers carefully.

DFSI has advised the Commission that it intends to implement this recommendation. The DFSI secretary will issue communications to all staff regarding revised contractor engagement processes, as well as lessons learned from this investigation. Additionally, reminders of relevant staff responsibilities will be embedded into SAP and Contractor Central at appropriate points in the contractor engagement and management processes. Finally, additional communications will be issued to staff in project management offices to both illustrate risks associated with contingent labour engagements, and identify the guidance and support available to these officers to manage these risks.

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 DFSI and the responsible minister.

As required by s 111E(2) of the ICAC Act, DFSI 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, the plan of action.

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

The Commission will publish the response to its recommendations, any plan of action proposed by DFSI and progress reports on its implementation on the Commission's website, www.icac.nsw.gov.au, for public viewing.

Appendix 1: The role of the Commission

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

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

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

The Commission may also investigate conduct that may possibly involve certain criminal offences under the *Parliamentary Electorates and Elections Act 1912*, the *Election Funding, Expenditure and Disclosures Act 1981* or the *Lobbying of Government Officials Act 2011*, where such conduct has been referred by the NSW Electoral Commission to the Commission for investigation.

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

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

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

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

Appendix 2: Making corrupt conduct findings

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

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

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

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

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

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

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

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

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

Subsection 9(4) of the ICAC Act provides that, subject to subsection 9(5), the conduct of a Minister of the Crown or a member of a House of Parliament which falls within the description of corrupt conduct in s 8 is not excluded

by s 9 from being corrupt if it is conduct that would cause a reasonable person to believe that it would bring the integrity of the office concerned or of Parliament into serious disrepute.

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

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

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

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

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

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

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

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

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

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

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

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

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

Appendix 3: Summary of responses to adverse findings

Counsel Assisting the Commission made written submissions setting out, inter alia, what adverse findings she contended it was open to the Commission to make against Mr Prestage. These were provided to Mr Prestage on 28 June 2018. Written submissions in response made on behalf of Mr Prestage were received by the Commission on 13 August 2018.

Submissions in response were also received from DFSI on 26 July 2018.

On 23 November 2018, Counsel Assisting provided additional submissions on a limited number of issues to Mr Prestage. Submissions in response were received on 19 December 2018.

The Commission considers that, in these circumstances, Mr Prestage had a reasonable opportunity to respond to proposed adverse findings.

Mr Prestage's responses to the proposed adverse findings were that the Commission should not make any finding of corrupt conduct against him. His responses have been incorporated in the body of this report.





INDEPENDENT COMMISSION
AGAINST CORRUPTION

NEW SOUTH WALES

Level 7, 255 Elizabeth Street
Sydney NSW 2000 Australia

Postal Address: GPO Box 500
Sydney NSW 2001 Australia

T: 02 8281 5999

1800 463 909 (toll free for callers outside metropolitan Sydney)

TTY: 02 8281 5773 (for hearing-impaired callers only)

F: 02 9264 5364

E: icac@icac.nsw.gov.au

www.icac.nsw.gov.au

Business Hours: 9 am - 5 pm Monday to Friday