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AGAINST CORRUPTION
NEW SOUTH WALES

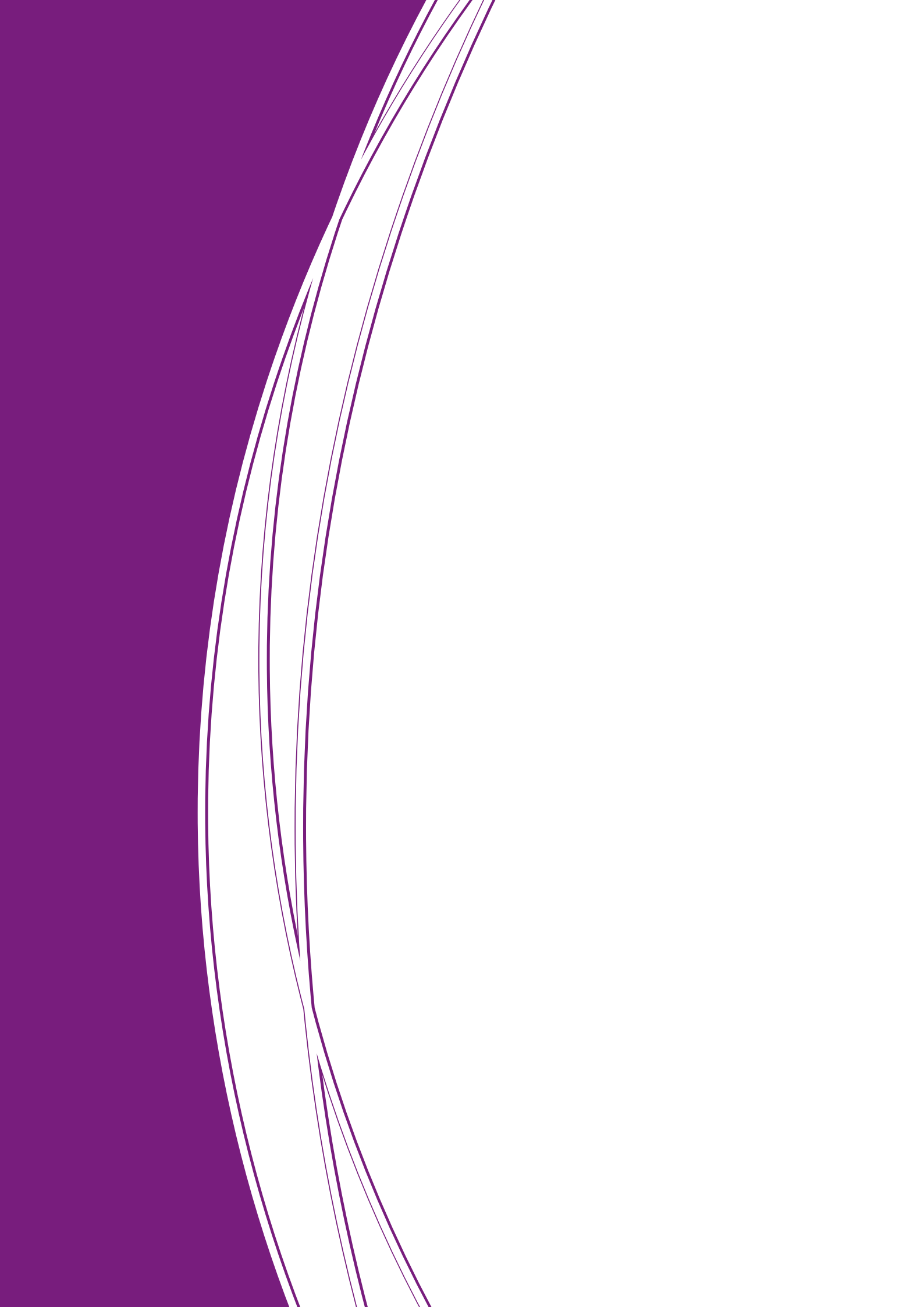
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WESTERN SYDNEY INSTITUTE PROPOSAL

By OscilloSoft Pty Ltd

INVESTIGATION INTO THE SOURCING OF SOFTWARE SYSTEMS FOR THE WESTERN SYDNEY INSTITUTE OF TAFE

ICAC REPORT
OCTOBER 2021






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INSTITUTE OF TAFE**

**ICAC REPORT
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Mr President
Mr Speaker

In accordance with s 74 of the *Independent Commission Against Corruption Act 1988* (the ICAC Act) I am pleased to present the Commission's report on its investigation into the sourcing of software systems for the Western Sydney Institute of TAFE.

No public inquiry was held in this investigation.

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

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

Yours sincerely

A handwritten signature in black ink, appearing to read 'Stephen Rushton'.

Stephen Rushton SC
Commissioner

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Summary of investigation and outcomes

This investigation by the NSW Independent Commission Against Corruption (“the Commission”) concerned an allegation that Hasan Mamun, then manager of finance and administration services at the Western Sydney Institute of TAFE (WSI TAFE), and Samiul Kabir, then manager of budget and performance at WSI TAFE, engineered the sourcing of software systems from Oscillosoft Pty Ltd, in return for payments from Oscillosoft as an inducement or reward for exercising their public official functions to show favour to Oscillosoft.

The Commission also examined an allegation that Mr Mamun was involved in the recruitment of two people in the finance unit at WSI TAFE who were personally connected to him; namely, Mr Kabir and Monzurul Hoque. The Commission also examined Mr Kabir’s involvement in the recruitment of Mr Hoque to a position at WSI TAFE.

Outcomes

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

- between August 2014 and December 2018, soliciting and receiving payments totalling between approximately \$227,153 and \$228,153. Of this amount, the sum of \$206,683.61 was paid by Oscillosoft into his wife’s bank account. In January 2018, a further between \$4,000 and \$5,000 was transferred by Oscillosoft into an account in Bangladesh on his behalf. The balance of approximately \$16,469 was comprised of cash payments. The cash payments were made by Mohammad Suza-Ud-Dawllah, a director of Oscillosoft. There were also gifts provided by Oscillosoft to Mr Mamun. The payments and gifts were provided by Oscillosoft and Mr Suza-Ud-Dawllah as an inducement or reward for Mr Mamun exercising his official functions, to favour Oscillosoft in relation to its business with

TAFE NSW, or the receipt of which would tend to influence Mr Mamun to show favour to Oscillosoft’s business interests in the exercise of his official functions (chapter 5)

- on 15 December 2015, and in order to conceal the fact that proper procurement procedures had not been followed in the engagement of Oscillosoft, making changes to the Oscillosoft proposal dated 13 December 2013 to bring the amount in the proposal under the threshold above which three quotations were required (chapter 5)
- knowingly signing declarations in 2015, 2016 and 2017, in which he falsely declared that his private and financial interests did not conflict with his duties as a member of the Tender Evaluation Team for the procurement of the budgeting and planning program known as the iPlan program, and that his independence and objectivity had not been, or was not likely to be, compromised (chapter 5)
- in March 2013, altering the resume of Mr Hoque to include false and misleading representations concerning Mr Hoque’s work history in order to support Mr Hoque’s application for the position of business analyst/financial resource analyst at WSI TAFE and in order to improve Mr Hoque’s prospects of gaining employment with WSI TAFE (chapter 6).

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

- between August 2014 and December 2018, soliciting and receiving payments totalling approximately \$220,435. The first payment of \$16,000 was paid by Oscillosoft into a friend’s account. The balance of the payments made by Oscillosoft were paid into an account of Mr Kabir’s wife. The sum of \$20,000 was paid in cash by

Mr Suza-Ud-Dawllah. The payments were made by Oscillosoft and Mr Suza-Ud-Dawllah, as an inducement or reward for Mr Kabir exercising his official functions, to favour Oscillosoft in relation to its business with TAFE NSW, or the receipt of which would tend to influence Mr Kabir to show favour to Oscillosoft's business interests in the exercise of his official functions (chapter 5)

- arranging, in March 2013, for Mr Mamun to alter Mr Hoque's resume to include false and misleading representations concerning Mr Hoque's work history, to support Mr Hoque's application for the position of business analyst/financial resource analyst at WSI TAFE, and in order to improve Mr Hoque's prospects of gaining employment with WSI TAFE (chapter 6).

The Commission found that Kazi Hassan, a director of Oscillosoft, engaged in serious corrupt conduct by:

- between August 2014 and December 2018, facilitating payments by Oscillosoft of between \$210,683.61 and \$211,683.61 as well as gifts to Mr Mamun, and facilitating payments by Oscillosoft of approximately \$200,435 to Mr Kabir, as an inducement or reward for Mr Mamun and Mr Kabir exercising their public official functions, to favour Oscillosoft in relation to its business with TAFE NSW, or the receipt of which would tend to influence Mr Mamun and Mr Kabir to show favour to Oscillosoft's business interests in the exercise of their official functions (chapter 5).

The Commission found that Ashique Ibrahim, another director of Oscillosoft, engaged in serious corrupt conduct by:

- between August 2014 and December 2018, facilitating payments by Oscillosoft of between \$210,683.61 and \$211,683.61 and gifts to Mr Mamun, and facilitating payments by

Oscillosoft of approximately \$200,435 to Mr Kabir, as an inducement or reward for Mr Mamun and Mr Kabir exercising their public official functions, to favour Oscillosoft in relation to its business with TAFE NSW, or the receipt of which would tend to influence Mr Mamun and Mr Kabir to show favour to Oscillosoft's business interests in the exercise of their official functions (chapter 5).

The Commission found that Mr Suza-Ud-Dawllah, the third director of Oscillosoft, engaged in serious corrupt conduct by:

- in late 2018, making cash payments to Mr Mamun of approximately \$16,469 and \$20,000 to Mr Kabir, as an inducement or reward for Mr Mamun and Mr Kabir exercising their public official functions, to favour Oscillosoft in relation to its business with TAFE NSW, or the receipt of which would tend to influence Mr Mamun and Mr Kabir to show favour to Oscillosoft's business interests in the exercise of their official functions (chapter 5).

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

- in March 2013, submitting a resume, which included false and misleading representations concerning Mr Hoque's work history, to support his application for the position of business analyst/financial resource analyst at WSI TAFE in order to improve his prospects of gaining employment with WSI TAFE
- using a resume containing the same false and misleading representations to apply for other positions at TAFE NSW (chapter 6).

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 Mamun for offences of soliciting and receiving corrupt commissions or rewards contrary to s 249B(1) of the *Crimes Act 1900* (“the Crimes Act”), making and using a false document contrary to s 253 and 254 of the Crimes Act, and offences of making and concurring in the making or publication of false or misleading statements with the intention of obtaining a financial advantage contrary to s 192G of the Crimes Act
- Mr Kabir for offences of soliciting and receiving corrupt commissions or rewards contrary to s 249B(1) of the Crimes Act and offences of making and concurring in the making or publication of false or misleading statements with the intention of obtaining a financial advantage contrary to s 192G of the Crimes Act
- Oscillosoft for offences of corruptly giving corrupt commissions or rewards to Mr Mamun and Mr Kabir contrary to s 249B(2) of the Crimes Act
- Mr Hassan for offences of offering to give, and aiding and abetting the giving by Oscillosoft of, corrupt commissions or rewards to Mr Mamun and Mr Kabir contrary to s 249B(2) of the Crimes Act
- Mr Ibrahim for offences of offering to give, and aiding and abetting the giving by Oscillosoft of, corrupt commissions or rewards to Mr Mamun and Mr Kabir contrary to s 249B(2) of the Crimes Act
- Mr Suza-Ud-Dawllah for offences of giving corrupt commissions or rewards to Mr Mamun and Mr Kabir contrary to s 249B(2) of the Crimes Act
- Mr Hoque for offences of publishing false or misleading statements with the intention of obtaining a financial advantage contrary to s 192G of the Crimes Act.

The Commission is also of the opinion that consideration should be given by TAFE NSW to the taking of action against Mr Hoque for a specified disciplinary offence and the taking of action against him on specified grounds, with a view to dismissing, dispensing with the services of, or otherwise terminating the services of Mr Hoque.

Chapter 7 of this report sets out the Commission’s review of the corruption risks identified during the course of the investigation. The Commission makes the following corruption prevention recommendations.

Recommendation 1

That TAFE NSW further constrains local information and communications technology (ICT) projects that are “architectural exceptions” by:

- closing regional data centres, and moving applications and software into the TAFE NSW Private Cloud or a local cloud provider
- evaluating local software modules, applications and versions for requirement and removal, where appropriate.

Recommendation 2

That TAFE NSW ensures robust and measurable criteria are used in relation to decision-making for the governance of ICT projects by uplifting capability to members of project control boards to better understand aspects of approvals, risk monitoring and seeking assurance.

Recommendation 3

That TAFE NSW expands existing training material to cover risks associated with direct negotiations.

Recommendation 4

That TAFE NSW develops strategic category plans that:

- cover all ICT spend (in collaboration between ICT procurement category teams and stakeholders)
- denote which spend is significant.

This should include the formulation of a schedule and project plan to ensure all significant spend is brought under contract.

Recommendation 5

That TAFE NSW re-evaluates and strengthens the process by which corruption information requests from integrity agencies to it are case managed.

Recommendation 6

That TAFE NSW invests additional resources to:

- increase by 50% trained nominated disclosure officers, including a cohort that are accessible, diversified and distributed throughout TAFE NSW within various administrative and teaching areas
- refresh training related to current nominated disclosure officers to improve their skill levels
- refresh content regarding public interest disclosures (PIDs) in the annual mandatory training.

Recommendation 7

That TAFE NSW conducts targeted training for complaint-handling and investigation specialists regarding the identification of fraud and corruption reports and escalation of PIDs.

Recommendation 8

That TAFE NSW introduces robust and centralised serious-wrongdoing reporting mechanisms across all areas of the business.

Recommendation 9

That TAFE NSW analyses its treatment of prior reports of corruption, including PIDs, to further inform its corruption prevention planning efforts.

Recommendation 10

That TAFE NSW re-evaluates the staff complaints management framework with a view to investing in an appropriate centralised and secure complaints management system for all staff.

Recommendation 11

That TAFE NSW reconsiders the appropriate resourcing of the corruption investigation function, including the current practice of referring outside of the Internal Audit Unit to the Employee Relations Unit.

Recommendation 12

That TAFE NSW invests in a centralised records management database for grievances and wrongdoing that is accessible to complaints management, investigative, corruption prevention and audit units, noting the confidentiality provisions when designing this access.

Recommendation 13

That TAFE NSW provides greater transparency of serious conduct to senior managers at chief level on a periodic basis (for example, quarterly).

Recommendation 14

That TAFE NSW undertakes a review within three years to provide assurance that the measures it has taken to improve ICT project governance, oversight of ICT procurement, complaint management and recruitment are achieving their objectives.

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 TAFE NSW and the responsible minister.

As required by s 111E(2) of the ICAC Act, TAFE NSW 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, details of the proposed plan of action.

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

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

Recommendation that this report be made public

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

Chapter 1: Background

This chapter sets out some background information concerning the investigation conducted by the NSW Independent Commission Against Corruption (“the Commission”), TAFE NSW and its role, the principal persons of interest, and relevant policies and procedures.

How the investigation came about

On 22 May 2017, the Commission received a notification in relation to Hasan Mamun from the managing director of TAFE NSW pursuant to s 11 of the *Independent Commission Against Corruption Act 1988* (“the ICAC Act”). Section 11 of the ICAC Act requires the principal officer of a public authority to report to the Commission any matter that the person suspects on reasonable grounds concerns, or may concern, corrupt conduct. A public interest disclosure (PID) had been made by a TAFE NSW employee and further enquiries had been made about the disclosure. As a result, a number of serious allegations were made about Mr Mamun.

First, it was alleged that Mr Mamun had a personal relationship with a director of Oscillosoft Pty Ltd, a TAFE contractor, which he did not disclose to TAFE NSW. Secondly, it was alleged that Mr Mamun engineered the sourcing of a software system, specifically the iPlan program from Oscillosoft, and, in doing so, proper procurement processes were not followed. At the time of the s 11 notification, TAFE NSW had paid Oscillosoft invoices totalling over \$2 million. Finally, it was alleged that Mr Mamun had “encouraged” the recruitment of two friends in the finance section of the Western Sydney Institute of TAFE (WSI TAFE), of which he was the manager.

Why the Commission investigated

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

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

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

The conduct reported to the Commission was serious and could, if established, constitute corrupt conduct within the meaning of the ICAC Act. In particular, it was alleged that Mr Mamun had a close personal relationship with a director of Oscillosoft, which he had failed to disclose and from whom he had sourced the iPlan software program for TAFE NSW. The alleged conduct had taken place over a number of years and a significant amount of money had been paid by TAFE NSW to Oscillosoft.

The Commission commenced a preliminary investigation in June 2018. The evidence gathered during the preliminary investigation corroborated the allegation. In February 2019, the Commission decided to undertake a more extensive investigation.

Conduct of the investigation

During the course of the investigation, the Commission:

- interviewed and/or obtained statements from a number of persons, including TAFE NSW employees and Oscillosoft directors
- obtained documents from various sources by issuing 22 notices pursuant to s 22 of the ICAC Act and one notice pursuant to s 21 and s 22 of the ICAC Act

- conducted two compulsory examinations
- executed three search warrants.

The Commission's investigation revealed significant issues with Mr Mamun's conduct while employed at TAFE NSW. The investigation also identified issues of concern in relation to other TAFE NSW employees, Samiul Kabir and Monzurul Hoque. It also identified serious weaknesses in TAFE NSW's systems and processes that needed to be addressed.

Decision not to hold a public inquiry

After taking into account the 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 Mamun, Mr Kabir, Mr Hoque and the Oscillosoft directors
- a public report would make the public sufficiently aware of the relevant conduct and system weaknesses and the Commission's corruption prevention recommendations.

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

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

- as a result of the investigation, the Commission was satisfied that Mr Mamun, Mr Kabir, Mr Hoque, Kazi Hassan, Ashique Ibrahim and Mohammad Suza-Ud-Dawllah had engaged in serious corrupt conduct
- 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 combating corrupt conduct. These functions, which are set out from s 13(1)(h) to s 13(1)(j) of the ICAC Act, would be undermined absent a public report.

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

On 11 September 2020, submissions by Counsel Assisting and the Corruption Prevention Division were provided to all relevant parties and submissions were invited in response. During October and November 2020,

submissions in response were received from Mr Kabir and TAFE NSW. In January 2021, submissions in response were received from Mr Hoque. No submissions in response were received from Mr Mamun, Mr Hassan, Mr Ibrahim or Mr Suza-Ud-Dawillah. On 28 May 2021, supplementary submissions were provided to Mr Mamun's legal representative; no submissions in reply were received. On 31 July 2021, further submissions were provided to the legal representative of Oscillosoft, Mr Hassan and Mr Ibrahim; no submissions in response were received.

All submissions received in response to the submissions of Counsel Assisting and the Corruption Prevention Division have been taken into account in preparing this report. All relevant parties were also invited to request that a summary of their response to the adverse findings contended for by Counsel Assisting in their submissions be included in the report in the event the Commission made such findings. Mr Hoque took up that invitation, and a summary is included at Appendix 3 to this report. Mr Kabir did not request that a summary of his response to the adverse findings be included in the report; however, the Commission has also analysed and considered Mr Kabir's submissions in response at Appendix 3 to this report.

TAFE NSW

TAFE NSW is a provider of vocational education and training in the state. TAFE NSW was established under the *Technical and Further Education Commission Act 1990* as an independent statutory body. The acronym "TAFE" stands for Technical and Further Education.

Before July 2017, WSI TAFE was one of 10 separate institutes of TAFE NSW. From July 2017, the 10 separate TAFE institutes were merged to form "One TAFE NSW".

On 1 July 2014, TAFE NSW became an independent legal entity. Before 11 December 2014, TAFE NSW was under the control of the NSW Department of Education and Communities (DEC). Between 12 December 2014 and April 2015, TAFE NSW was a separate, unrelated public sector agency. On 1 July 2015, through State Training Services, TAFE NSW was included in the NSW Department of Industry, Skills and Regional Development (DISRD) cluster; and then from 1 April 2017, it fell under the NSW Department of Industry. Since 1 July 2019, TAFE NSW has come under the NSW Department of Education.

Relevant WSI TAFE staff

Mr Mamun

In February 2010, Mr Mamun commenced his role as manager of finance and administration services at

WSI TAFE. He was the most senior financial executive at WSI TAFE. The main purpose of his position was to "provide leadership, direction and expert advice on all aspects of Finance and Administration Services" and the provision of:

...financial stewardship and governance ... to ensure the integrity and accountability of financial data, accurate reporting on financial information and compliance with Departmental and TAFE NSW policies and procedures, government legislation and other statutory requirements.

From around mid-2017, Mr Mamun held the position of head of management, accounting and analytics at TAFE NSW. On 31 August 2019, Mr Mamun resigned from his position at TAFE NSW.

Mr Mamun had a professional background in the private sector. He said that he and Mr Kabir met through their involvement with the Bangladeshi community in about 2009 or 2010.

Mr Mamun gave evidence to the Commission over two days.

Mr Kabir

On or around 25 June 2012, Mr Kabir commenced employment as the manager of budget and performance at WSI TAFE. His role included the provision of:

...high level management, advice and support to the Management Accountant on all aspects of Western Sydney Institutes [sic] financial and management report processes [and also to] lead and maintain the [Western Sydney] Institute's Management Accounting Reporting Systems.

Mr Kabir's immediate superior was Rick Wilson, WSI TAFE's management accountant. Mr Mamun was Mr Wilson's superior.

On 25 August 2017, Mr Kabir became the manager of planning system and tools at TAFE NSW. In May 2018, he took on the role of a senior finance business partner for the South Region at TAFE NSW. On 7 September 2019, Mr Kabir resigned from his position at TAFE NSW.

Mr Kabir gave evidence that he had known Mr Mamun since about late 2003 or early 2004, when he moved to Australia as a student. Mr Kabir described his relationship with Mr Mamun as close. At various points in Mr Kabir's evidence, he described Mr Mamun as his "family friend", "local guardian" and "mentor".

Mr Kabir gave evidence to the Commission over two days.

Mr Hoque

In 2013, Mr Hoque commenced in a contract position as a financial resource analyst at WSI TAFE. Mr Hoque eventually obtained a permanent position at WSI TAFE. Mr Hoque knew Mr Mamun and Mr Kabir through the Bangladeshi community.

Other WSI TAFE employees

At the time of Oscillosoft's engagement by WSI TAFE, Susan Hartigan was institute director at WSI TAFE. Ms Hartigan was employed by TAFE NSW for 35 years until she resigned in June 2014. As finance manager, Mr Mamun reported directly to Ms Hartigan. In October 2014, Robin Shreeve became the institute director at WSI TAFE, a position which he held until the One TAFE NSW restructure in mid-2017.

Sue Westbrook was employed by TAFE NSW for 28 years before leaving TAFE NSW in March 2018. Her last role before leaving was as associate director at WSI TAFE. In this role, she was responsible for student services and education delivery.

Mr Wilson was employed at TAFE NSW between 2002 and February 2017. Between January 2012 and February 2017, he held a position as WSI TAFE's management accountant. In this position, he looked after the budget process each year. Mr Wilson reported to Mr Mamun, and Mr Kabir reported to Mr Wilson.

Oscillosoft and its directors

Oscillosoft was established by Mr Hassan in May 2007. At all relevant times, there were three directors of Oscillosoft; namely, Mr Hassan, Mr Ibrahim and Mr Suza-Ud-Dawllah. The Oscillosoft directors participated in interviews with Commission officers. Mr Suza-Ud-Dawllah also provided a lengthy written document to the Commission, which included extracts of contemporaneous records, such as email exchanges and Skype conversations.

Mr Hassan

Mr Hassan holds qualifications in computer science, information technology and finance from various tertiary institutions. In his interview with Commission officers, Mr Hassan stated that he knew Mr Mamun since around 2007 from the Bangladeshi community. He said Mr Mamun was a respected member in the community, whom he viewed as an elder or a "fatherly figure". He said he did not, however, consider Mr Mamun to be a close friend. Mr Hassan did not address his relationship with Mr Kabir.

Mr Ibrahim

Mr Ibrahim was appointed to the board of Oscillosoft in late 2009. During the relevant period, he was largely responsible for the administration and finance sides of Oscillosoft's business, such as processing invoices. In about 2009, Mr Ibrahim met Mr Mamun at Bangladeshi community events. He met Mr Kabir through Mr Mamun.

Mr Suza-Ud-Dawllah

Mr Suza-Ud-Dawllah was appointed to the board of Oscillosoft in 2009. He did not have any interactions with Mr Mamun and Mr Kabir until late 2017.

The relevant policies and procedures

During the relevant period, various codes of conduct and policies applied to TAFE NSW and its institutes.

Codes of conduct

Between 2010 and 2014, the DEC code of conduct was in force and applied to TAFE NSW employees. The aim of the code was to establish a common understanding of the standards of behaviour expected of all employees of DEC. The relevant parts of the code of conduct relate to conflicts of interest, secondary employment, declaring gifts, benefits and bribes, and recruitment processes.

In relation to conflicts of interest, the DEC code of conduct provided that:

Personal views or private interest can, or have the potential to, influence a person's capacity to perform their duties and in turn compromise their integrity and that of the Department.

As a departmental employee, you must be objective and impartial, and be seen to be so. A conflict of interests [sic] can involve:

- pecuniary interests i.e. financial gain or loss or other material benefits

- non-pecuniary interests i.e. favours, personal relationships and associations.

It may not only be about your own interests. It may include:

- the interests of members of your immediate family or relatives

(where these interests are known)

- the interests of your own business partners or associates, or those of your workplace

- the interests of your friends.

Hostility as well as friendship can also give rise to actual or perceived conflicts of interests.

A conflict exists when a reasonably minded and informed person would form that view.

The code provided that any conflict of interest should be assessed, identified and reported. In relation to declaring gifts, benefits and bribes the code provided that:

As an employee, you may be offered a gift or benefit as an act of gratitude. There are some circumstances when to refuse a gift would be perceived as rude, insulting or hurtful.

You are expected to exercise sound judgment when deciding whether to accept a gift or benefit. It is important that the acceptance of a gift does not influence or is not seen to influence decision-making.

Further, the code provided that:

[Y]ou must never ask for money, gifts or benefits and you must never accept any offer of money, gifts or benefits in exchange for favours. To do so may amount to bribery, which is a crime. The code defined bribery as "soliciting, receiving or offering any undue reward to or by a person to influence the way that a person acts. A reward can encompass anything of value and is not limited to money or tangible goods".

Significantly, the code also stated:

[A]ccepting gifts and other benefits has the potential to compromise your position by creating a sense of obligation and undermining your impartiality. It may also affect the reputation of the Department and its officers. You must not create the impression that any person or organisation is influencing the Department or the decisions of any of its employees.

When a gift or benefit was accepted by an employee, the employee was obliged to advise his or her manager. In relation to private and secondary employment, the code provided that:

...It is permissible for employees to undertake paid secondary work within or outside the Department ... However, employees must recognise their primary commitment is to their principal employment in the Department. Engaging in other employment; for example ... working as a consultant, may have the potential to compromise or be seen to compromise their duties as a departmental employee.

The code made it clear that, if employed in a permanent full-time or temporary full-time position, managerial approval was required prior to engaging in any secondary employment. The approval needed to be obtained on an annual basis. The code specifically stated that, in cases where a real or perceived conflict of interest existed, an employee's immediate supervisor should be advised. The supervisor was to assess the "manageability of the conflict of interests and/or review the continuation of the private or secondary employments".

In relation to recruitment processes, the code of conduct provided that:

... The recruitment of employees in the Department is conducted in line with the relevant legislation, industrial instruments, policies and procedures. Recruitment and staff selection processes must meet the principles and the standards of merit selection. It must be ethical, fair and effective.

Further, the code stated that:

In order to avoid any possible accusation of bias, you must not be involved in any appointment, or any other decisions ... for any employee, or prospective employee, to whom you are related, or with whom you have a close personal or business relationship.

Selection panel members need to declare to the panel any prior personal knowledge or interest in any of the applicants. This is to ensure that any conflicts of interest, which might unduly influence that person in the panel's deliberations is carefully managed. Prior knowledge of the applicant does not necessarily amount to a conflict of interests or exclude participation in the selection process.

On 14 July 2014, a new DEC code of conduct came into effect, which did not change a TAFE NSW employee's obligations in relation to conflicts of interest, secondary employment, declaring gifts, benefits and bribes, and recruitment. In November 2016, TAFE NSW introduced the TAFE NSW code of conduct and ethical practice. Again, the provisions of the code did not differ in any significant way from the earlier codes in respect of conflicts of interest, secondary employment, declaring gifts, benefits and bribes, and recruitment.

Procurement at TAFE NSW

During the relevant period, the 2013 DEC Procurement Approach Easy Reference Guide applied and provided that:

- a minimum of one written quotation was required for a contract/purchase valued at less than \$30,000

- a minimum of three written quotations were required for a contract valued at between \$30,000 and \$150,000
- for contracts valued at more than \$150,000, the project should be referred to the Procurements Solutions Directorate to assess and approve the procurement approach. It provided that all contracts over \$150,000 must be publicly disclosed.

Delegations of authority

In accordance with delegations of authority in force for the relevant period of time, Mr Mamun, as a level 4 institute manager, had a delegated authority of \$150,000. Delegations in force at the time the iPlan program was procured show that Mr Mamun was not delegated to procure software programs.

Chapter 2: The iPlan program

This chapter examines the origins of the iPlan program, and specifically how and why the iPlan budgeting and planning program was developed by Oscillosoft and acquired by WSI TAFE. The question whether Mr Mamun deliberately engineered the sourcing of the iPlan program from Oscillosoft is also addressed.

It is common ground that Mr Mamun sought and was given approval by the WSI TAFE executive to purchase the iPlan program from Oscillosoft. The terms of the approval given to Mr Mamun by the WSI TAFE executive and whether Mr Mamun was deliberately non-compliant with the terms of the approval in order to ensure the engagement of Oscillosoft by WSI TAFE are also addressed.

How WSI TAFE acquired the iPlan program

The WSI TAFE records indicate that, by September 2013, Mr Mamun's finance team at WSI TAFE was attempting to develop a budgeting and planning tool for WSI TAFE, and held meetings with some companies to discuss engaging them for that purpose.

On 26 November 2013, Mr Ibrahim sent an email to Mr Mamun attaching Oscillosoft's proposal for the development of a budgeting and planning tool. The proposal detailed the engagement model, costing structure and the project scope. The amount to be paid by WSI TAFE to Oscillosoft was \$38,752. It was anticipated the program would be implemented by March 2014. This version of the proposal was described as version "V1.0" and the copy in the possession of the Commission is unsigned.

On 13 December 2013, Mr Ibrahim sent Mr Mamun an updated version of the proposal. This version was described as "V1.2". The total amount to be paid by WSI TAFE to Oscillosoft under this proposal was \$45,544.

The version in the possession of the Commission is unsigned.

By November or December 2013, Oscillosoft had commenced the development of the iPlan program for WSI TAFE.

On 20 May 2015, Mr Mamun signed an Oscillosoft project proposal document on behalf of WSI TAFE for approximately \$261,000, including online support. The Commission notes that this was above Mr Mamun's delegation of \$150,000.

Mr Mamun's evidence

Mr Mamun gave evidence to the Commission that, when he commenced in his role at WSI TAFE in 2010, he advised the WSI TAFE's then director, Ms Hartigan, that WSI TAFE lacked a budgeting tool. At the time, TAFE NSW was in the process of developing a budgeting system called the Educational Planning and Integrated Costing (EPIC) program, which was not due to be released until the end of 2014. Mr Mamun said that, in September or October 2013, Ms Hartigan asked him to find a "band aid" or temporary budgeting tool for WSI TAFE, while they waited for the release of the EPIC program. The intention was to use the temporary budgeting tool until the EPIC system was released.

Mr Mamun said he met Mr Hassan of Oscillosoft through his involvement in the Bangladeshi community in about 2010. In 2013, Mr Mamun approached Mr Hassan and asked if he was willing to develop a software program for WSI TAFE. Mr Hassan agreed to do so. Mr Mamun said that, within a short period of time, Oscillosoft had prepared a prototype, which he presented to the WSI TAFE's executive: Ms Hartigan, Ms Westbrook and Francesca Sacaro. According to Mr Mamun, the directors were happy with the prototype and asked Mr Mamun to "roll it out" while they were waiting for the EPIC system.

Mr Mamun initially told the Commission that WSI TAFE's executive approved expenditure of \$30,000 to purchase a pilot iPlan program from Oscillosoft. A pilot program is a demonstration version of the program, which would allow WSI TAFE to ascertain whether the program was suitable to its needs. He subsequently claimed he was given approval to invest \$50,000 in the product for the 2013–14 financial year. Later, he stated that he was given \$30,000 for two semesters (\$60,000 in total).

Mr Mamun denied Ms Hartigan's account (examined below) that she approved only \$30,000 and that all other program development needed to be done in-house by WSI TAFE staff. He gave evidence that perhaps there had been a misunderstanding between Ms Hartigan and himself. Mr Mamun accepted that he was aware that, for contracts worth more than \$30,000, he needed to obtain three quotations, in accordance with the procurement guidelines. When asked whether the initial agreement with Ms Hartigan was to buy a platform to be developed in-house by WSI TAFE employees, Mr Mamun stated:

There was no agreement of in-house or out-house, I was just told that you build up something, bring it on board. There was no agreement of in-house or out-house or anything else for that matter, it was never a clear thing. I was just told, go and do it, that's all I can say.

During his second compulsory examination with the Commission, Mr Mamun claimed that he held documents showing that Ms Hartigan had approved \$30,000 expenditure for two semesters (\$60,000 in total). After his compulsory examination, Mr Mamun produced documents, which he asserted supported this claim. Only one document contained relevant information. It was entitled "Budget Projection All Funds 2013/2014" and indicates that "Marketing Projects (Approved)" were to cost \$30,000 for two semesters. The iPlan program was not a marketing project and the document produced by Mr Mamun does not suggest otherwise.

The Commission is satisfied the document does not evidence that Ms Hartigan had approved \$30,000 expenditure for the iPlan program for two semesters.

Mr Kabir's evidence

Mr Kabir said that, when he started at WSI TAFE in 2012, he realised that there was a need for a budgeting tool. With the assistance of others, Mr Kabir designed an Excel spreadsheet for this purpose. He said that some staff members at WSI TAFE found it difficult to use the Excel spreadsheet and Mr Mamun wanted to automate the process with a web-based solution. According to Mr Kabir, Mr Mamun stated, "I will make my own budgeting tool".

In October 2013, Mr Kabir met Mr Hassan and Mr Ibrahim of Oscillosoft at a meeting that he attended with Mr Wilson and Mr Mamun. Mr Kabir did not know Mr Hassan and Mr Ibrahim personally but had seen them at gatherings of the Bangladeshi community. He said that, from this point in time, a team of people at WSI TAFE – Mr Wilson, Antony Serratore and Mr Kabir – worked together to automate the Excel spreadsheet he had developed. He said the project evolved and, in 2014, the iPlan program was launched at WSI TAFE. Mr Kabir said it was Mr Mamun's decision to engage Oscillosoft, stating, "the only thing I knew from him that he, he know [sic] them, and he know they're really good, he wants to give them an opportunity". Mr Kabir said that Mr Mamun believed Oscillosoft would do the project for a low price.

Ms Hartigan's evidence

At the time the iPlan software program was purchased by WSI TAFE, Ms Hartigan was WSI TAFE's institute director. The executive was comprised of Ms Hartigan, Ms Westbrook and Ms Sacaro. Ms Hartigan participated in an interview with Commission officers. During that interview, Ms Hartigan stated:

It was a really difficult time ... we were in a situation where we had no tools for planning and no tool for finance and we had no budget and it was almost impossible for teaching sections to function. We couldn't give out a budget and if you can't give out a budget then the teaching sections can't actually decide how many classes they're going to run. So the whole of TAFE [NSW] was in a dreadful situation.

Ms Hartigan said that Mr Mamun spoke to her about a program he had seen that allowed for financial and educational planning in the one tool. Ms Hartigan said that her recollection was “vague” but she believed Mr Mamun came to an executive meeting and spoke about the program and because “times were tough” it was agreed by WSI TAFE’s executive that Mr Mamun could purchase the system. She recalled a presentation about the program but could not remember who carried out the presentation.

Ms Hartigan understood from a conversation with Mr Mamun that the “platform” or “base” system cost was \$25,000. She agreed to spend up to \$30,000. It was her understanding that WSI TAFE staff in the planning and finance units would customise the program for WSI TAFE’s needs. She denied that she approved expenditure of more than \$30,000. Ms Hartigan understood that, if a product was procured for over \$30,000, three quotations needed to be obtained.

Ms Westbrook’s evidence

Ms Westbrook was the associate director of WSI TAFE at the time the iPlan program was acquired, and participated in an interview with Commission officers. She said that Mr Mamun brought the iPlan program to WSI TAFE’s institute executive, of which she was a member. Ms Westbrook said that the plan was to purchase the “base” product and for in-house staff to develop it. She recalled that the approval to purchase the product was given on the basis that it cost under \$30,000. She could not recall seeing any proposal submitted by Oscillosoft.

Ms Westbrook agreed that Mr Mamun was a strong advocate for the iPlan product. She said he came to the executives with the product and “it just looked like it would fit the bill. It was something we could customise and was within a reasonable budget”. She said that, when the product went live in March 2014, it worked very well for WSI TAFE. Ms Westbrook was aware that Mr Mamun did a presentation of the iPlan program to all the other finance managers of TAFE NSW institutes.

Mr Wilson’s evidence

Mr Wilson, WSI TAFE’s management accountant, also participated in an interview with Commission officers. Mr Mamun was Mr Wilson’s superior and Mr Kabir was his subordinate. Mr Wilson explained that the systems that were used by WSI TAFE were inadequate for the purposes of budgeting and planning. Mr Wilson said that they were essentially looking for a system that would provide them with control over their budgeting process. They were looking for low-cost options and Mr Mamun said, “I can get a solution for under \$30,000 from this company [Oscillosoft]”.

Mr Wilson said that Oscillosoft was responsible for the development of the product as his staff at WSI TAFE did not possess the requisite skills to develop the program. Mr Wilson said he understood that approval to purchase the iPlan program had come from Ms Hartigan. Mr Wilson said that Mr Mamun was responsible for the procurement of the iPlan program and was in contact with the WSI TAFE executive. Mr Wilson had no involvement in the procurement process. He said that Mr Mamun was the “driving force” behind the iPlan product and described him as “one of the most progressive accounting people in TAFE [NSW] to take that initiative”.

Mr Wilson said that the iPlan program was a success for WSI TAFE and, as a result, other TAFE NSW institutes became interested in the product. He said that he and his team, which included Mr Kabir, gave presentations to other TAFE NSW institutes about the iPlan program. He said that many other TAFE NSW institutes purchased the product.

Evidence of Oscillosoft’s directors

Mr Hassan told the Commission that, in 2013, he became aware that Mr Mamun was working at TAFE NSW, when Mr Mamun contacted him to see if Oscillosoft could develop a program for WSI TAFE. Mr Mamun asked him to help WSI TAFE to build a budgeting tool that would transform an Excel spreadsheet to webpages. Mr Hassan understood that this would be a temporary measure for WSI TAFE because a program called EPIC was in the process of being developed for the same purpose. Mr Hassan told the Commission he saw it as an “opportunity for a year where we can bank some knowledge from them [WSI TAFE]”. Mr Hassan said he designed the software program and he received direction about the requirements of the software from members of the finance team; namely, Mr Wilson, Mr Kabir, Mr Hoque and Mr Serratore. Mr Hassan said the program had to be developed within a three- or four-month period and it was delivered in March 2014. Mr Hassan said that it was well received by those who used it at WSI TAFE.

Mr Ibrahim told the Commission that, in July or August 2013, Mr Mamun approached Oscillosoft and requested the development of a software program for WSI TAFE. Mr Ibrahim said the first official meeting between Oscillosoft and WSI TAFE took place on 13 September 2013 and, from that point, Oscillosoft started to prepare a custom designed program for WSI TAFE's needs. Oscillosoft provided a demonstration to Mr Mamun, and Mr Mamun told them to proceed with the development of the software. Mr Ibrahim said that Mr Mamun was responsible for the strategy behind the development of the iPlan program, while Mr Kabir became involved in providing the specifications and requirements to Oscillosoft. According to Mr Ibrahim, the software was developed on the basis that the EPIC program, TAFE's new budgeting and planning tool, would ultimately replace the iPlan program. Mr Ibrahim said that the WSI TAFE staff were not involved in building the software but provided feedback and specifications about what was required to Oscillosoft.

Mr Suza-Ud-Dawllah told the Commission that, on 13 September 2013, WSI TAFE asked Oscillosoft to convert an Excel spreadsheet to a one- or two-page website. Mr Suza-Ud-Dawllah said this was considered a small job, while WSI TAFE waited for the EPIC system to be launched. At this stage of Oscillosoft's engagement by WSI TAFE, Mr Suza-Ud-Dawllah had little involvement with Mr Mamun, Mr Kabir, the project or its development. The evidence before the Commission indicates that Mr Suza-Ud-Dawllah had no involvement with Mr Mamun or Mr Kabir until late 2017.

The Commission is satisfied that Mr Mamun took steps to engineer the sourcing of the iPlan software program from Oscillosoft by deliberate non-compliance with the approved terms of expenditure determined by WSI TAFE's executive. The Commission examines further steps taken by Mr Mamun to engineer the sourcing of the iPlan program from Oscillosoft in chapter 3. His motivations for doing so are addressed in chapters 4 and 5.

The Commission's findings

Mr Mamun

The Commission is satisfied that, in July or August 2013, Mr Mamun approached Oscillosoft and asked it to develop a software program for WSI TAFE. Further, after the initial meeting with Oscillosoft in September 2013, Mr Mamun directly engaged Oscillosoft to develop the iPlan program on behalf of WSI TAFE.

The Commission accepts the evidence of Ms Hartigan and Ms Westbrook. The Commission is satisfied that the WSI TAFE executive approved expenditure of \$30,000 for the "base" product and believed in-house staff would develop the program. The Commission does not accept Mr Mamun's evidence concerning the terms of the approved expenditure given by WSI TAFE's executive. The terms of the approval advanced by Mr Mamun changed during the course of his evidence and is unsupported by the documents produced by him or any other evidence.

Chapter 3: The procurement of the iPlan program

This chapter examines issues concerning the procurement processes used by Mr Mamun to acquire the iPlan program. By June 2014, the Illawarra Institute of TAFE NSW and the Western Institute of TAFE NSW had expressed interest in purchasing the iPlan program from Oscillosoft. Ultimately, nine of the 10 TAFE NSW institutes purchased the iPlan program. Between 21 January 2014 and 29 August 2018, the nine TAFE NSW institutes paid \$3,409,600.12 to Oscillosoft.

However, as the iPlan program became more widely used among TAFE NSW institutes, questions were raised about the procurement processes used by Mr Mamun to acquire the program.

Scrutiny of the procurement of the iPlan program

In late 2014, issues were raised concerning the steps taken by Mr Mamun to procure the iPlan program. For example, it was noted by other TAFE NSW employees that DEC approval had not been given to directly negotiate with Oscillosoft, and that Oscillosoft did not have the appropriate information and communications technology (ICT) accreditation under the NSW Government's standard commercial framework for ICT services.

By April 2015, an iPlan Reference Group had been established. The purpose of the group was to provide joint ownership of the iPlan program and its related modules among the various TAFE NSW institutes that had purchased the product. The group was to provide a consultative forum to "review, prioritise and schedule proposed changes to the base iPlan system and to escalate issues to state wide bodies where data integration may be required".

On 1 April 2015, an email was sent by Paul McGowan, director of finance and business services at the Riverina Institute of TAFE, to members of the iPlan Reference

Group, including Mr Mamun. In the email, Mr McGowan requested that Mr Mamun take steps to obtain evidence of the initial procurement sign-off for Oscillosoft. There is no evidence that the initial procurement sign-off was ever provided to the iPlan Reference Group. There is no evidence before the Commission that it exists.

On 22 May 2015, the iPlan Reference Group met and discussed, among other things, seeking advice from DEC Procurement to ensure future procurement activity with the iPlan program and Oscillosoft was compliant with NSW Government purchasing guidelines, and to consider options for protocols related to sharing development costs among other TAFE NSW institutes.

On 22 June 2015, Mr McGowan submitted a request to DEC Procurement to directly negotiate with Oscillosoft on behalf of TAFE NSW institutes. On 30 June 2015, the application was refused because the agreement with the supplier exceeded the procurement threshold for the direct engagement of suppliers. The Commission notes that, since 2013, Mr Mamun had directly negotiated with Oscillosoft without the appropriate approval. TAFE NSW approval to negotiate directly with Oscillosoft was given much later, on 21 December 2017 (detailed below).

On 17 August 2015, Mr Mamun wrote to Mr Hassan and Mr Ibrahim and advised them that there was a need to formalise the iPlan procurement process and advised that Oscillosoft needed to obtain ICT accreditation.

Documents obtained from WSI TAFE indicate that, by September 2015, Mr Mamun was making enquiries within WSI TAFE in an attempt to find documentation that supported the original procurement and an approval to spend \$25,000 for the iPlan program. Such documentation could not be located.

On 7 September 2015, Mr Mamun wrote an email to Mr Shreeve, the new WSI TAFE institute director. Mr Wilson, Ms Saccaro and Ms Westbrook were copied into the email:

Robin,

The original iPlan development was initiated by WSI [TAFE] as an interim measure to support a more rigorous process of budgeting in the absence of a central TAFE NSW solution in the foreseeable future. The [WSI TAFE] Institute executives then approved an initial amount of \$40,000 for the project and was given approximately 10 weeks of go live. Due to limited time and funding we looked for a developer profile;

- *Who currently has off the shelf [sic] platform/engine that we can customise for our unique need*
- *The low daily rate (budgeted \$600 to \$800)*
- *Deliver within that time frame*

To manage this meagre budget, we could ONLY afford to get the developer to carry out the systemic customisation ... I knew we could only afford to get a mid to small provider, who may not be listed on the ICT approved provider list.

On 13 September 2015, Mr Shreeve responded:

Hasan

I do not doubt the effort put into the outcomes of iPlan. But that is not my question.

I need to know:

- Are OscilloSoft on any approved contractors list?;*
- If not how were they appointed without breaching TAFE policy? I assume there are provisions for contracts under specified amounts or for unique expertise. I just need to see these policy clauses.*

On 15 September 2015, in response to his email, Mr Mamun wrote the following to Mr Shreeve:

Robin

Our original quote amount under 30k (see attached Page 4 "simple procurement guide") therefore certainly fall within the 1 quote (see attached original quote) policy. IPLAN is an [sic] unique/specific solution, where Oscillosoft has the educational product speciality (Horizon engine – Macq Uni), which falls within the ICAC direct negotiation guide (see attached ICAC policy I have only scanned the relevant pages) approved by DET procurement. Oscillosoft is ICT listed now (see attached email from procurement). We (Seven Institutes) are now at the final stage of obtaining direct negotiation approval with Oscillosoft under the guidance of Industry Procurement team.

Hope this answers your query.

Mr Mamun attached a number of documents to his email, including:

- an email dated 14 September 2015 from a procurement officer at the NSW Department of Industry indicating that Oscillosoft's application to be included on the ICT services prequalification scheme as a registered supplier had been approved
- the "original quote" to which Mr Mamun referred was an Oscillosoft proposal dated 13 December 2013 and described as "V1.3". Mr Mamun, however, purportedly signed the document on 26 November 2013. According to this document, the total cost of the project was \$29,920. The Commission extracted the metadata for the document purportedly signed on 26 November 2013, which indicated that the document was created on 15 September 2015. The Commission notes that the Oscillosoft proposal created on 15 September 2015 was different from the authentic proposal sent by Oscillosoft on 13 December 2013, in evidence before the

Commission, which indicated the amount to be paid by WSI TAFE to Oscillosoft was \$45,544.

On 17 September 2015, Mr Shreeve responded in an email, "OK Thanks Hasan".

In July 2017, all 10 individual TAFE NSW institutes were merged to form One TAFE NSW. Despite concerns about the procurement of the iPlan program, in October 2017, Nick Foster, general manager of financial planning and analysis at TAFE NSW, took steps to acquire the iPlan platform for One TAFE NSW. On 7 September 2017, Oscillosoft sent TAFE NSW a proposal for iPlan to be purchased by One TAFE NSW with pricing options.

On 23 November 2017, Mr Mamun signed a procurement strategy for the engagement of Oscillosoft for the iPlan financial and budget planning solution for One TAFE NSW. The estimated value of the contract was \$3.7 million. The purpose of the document was set out:

Endorsement is being sought to conduct direct negotiation with Oscillosoft Pty Ltd ("Oscillosoft") for an enterprise agreement with regard to iPlan financial and budget planning solutions ("iPlan") for One TAFE.

iPlan was developed by Oscillosoft for Western Sydney Institute (WSI) in 2014 to support a more rigorous process of budgeting with a focus on revenue planning and generation. The tool was adopted by WSI [TAFE] users and later by other 9 regional institutes because it is specifically tailored and customised to meet the financial planning needs of TAFE NSW Institute.

Under the new One TAFE organisational structure, the current platforms are not suitable to enable an enterprise budgeting process and capability, it is necessary to create a hyper-instance, One TAFE platform whose capability and structure will be sufficient to contain and handle all data migrating from the 10 current separate instances. The upgraded iPlan solution will support TAFE NSW in achieving modules' standardisation and data consolidation across all TAFE NSW RTOs and users (approximately 3000 users).

The expected contract duration for this procurement is two years with one-year extension option, however, TAFE NSW will also consider different contract terms should they be beneficial to the TAFE NSW.

Oscillosoft is currently accredited as an advanced supplier on the NSW whole of government ICT Services Scheme.

The procurement strategy form was to be signed by a number of delegates, including Mr Mamun.

On 21 December 2017, approval was given to directly negotiate a contract between One TAFE NSW and Oscillosoft.

On 2 November 2018, One TAFE NSW signed a contract with Oscillosoft for the iPlan program for a cost of \$3,822,192. The contract was to expire on 30 May 2021.

Mr Mamun's evidence

Mr Mamun said that, in late 2014, Mr Shreeve raised issues about the procurement processes used to acquire the iPlan program. Mr Mamun claimed that, up until this point, he had not had any procurement support. He admitted that he did not follow the correct procedures relating to the procurement of the iPlan program. He also admitted that he did understand that he was required to obtain three quotations for contracts valued over \$30,000, stating, "That's right, that I understood, I must say". He also said that he did not know the correct procurement processes and did not know his delegation. He said that he sought approval from the institute directors – namely Ms Hartigan, Ms Westbrook and Ms Saccaro – and he was not told there was a problem with the procurement processes until much later.

Mr Mamun agreed that, on 15 September 2015, he sent Mr Shreeve an Oscillosoft proposal dated 13 December 2013 and described as "V1.3". The document was purportedly signed by Mr Mamun on 26 November 2013. As previously noted, according to this document, the total cost of the project was \$29,920. Mr Mamun agreed that it was likely that he altered the document so it was under the \$30,000 threshold required by the DEC guidelines, but claimed \$29,920 was the amount paid to Oscillosoft as at 26 November 2013, as reflected in the Systems Applications and Products (SAP) system. He also agreed that, by altering the proposal to suggest the cost of the project was under \$30,000, he was representing that there was no need to obtain three quotations. He agreed that he was nervous about the enquiries made by Mr Shreeve.

Mr Mamun agreed that he was responsible for negotiating and dealing with Oscillosoft. He also agreed he was the "driving force" behind the iPlan program and that he was enthusiastic about the product.

Mr Mamun was shown a text message by the Commission that he sent to Oscillosoft director Mr Ibrahim on 6 November 2018:

If asked U first met Hasan [Mamun] from WSI in 2013 at the Edutech conf [conference] in Melbourne ... u had a stall with Horizen (iplans original version).

Mr Mamun said he sent this message at the time Mr Foster was asking questions about the procurement of the iPlan program and Mr Foster had contacted Oscillosoft himself. Mr Mamun agreed that his text message to Mr Ibrahim represented an instruction to Mr Ibrahim to lie to Mr Foster about how they met because he had not declared that he had a prior relationship with the directors of Oscillosoft.

During his interview, Mr Ibrahim told the Commission that he was not sure why he had been sent that message but said that he had known Mr Mamun in a personal capacity from well before 2013.

Mr Mamun said that TAFE NSW still uses the iPlan system and this is TAFE NSW's only budgeting tool. The EPIC program was abandoned in 2017 because it did not possess the capabilities required of it by TAFE NSW.

Mr Kabir's evidence

Mr Kabir said that, some time in 2017, Mr Mamun had told him that a complaint had been made and that WSI TAFE was investigating the procurement of the iPlan program. Mr Mamun asked Mr Kabir for some supporting documents about the approval process. Mr Mamun later told him that he got a "green tick" and there was "nothing wrong" with the procurement process used to acquire the iPlan program. Mr Kabir also stated he believed that Mr Mamun had the delegated authority to engage Oscillosoft.

Mr McGowan's evidence

As previously noted, Mr McGowan was, at the relevant time, the director of finance and business services at the Riverina Institute of TAFE NSW, leaving that position in September 2017. Mr McGowan told the Commission that he was not sure what had taken place when the iPlan program had been acquired by WSI TAFE, but he "retrospectively got actively involved in trying to put things in place ... that I was worried hadn't taken place ... and that was affirmed at a later point". For example, Mr McGowan discovered that Oscillosoft was not on any ICT-approved provider list and he took steps to get it on the list. He also tried to get approval to directly negotiate with Oscillosoft. The iPlan Reference Group was established in response to these issues. Mr McGowan drove the idea of having an iPlan sharepoint site where all the Oscillosoft contracts and minutes of meetings were kept.

Mr McGowan said that he had concerns that there was "some sort of connection" or relationship between Mr Mamun and Oscillosoft. He never directly asked Mr Mamun if there was a relationship between them. He said he went ahead with the purchase of the iPlan program in

late 2014 because he did not want to be the only TAFE NSW institute not using the iPlan program.

Dominica Williams' evidence

Dominica Williams was employed by TAFE for six years until October 2017. She was the manager of finance for the Western Institute of TAFE NSW and was based in the NSW town of Orange. Before leaving TAFE NSW, she worked at TAFE NSW's head office in Ultimo, a suburb of Sydney. Ms Williams was also part of the iPlan Reference Group.

Ms Williams told the Commission that Mr Mamun was enthusiastic about the iPlan program. She described the program as Mr Mamun's "baby". She said that the environment at TAFE NSW at the time of the iPlan program's introduction was "fairly chaotic" and they needed a program to assist in budgeting and planning. Ms Williams said that, when she arranged to purchase the iPlan program for the Western Institute, Mr Mamun offered her a discounted price without discussing it with Oscillosoft.

She said that, at this time, she questioned Mr Mamun's involvement with Oscillosoft and described it as a bit "suss" [suspicious]. She said she had a conversation with Mr Mamun about the nature of his relationship with Oscillosoft and asked whether he was receiving kickbacks or commissions from them. Mr Mamun denied that he had any personal connection with Oscillosoft, or that he was receiving kickbacks or commissions from Oscillosoft. Ms Williams said he told her, "I'm just really enthusiastic about the program". Mr Mamun was not questioned about whether Ms Williams asked him about his personal connection to Oscillosoft, or whether he was receiving kickbacks; although, he was given an opportunity to consider her evidence as outlined in Counsel Assisting's submissions.

The Commission's findings

Mr Mamun

It is common ground that, in March 2014, when the iPlan program was launched at WSI TAFE, it was a success and it proved to be a useful tool for WSI TAFE staff. The evidence that Mr Mamun was considered the "driving force" behind the iPlan program was also uncontroversial.

The issue for determination is whether Mr Mamun knowingly failed to comply with the proper procurement processes when he acquired the iPlan program, and whether he did this in order to engineer the sourcing of the program from Oscillosoft.

The Commission rejects Mr Mamun's evidence that he did not know or understand the proper procurement processes. Importantly, he admitted that he understood that, for contracts valued over \$30,000, he was required to obtain three quotations and he failed to do so. The Commission is satisfied that Mr Mamun knew that he did not comply with proper procurement processes when he acquired the iPlan software program. He knew that he was required to get approval to directly negotiate with a contractor and that an IT contractor should be on the list of ICT accredited suppliers. The Commission is also satisfied that Mr Mamun deliberately ignored and circumvented the proper procurement processes in order to engineer the sourcing of the program from Oscillosoft.

The Commission is also satisfied that, when questions were raised about why proper procurement processes had not been followed, Mr Mamun took steps to conceal the fact that he had knowingly failed to comply with proper procurement processes from Mr Shreeve. The Commission is satisfied that Mr Mamun misled Mr Shreeve about the original procurement of the iPlan program by WSI TAFE, when, on 15 September 2015, he made changes to the Oscillosoft proposal dated 13 December 2013 to bring the amount in the proposal under the \$30,000 threshold (\$29,920). As previously noted, the metadata attached to the document purportedly dated 13 December 2013, indicates that this document was created on 15 September 2015, at the time of Mr Shreeve's enquiries. In Oscillosoft's authentic proposal, dated 13 December 2013, the amount to be paid to Oscillosoft was \$45,544, which was well over the \$30,000 threshold. If Mr Mamun had shown the authentic Oscillosoft proposal to Mr Shreeve, questions would have been asked about why Mr Mamun had failed to obtain three quotations. The Commission is satisfied Mr Mamun was motivated to change the figure on the document to an amount under \$30,000 (\$29,920) because he knew that questions would be asked about why he had failed to obtain three quotations. This finding

is consistent with the admissions made by Mr Mamun during the course of his testimony.

The Commission is also satisfied that, on 6 November 2018, Mr Mamun instructed Mr Ibrahim to lie about how they met, in an effort to hide their relationship from Mr Foster. Finally, the Commission is satisfied that, when asked by Ms Williams, Mr Mamun denied a personal connection with Oscillosoft or that he was receiving kickbacks or commissions from Oscillosoft.

Chapter 4: The relationship between Mr Mamun, Mr Kabir and Oscillosoft

As noted in chapters 2 and 3, the Commission is satisfied that Mr Mamun engineered the sourcing of the iPlan program from Oscillosoft. This chapter examines whether Mr Mamun and Mr Kabir were financially motivated to ensure that Oscillosoft's iPlan program was purchased by WSI TAFE and other TAFE NSW institutes.

In summary, it is not in issue that Mr Mamun and Mr Kabir received payments, and, in the case of Mr Mamun, gifts from Oscillosoft. The issue for determination is whether Mr Mamun and Mr Kabir solicited and received the payments from Oscillosoft as an inducement or reward for exercising their public official functions to show favour to Oscillosoft.

What was the arrangement?

On 31 October 2014, Mr Hassan wrote an email to Mr Ibrahim and Mr Suza-Ud-Dawllah about a meeting he had held with Mr Mamun, as follows.

ASWB¹ Brothers,

I had a meeting at TAFE today, and situation arise I had a detail talk with Mithu Bhai² [Hasan Mamun], where I raise our concern about financial dealings. I found that he believes having enough reason to accept the portion of amount (that we agreed on previously), also because he never makes decision for other TAFE's [only WSI TAFE].

Therefore, he is confident on taking the portion as an external consulting service fee on product design.

¹ ASWB signifies a greeting, and is a short abbreviation of "Assalamu'alaikum warahmatullahi wabarakatuh", which translates as "May the peace, mercy, and blessings of Allah be with you".

² "Mithu Bhai" is a nickname for Hasan Mamun. "Bhai" means elder brother.

I listened to his complete concerns and how he is currently managing the conflict, and personally I was convinced. I asked him to also describe directly both of you in this regards when is suitable, as I won't be taking any responsibility to convince.

What he is proposing is as below,

when any new license [sic] is sold they will be getting 20% on base price as agreed.

if any new module are developed he won't be getting any money.

if any new features (enhancements of modules) are developed we will be charging \$950 as our daily rate, of which he expects to have \$150 as their portion (around 20%). I said I will need to confirm it after discussion [sic] this with my partners and they should be part of the discussion.

He was not in favour of the idea gift as he believe that may cause more confusion, rather then he should not take any. But if he takes things needs to be clearly understood and agreed with respect. And also, when I heard from him I found things are not really what it sounded earlier (but, that's me and I can be wrong)

My obligation was to let you know his understanding and expectation, so that we can discuss when convenient among us.

Also, hassan [Ibrahim] as discussed over the phone earlier, I personally think we should not make this as an entry as commission, as I personally think it is not a commission rather this is the portion they are getting for their involvement as a product design consultant. But this is my understanding and opinion, and we all have our owns [sic] based on our perspective. You are in charge of managing the accounting, hence you may consult with the accountant and are free to make the entry whichever you think is preferred. I do not have any further input in this.

May Allah make it easy for us all.

Kazi Hassan

The Commission is satisfied that the purpose of Mr Hassan's email was to advise his fellow Oscillosoft directors of a conversation he had with Mr Mamun about Mr Mamun and Mr Kabir accepting money from Oscillosoft. The Commission notes that, by this time, other TAFE NSW institutes had started to purchase the iPlan program. Mr Hassan stated that Mr Mamun told him that there was no conflict of interest because he did not make decisions for other TAFE NSW institutes, only WSI TAFE.

Mr Mamun's evidence

Mr Mamun told the Commission that, by July or August 2014, Ms Hartigan told him other TAFE NSW institutes had made enquiries about the iPlan program. Mr Mamun said that, at the time other TAFE NSW institutes started to enquire about the iPlan program, he approached Oscillosoft (subsequently established to be Mr Hassan) and asked for 10% of the profits from the sale of the iPlan program to other TAFE NSW institutes. He told the Commission he asked for "a bit of consultancy, a bit of commission or whatever it is" and Oscillosoft agreed. He said that he suffered from a "false sense of entitlement" and he made a "huge error of judgment".

Mr Mamun accepted that, at a meeting on 31 October 2014, Mr Hassan raised concerns about Oscillosoft's financial dealings with him and Mr Kabir. Mr Mamun said that he told Mr Hassan that he did not have a conflict of interest because Oscillosoft was now selling the iPlan program to other TAFE NSW institutes and he worked for WSI TAFE alone. He told them that he did not make any decisions for the other TAFE NSW institutes and WSI TAFE was in fact in competition with the other TAFE NSW institutes. Mr Mamun gave evidence that he understood that, by accepting payments from Oscillosoft, there was a conflict of interest with his position at WSI TAFE.

Mr Mamun said he also arranged for Mr Kabir to receive 10% of the profits. In effect, this meant that Mr Mamun and Mr Kabir would receive 20% of the profits, which was to be shared equally between them. He said he told Oscillosoft that Mr Kabir had "the same input in developing, so he should get 10 per cent as well".

Mr Mamun said that he probably did code of conduct training when he started at WSI TAFE, and understood that he should not accept payments from a TAFE NSW contractor, namely, Oscillosoft.

Also in evidence before the Commission was an email from WSI TAFE's executive unit on 9 April 2015, sent

to a number of recipients, including Mr Mamun, which set out the obligations of senior executive staff and senior officers to fill out a Gifts and Benefits Declaration Form on a quarterly basis. Mr Mamun was required to disclose the receipt of any gifts or benefits with a value greater than \$50. TAFE NSW's revised Register of Gifts and Benefits Procedures were attached to the email. Mr Mamun did not declare any gifts or benefits received from Oscillosoft.

Mr Kabir's evidence

Mr Kabir said that, between February and May 2014, he received a telephone call from Mr Mamun. Mr Mamun told him that he had been approached by Mr Hassan of Oscillosoft with an offer that they should each receive 10% of any sales to other TAFE NSW institutes if they could help Oscillosoft develop the product.

Mr Kabir gave the following evidence:

I really don't know why they wanted me to involve in this one [10% payments for sales] because whether I was involved in, in this product development or not I still had to do my job. It was, it was part of my job [at WSI TAFE] anyway to, to enhance the product and it's by nature as I told you that I like innovating. I like doing new things so that it benefits the business.

Mr Kabir said that he agreed to receive money because he was experiencing significant financial difficulties and had accrued personal debts. His wife was pregnant and expecting their first child. He was also financially responsible for his family, who resided overseas. He said that he took the opportunity to earn some extra money to support his family. He was purely motivated by the need to earn extra money: "I just keep doing my, you know, normal job [at WSI TAFE] and this will give me additional money". He stated that the developers were from Bangladesh, so he provided additional support by dealing with them in their own language to help them understand the business requirements. He also said that he trusted Mr Mamun as a mentor and did not think twice about accepting the money.

Mr Kabir gave the following evidence:

Sometimes I was a bit surprised. I, I asked myself, I asked Hasan [Mamun] as well and I thanked him that you have included me in this scheme although I'm not doing much about it but it's a great financial help for me. So I, I thought he was generous that he included me in this one ... If anybody investigates Oscillosoft account it's easy, it's crystal clear the money is directly going to our family. He said that look, if something happens it will happen to me. You are, you are out of the, you know, danger because you are not any of the decision making. You haven't

taken any decision as such you're just doing your role and you should be fine.

Mr Kabir gave evidence that, from the outset of the arrangement, Mr Mamun, Mr Kabir, Mr Hassan and Mr Ibrahim had doubts and concerns about whether there might be a conflict of interest by receiving payments from a TAFE NSW contractor. Mr Kabir said that Mr Mamun also told him that, because he had not signed a conflict of interest declaration, there should not be a problem. Mr Kabir agreed, however, that by receiving money from a TAFE NSW contractor, he did have a conflict of interest, stating, "It's a problem, yeah". Mr Kabir said, "I do understand that, getting money from the contractors who works for TAFE, it's, it's a problem, yeah".

Mr Kabir said that Mr Mamun told him he should prepare his wife to answer questions from the tax office about her income from Oscillosoft and she should say that she worked for Oscillosoft. Mr Kabir said that he found out in 2017 that Mr Mamun had initially approached Oscillosoft with a request for money and Mr Hassan had not made the offer himself.

Mr Kabir said that he did not believe any other TAFE NSW employee besides he and Mr Mamun received benefits from Oscillosoft and did not know of any other person at TAFE NSW who was aware of this arrangement with Oscillosoft, other than Mr Mamun. Mr Kabir did not disclose the receipt of this money to anyone at TAFE NSW. Mr Kabir agreed that, when he commenced at WSI TAFE, he completed an induction program, in which he learnt about his obligations in relation to conflicts of interest, secondary employment and pecuniary interests and there was "negligence" on his part in accepting money.

The evidence of Oscillosoft's directors

Mr Hassan told the Commission that Oscillosoft was looking for a "subject matter expert" and, sometime in 2013, Mr Mamun approached him and said:

Hey Kazi look what about you engage us for, for some consulting and we will, we'll make it happen. We'll go through fine details and we'll share with you more because we are giving you knowledge for your product building.

Mr Hassan said he agreed to this because he believed this was a short-term project and Oscillosoft had plans to take the iPlan program to other educational institutions after TAFE NSW. Mr Hassan said, "[w]e are going to approach ... the schools, colleges, private colleges". Mr Hassan said that Mr Mamun and Mr Kabir provided their "expertise" about the financial systems at WSI TAFE because Mr Hassan did not have that knowledge.

Mr Hassan described it as a "no risk" arrangement for Oscillosoft, Mr Mamun and Mr Kabir.

Mr Hassan said he raised the issue of whether Mr Mamun and Mr Kabir had a conflict of interest by receiving money from Oscillosoft and Mr Mamun assured him they did not. According to Mr Hassan, he believed Mr Mamun when he told him:

There's no conflict, no problem ... we believe you [Mr Mamun] and he's a community person, big person, a very big government officer. He must know his rights and he's saying there's no conflict we saying there's no conflict.

Mr Hassan said he told them that Oscillosoft did not have money for a consultant and Mr Mamun said they were happy with payment through "revenue royalty", meaning that they would receive an amount of the revenue should the iPlan product be sold elsewhere. Mr Hassan said that Mr Mamun asked for a 20% commission or royalty to be split evenly between Mr Mamun and Mr Kabir, if the iPlan program was sold to other TAFE NSW institutes. Mr Hassan explained it in this way:

They are experienced, they know the matters and we know that TAFE [NSW], they are working for TAFE [NSW] it shows that they have credibility so and also we don't have language barrier... so it's a, it's a quick win for us.

Mr Ibrahim said that Mr Hassan gave the following account to him of the conversation with Mr Mamun in which he agreed that Oscillosoft would pay 20% of sales to Mr Mamun and Mr Kabir:

Now during this time there was a discussion [which] took place between Kazi [Hassan] and Hasan Mamun. I wasn't in that meeting but Kazi [Hassan] did say look we – because this product is only short term we're going to take this product outside [sell it beyond TAFE NSW]. They [Mamun and Kabir] will consult us and give us a subject matter expertise. Royalty, commission whatever it is, so that's how he explained it and I said okay.

Mr Ibrahim believed that Mr Mamun and Mr Kabir would be providing subject matter expertise about the education industry. According to Mr Ibrahim, Mr Mamun would be providing:

The industry knowledge. The product design, the overall concept. I mean we do the coding that's not a problem but you know anyone can build software but there was workflow that happens in the education industry.

Mr Ibrahim said he saw their work for WSI TAFE as a "small patch job" but they wanted to develop it and take

it outside WSI TAFE and, in order to do this, they needed subject matter expertise about the education industry.

Mr Suza-Ud-Dawllah stated that, on or around 6 June 2014, Mr Hassan made a financial commitment to Mr Mamun and Mr Kabir and, in return, Mr Mamun and Mr Kabir would provide consultancy services to Oscillosoft. According to Mr Suza-Ud-Dawllah, the payments made to Mr Mamun and Mr Kabir were decided and arranged by Mr Hassan, and Mr Ibrahim was responsible for processing the payments. He was aware that gifts were also given to Mr Mamun. He said that he was aware that Mr Mamun did in fact provide consultancy services to Oscillosoft and would sometimes work late into the night while dealing with Oscillosoft's Bangladesh-based team. Mr Suza-Ud-Dawllah said he used to become upset when Mr Mamun would approve leave and such things for the team in Bangladesh and he raised the issue with Mr Hassan. Mr Suza-Ud-Dawllah said:

I'll say they did put a lot of effort, you know but Ash [Ibrahim] always used to say one thing that they're double dipping. Double dipping means that the work they're doing for us, of course, no doubt it's a lot of extra work but TAFE [NSW] is paying them for that because they're a specialist expertise.

Mr Suza-Ud-Dawllah stated that, much later, in 2018, he arranged for cash payments to be made to Mr Mamun and Mr Kabir. These payments are examined in chapter 5.

What payments and gifts were received by Mr Mamun and Mr Kabir?

It is not in issue that, between 20 August 2014 and 16 June 2017, Oscillosoft made payments totalling between approximately \$227,153 and \$228,153. Of this amount, \$206,683.61 was paid by Oscillosoft into an account associated with Mr Mamun's wife and that these payments were intended for Mr Mamun. In January 2018, Mr Mamun had Oscillosoft transfer a further sum of between \$4,000 and \$5,000 to an account in Bangladesh on his behalf. In November/December 2018, Mr Mamun also received two cash payments from Mr Suza-Ud-Dawllah of approximately \$9,120 and \$7,349.

Further, Mr Mamun accepted that he also solicited and received gifts from Oscillosoft: a laptop computer (\$738.99), a cordless telephone (\$228.85) and installation of built-in cupboards at his home (\$2,055).

It is not in issue that the first payment of \$16,000 received by Mr Kabir from Oscillosoft was paid into a friend's

account on 4 August 2014 and then paid to Mr Kabir. Further, between 4 November 2014 and 16 June 2017, Oscillosoft made payments totalling \$200,435 to an account associated with Mr Kabir's wife. The payments were intended for Mr Kabir. Finally, in 2018, Mr Kabir received two cash payments totalling around \$20,000 from Mr Suza-Ud-Dawllah.

Mr Hassan said that he retained a spreadsheet that reflected the payments made to Mr Mamun and Mr Kabir and to which sales to TAFE NSW institutes the payments related. The spreadsheet was later deleted from the computer by Mr Hassan.

Mr Mamun's evidence

Mr Mamun said that he created an ABN in his wife's name and issued invoices in his wife's name to Oscillosoft for payment. He said that he received instructions about what to put on the invoice from Oscillosoft, subsequently established to be Mr Ibrahim. The money was paid into his wife's account but the payments were intended for him. He accepted he received payments totalling around \$200,000 into his wife's account and his wife did not carry out any work for Oscillosoft.

Mr Mamun accepted that he also received gifts from Oscillosoft, specifically, a laptop computer, a cordless telephone and the installation of built-in cupboards at his home. An order was placed by Oscillosoft on behalf of Mr Mamun for solar panels worth between \$6,000 and \$7,000, but Mr Mamun ultimately decided not to purchase the solar panels and the deposit was returned to Oscillosoft. Mr Mamun said the gifts represented the first payments to him from Oscillosoft. He did not declare any of the items to WSI TAFE as gifts received from a contractor. Mr Mamun said that he used the money received from Oscillosoft to pay for his child's tuition fees and also paid for holidays.

Mr Mamun said that, in 2018, the Oscillosoft directors indicated that, as a result of discussions with their solicitor, they did not want to pay the money into his wife's bank account. Oscillosoft then agreed to make cash payments to him. In his first compulsory examination with the Commission, he said that he received two cash payments totalling about \$7,000 from Oscillosoft. In his second compulsory examination, he accepted that, in November/December 2018, he received the first amount of \$9,120, and, in December 2018, he received the second amount of \$7,349.95 from Mr Suza-Ud-Dawllah. He kept the cash at home and spent it on different things.

Mr Mamun said he knew that he should not be receiving payments from Oscillosoft. He said that his wife was vehemently opposed to receiving money from Oscillosoft and he accepted that this was because she knew it was

dishonest. He agreed that an ABN was set up in his wife's name, invoices were issued in her name and money was paid into her account, in an effort to deceive WSI TAFE and to hide his conduct.

Mr Mamun said that on three occasions he declared that his private and financial interests did not conflict with his duties as a member of the Tender Evaluation Team for the procurement of the iPlan program, and that his independence and objectivity had not been or was not likely to be compromised. In evidence before the Commission was a declaration signed by Mr Mamun on 2 August 2016. On this date, Mr Mamun signed a TAFE NSW confidential declaration that:

- (a) *I have read and understand the requirement under the TAFE Code of Conduct and Ethical Practices and The Code of Ethics and Conduct for NSW government sector employees (the Code) to declare any private financial, business, personal or other interests or relationship that have the potential to influence, or could be perceived to influence, decisions made or advice given by me.*
- (b) *I will take prompt action to manage any actual and/or reasonably perceived conflicts of interests, as required by the Code, and at a minimum, update the Declaration annually.*

Mr Mamun declared, "I have no such private interests to declare". Mr Mamun told the Commission he signed the document knowing it was false.

On 18 December 2017, Mr Mamun signed a code of conduct agreement form and sent it to the ICT category manager at TAFE NSW. This is the last declaration form he signed. In the form, Mr Mamun declared that he had read and understood the document entitled the Code of Conduct for Tender Evaluation Teams and agreed to be bound by its contents in respect of his duties related to the procurement of the iPlan program. By signing the document, he asserted that he did not have a conflict of interest with Oscillosoft and had not accepted gifts, gratuities and hospitality from Oscillosoft. Mr Mamun believed he signed another declaration form in 2015; although this was not in evidence. He admitted that he signed all three declarations knowing the declarations were false.

Mr Kabir's evidence

Mr Kabir told the Commission that, on 4 August 2014, he issued his first invoice to Oscillosoft in an amount of \$16,000, in his friend's name and with their bank account details. The friend then transferred the money to him. He then set up an ABN in his wife's name and arranged for payments to be made to his wife's account. He said that he believed that he could not put money into his own

bank account because he was a government employee and there would be a conflict of interest. Mr Kabir's wife did not carry out any work for Oscillosoft.

Mr Kabir said that he would usually receive a payment from Oscillosoft first and then forward an invoice to Oscillosoft. He spent the money by servicing his debts and also paid for some alterations to his home.

In 2018, Mr Kabir said he also received some cash payments, totalling roughly around \$20,000. He received his last cash payment in December 2018. Mr Kabir said the cash payments were made by Oscillosoft director, Mr Suza-Ud-Dawllah. Mr Kabir said that Oscillosoft made cash payments because Oscillosoft had received legal advice that the involvement of Mr Kabir and Mr Mamun with Oscillosoft was "completely illegal".

The evidence of Oscillosoft's directors

Mr Hassan told the Commission that Oscillosoft was first approached by the Illawarra Institute of TAFE NSW to purchase the iPlan program. He said the sale was unexpected and, when Oscillosoft received payment from the Illawarra Institute of TAFE NSW, Mr Mamun demanded their "dues" (meaning payments). Mr Hassan said that Mr Mamun again assured him that there was no conflict of interest because he worked for WSI TAFE and not the other TAFE NSW institutes. It was agreed that Mr Mamun and Mr Kabir should issue invoices to Oscillosoft for payment.

However, Mr Hassan said he and his fellow Oscillosoft director, Mr Ibrahim, were also uneasy when Mr Kabir submitted an invoice in a friend's name and questioned why this had occurred.

Sam [Kabir] send [sic] the first invoice but it was in another person's name. But Ash says "Why another person's [name]?" [Kabir said], "That's fine he's my friend and we are OK with this. They [Ibrahim] said "OK" ... he [Ibrahim] paid him but he said "But it doesn't look good".

Mr Hassan said that he and Mr Ibrahim became concerned when Mr Mamun sought gifts such as a telephone and solar panels rather than payments through the issuance of invoices. This led to a meeting with Mr Mamun, after which he sent the email dated 31 May 2014. Only Mr Mamun and Mr Hassan were present at the meeting. Mr Hassan gave the following account of the meeting:

So I said "This looks like a gift". They [Mamun] said "No". So he negated the idea. He said "And we are rightfully, can take this because we don't [make decisions for], are not other TAFEs". And he draw [sic] a picture, convince me and that's where I came

back and I wrote down "I'm convinced" ... Yeah because I did my part the sanity check. So for me it was even unimaginable that he is taking a risk on that position for this money. It was, still today I don't understand how we did this.

Mr Hassan said he asked Mr Mamun about any potential conflicts of interest on subsequent and multiple occasions. He said Mr Mamun repeatedly told him there was no conflict in accepting a portion of the sales by Oscillosoft to other TAFE NSW institutes because he was not involved in or able to influence the decision-making process of other TAFE NSW institutes.

Mr Hassan said that Mr Mamun and Mr Kabir then set up ABNs in their wives' names and registered for GST. The invoices were sent in their wives' names and the payments were made to their wives' bank accounts. Mr Hassan believed it was done this way for tax purposes and also argued that issuance of "legitimate" invoices in their wives' names made him believe the arrangement was above board. He confirmed that Mr Mamun and Mr Kabir's wives never worked for Oscillosoft.

By November 2014, Mr Hassan said he was no longer using Mr Mamun and Mr Kabir as "subject matter experts", as Oscillosoft had the information it needed from them. However, Mr Hassan claimed that Oscillosoft wanted to honour its original agreement and continued to pay Mr Mamun and Mr Kabir when the iPlan product was sold to other TAFE NSW institutes. Mr Hassan was aware of later cash payments made by Mr Suza-Ud-Dawllah to Mr Mamun and Mr Kabir.

Mr Ibrahim told the Commission that the iPlan program was a success at WSI TAFE and, in June 2014, Illawarra TAFE bought the iPlan program. Mr Ibrahim said that, at that time, Mr Mamun sought payment from them. Mr Ibrahim raised the issue with Mr Hassan because "it doesn't feel right". Mr Hassan discussed it with Mr Kabir and Mr Mamun, who indicated:

...every TAFE [NSW] is independent. They have their own ABN, they have their own decision make [sic] and we dealt with different people so it's got nothing to do with us.

Mr Ibrahim said that Mr Mamun received gifts from Oscillosoft in lieu of payment and Mr Mamun never paid for or offered to pay for the gifts purchased for him.

Mr Ibrahim said he asked Mr Mamun and Mr Kabir for invoices for payment. They ultimately set up ABNs in their wives' names, issued invoices in their wives' names and arranged for the payments to be made into their wives' bank accounts. When asked why this occurred, Mr Ibrahim said "I can only guess it was a tax thing". Mr Ibrahim said he asked Mr Mamun and Mr Kabir why

they submitted invoices in their wives' names and they confirmed it was for tax purposes. Mr Ibrahim said that, as long as there was an invoice, he did not think there was an issue. He agreed that Mr Mamun and Mr Kabir's wives never carried out work for Oscillosoft. Mr Ibrahim was aware of cash payments made by Mr Suza-Ud-Dawllah to Mr Mamun and Mr Kabir.

What was done in return for the payments?

Mr Mamun's evidence

Mr Mamun said he was "absolutely" the "driving force" behind the iPlan program for WSI TAFE, One TAFE NSW and other TAFE NSW institutes.

Mr Mamun agreed that the payments and benefits he received were "absolutely" given as a reward for securing work for Oscillosoft.

Mr Mamun said that he was involved in the promotion of the iPlan program to other TAFE NSW institutes and gave presentations to other TAFE NSW institutes. He said that sometimes Mr Kabir came with him to do this.

Mr Kabir's evidence

Mr Kabir said that Mr Mamun was responsible for liaising with, promoting and demonstrating the iPlan program to other TAFE NSW institutes. Mr Kabir said he and his team were responsible for demonstrating the capability of the product and how the system worked at other TAFE NSW institutes. He said that he visited most TAFE NSW institutes and helped implement the product and systems. He said nine of the 10 TAFE NSW institutes commenced using the iPlan program.

The evidence of Oscillosoft's directors

A common thread throughout the evidence of the Oscillosoft directors, particularly the evidence of Mr Hassan and Mr Ibrahim, was that they were innocently involved in the arrangement with Mr Mamun and Mr Kabir, and that Oscillosoft continued to make payments to Mr Mamun and Mr Kabir even after it stopped using them as subject matter experts in November 2014 because it was committed to honouring its original arrangement.

However, in evidence before the Commission, was an extract from a direct messaging conversation between Mr Ibrahim and Mr Hassan. On 1 September 2016, Mr Ibrahim wrote to Mr Hassan, "yes we [Oscillosoft] need to milk TAFE as much as possible in case mithu bhai [Mamun] no longer there". Mr Hassan responded, "yes".

During their respective interviews, neither Mr Ibrahim nor Mr Hassan were questioned about this conversation, but it was brought to their attention in the submissions of Counsel Assisting, which were provided to them. The Commission is satisfied that this conversation reflected an understanding between Mr Hassan and Mr Ibrahim that Mr Mamun was the source of much work from TAFE NSW and that they needed to secure work while Mr Mamun was still employed at TAFE NSW. The Commission notes that this conversation took place in the context of contemporaneous payments made to Mr Mamun and Mr Kabir.

What did others at WSI TAFE know?

Ms Hartigan said that Mr Mamun did not tell her anything about the company from whom he intended to purchase the product; namely, Oscillosoft. She said that she would have expected any association with the company to be disclosed by Mr Mamun. She could not remember if Mr Mamun said that he had an association with the company but at a later point in her interview she said:

No. No, no, no, sorry I'm sorry I'm quite – I'm just a bit astounded. No, I'm not – was never – I wasn't aware that there was – that any association between Mr Mamun and the company existed.

Mr Wilson had no idea that Mr Mamun had a previous relationship with Oscillosoft. Mr Wilson was not aware of any gifts or benefits received from Oscillosoft by anyone at WSI TAFE. Mr Wilson stated:

Because it was part of the code of conduct and it was actually common knowledge basically if you received any gifts you have to declare them from the start and you know certainly not retain them for personal use.

Mr Serratore, who was, at the time, a financial resource analyst at WSI TAFE, stated that he believed that Mr Mamun and Mr Hassan attended the same mosque together. He knew of no connection between Mr Kabir and Oscillosoft.

The Commission is satisfied that no one else at WSI TAFE knew of the financial relationship between Mr Mamun, Mr Kabir and Oscillosoft.

Chapter 5: Disputes arise between Mr Mamun, Mr Kabir and the Oscillosoft directors

This chapter addresses the disputes that arose between the directors of Oscillosoft, Mr Mamun and Mr Kabir from the end of 2017. The disputes centred on the financial relationship between Oscillosoft and Mr Mamun and Mr Kabir. The most significant events are set out below. Mr Suza-Ud-Dawllah was able to provide contemporaneous records about some of these events.

This chapter also considers whether the conduct of Mr Mamun, Mr Kabir, Mr Hassan, Mr Ibrahim and Mr Suza-Ud-Dawllah concerning the benefits received by Mr Mamun and Mr Kabir constitutes serious corrupt conduct.

A business partnership is proposed

In May 2017, Mr Kabir visited Bangladesh for his sister's wedding and, while there, he visited Oscillosoft's Dhaka office on 5 May 2017 and proposed a business partnership with Oscillosoft. Mr Hassan was working in Oscillosoft's Dhaka office at the time of Mr Kabir's visit. Mr Kabir expressed to him that he and Mr Mamun were interested in becoming business partners. Mr Hassan said:

That was not a surprise, because it was already anticipated as most of the [TAFE NSW] institutes are already taking the licences and there are not many TAFEs left where they are eligible to get the royalty and surely anyone, if given the opportunity to like to hold the part [sic] of such a product.

Mr Ibrahim told the Commission that, after the iPlan program had been sold to most other TAFE NSW institutes, Mr Mamun approached Mr Ibrahim and indicated that he wanted equity in Oscillosoft. According to Mr Ibrahim, Mr Mamun and Mr Kabir were "not happy with 20 percent basically".

It was decided among the Oscillosoft directors that Mr Suza-Ud-Dawllah, on behalf of Oscillosoft, would

seek legal advice about the proposal to form a company with Mr Mamun and Mr Kabir. Mr Hassan said that, at one point, Mr Kabir indicated to them that he was willing to quit his job at TAFE NSW to pursue this opportunity with Oscillosoft.

Mr Suza-Ud-Dawllah told the Commission that, after Mr Kabir's visit to Oscillosoft's Bangladesh office on 5 May 2017, further discussions about expanding the iPlan product took place between Mr Mamun, Mr Kabir, Mr Suza-Ud-Dawllah and Mr Hassan at a Thai restaurant in Sydney on 7 November 2017. Mr Suza-Ud-Dawllah said that, during the meeting:

HM [Mamun] was advising he has 20 years of industry experience and also he has a lot of ideas with that this product will be a game changer in Australia and Globally. Then conversation took place about the percentage and they wanted 30 percent of the new company sharer [sic]. During the conversation Mamun was explaining he is not doing any conflict of interest here. Then after finishing the meeting I told Mr Hassan we need to take some legal advice in relation to the structure of the partnership company. At this stage all we talk about the future goal and vision.

Mr Mamun denied that he was intending to form a company or partnership with the directors of Oscillosoft, insisting that he intended to consult for Oscillosoft.

In his evidence before the Commission, Mr Kabir agreed he travelled to Bangladesh in May 2017 and visited Oscillosoft's offices in Bangladesh. He agreed that he discussed becoming a business partner of Oscillosoft with Mr Hassan. He said that Mr Mamun had previously posited the idea of becoming Oscillosoft's business partner. Mr Kabir said that he participated in subsequent discussions about this idea and in particular, that he and Mr Mamun would have a 20% to 30% stake in any new company.

Oscillosoft seeks legal advice

On 15 November 2017, Mr Suza-Ud-Dawllah received legal advice that Oscillosoft could not establish any company with Mr Mamun and Mr Kabir because they worked for TAFE NSW. He said he did not tell his lawyer that they had been making payments to Mr Mamun and Mr Kabir:

Immediately after I finished with [the lawyer], I did call to KH [Hassan] and AI [Ibrahim]. I have advised them the situation. I was traumatised and shattered because I never imagine we have done such a mistake in our life and we did not even realise. At this stage I was advising KH and AI we should cancel the TAFE contract and should get out. AI and KH was [sic] trying to come [sic] me down that day that's all they could do from overseas.

Mr Suza-Ud-Dawllah said he was “very much worried and panicked” and called Mr Ibrahim on 13 occasions and Mr Hassan on nine occasions. In response, Mr Hassan told him: “Mohammad, don't worry too much and you are unnecessary [sic] panicking”.

Mr Hassan said that Mr Suza-Ud-Dawllah visited Oscillosoft's lawyers on 16 November 2017 (the evidence establishes that it was actually 15 November) and, when he returned, he advised Mr Hassan and Mr Ibrahim that “everything we did from the beginning was a criminal act, and it left us shattered”. According to Mr Hassan, Mr Mamun and Mr Kabir told them that “lawyers always scare people. We have submitted documents in ICAC. We have already have [sic] a tax audit”.

Mr Ibrahim told the Commission that Mr Suza-Ud-Dawllah received legal advice on 16 November 2017 (the evidence establishes it was 15 November). According to Mr Ibrahim, “Lawyer goes ‘what are you guys talking about? You can't formulate anything like this’”. Mr Ibrahim was overseas at the time the legal

advice was received but Mr Suza-Ud-Dawllah contacted him to let him know what had happened.

On 16 November 2017, the following email exchange took place between Mr Ibrahim and Mr Suza-Ud-Dawllah:

[Mr Ibrahim]:

I knew this was wrong from the beginning flagged it a few time in my way but got shut down ...

Also after a while I got used to it so I didn't want to hamper it.

Now it's coming out.

Litteraly [sic] I am in the toilet

[Mr Suza-Ud- Dawllah]: *Bhai we are in Big Trouble looks like I will talk to few more people just to find out how to cover our Back.*

We should not worry for Mithu Bhai and the deal at the moment.

Bhai in legal matter when I am panicking means we are in shit just one person have to raise the awareness and we all will be under shit

On 10 January 2018, Mr Suza-Ud-Dawllah said a meeting took place at Penrith between Mr Ibrahim, Mr Mamun and Mr Suza-Ud-Dawllah. Mr Suza-Ud-Dawllah said:

So a meeting was called to meet Hassan [sic] Mamun and warn him with the past doings

[Mr Suza-Ud-Dawllah had located previous and

similar cases of the Commission on the internet] and to advise possible pull out from the contract. We also advised him this type of incident did happen in the past and how come by being an employee of the TAFE he did ignore and keep telling us everything is good what he was doing. At this stage the first time we did advise him face-to-face that we have legal advice on what he has done with us was wrong.

Mr Mamun gave evidence that Oscillosoft received legal advice that Oscillosoft should not form any business relationship with Mr Mamun and Mr Kabir, as follows.

That, that is the first time I, both of us got to understood [sic] the depth of incorrect and unscrupulous thing that we did, the depth of it ... And that's the black and white first it ever came to me.

Despite Mr Mamun's claim that, after the legal advice was received, he knew their conduct was "incorrect" and "unscrupulous", Mr Mamun agreed that he suggested making payments to Bangladesh instead. He could not recall if they asked him to repay the money paid by Oscillosoft to him, although he stated, "[B]ut we spoke about the rectification process so that implies money back [to Oscillosoft]". He also agreed that he continued to chase Mr Hassan for money in late November 2017. He agreed that there were discussions held about paying him in shares, bullion and property. Mr Mamun said that any discussions about potential payment related to potential consultancy for Oscillosoft and that no further money was owed to them for the sale of the iPlan program to other institutes.

Mr Kabir recalled that Oscillosoft sought legal advice on this proposal and they were advised that it was not possible to proceed with the proposed business venture as long as he and Mr Mamun worked for TAFE NSW.

Further payment to Mr Mamun in January 2018

Despite the advice from Oscillosoft's lawyers, on 22 January 2018, Mr Mamun contacted Mr Ibrahim and asked for an urgent cash payment to be made to a Bangladeshi bank account, purportedly for a relative overseas who required a brain operation. On the same date, Mr Hassan arranged for between \$4,000 and \$5,000 in Australian dollars to be transferred to the nominated account for Mr Mamun. Mr Ibrahim said he wanted to help Mr Mamun because he was in need. Mr Ibrahim said that Mr Mamun asked him to "balance" it out of money owed to him but Mr Hassan told Mr Mamun they needed to arrange a meeting with him to discuss their relationship. Mr Suza-Ud-Dawllah said

he became aware of the payment only after it had been arranged by Mr Hassan and Mr Ibrahim, and he was not pleased about it.

Mr Mamun agreed that, between 20 and 23 January 2018, he requested that Oscillosoft transfer \$5,000 in Australian dollars to a Bangladeshi bank account. He claimed that this money related to money owed for the sale of the iPlan program to the Northern Sydney Institute. He claimed the payment was intended for an orphanage in Bangladesh but also agreed that he had told Oscillosoft it was for a "brain tumour" and a "family issue".

Memorandum of understanding

The evidence establishes that, in early 2018, Mr Ibrahim drafted a memorandum of understanding (MOU) on behalf of Oscillosoft; although the other Oscillosoft directors also contributed to the document. The proposed parties to the MOU were Oscillosoft, Mr Mamun and Mr Kabir. The first paragraph of the draft MOU stated that, by signing the document, Mr Mamun and Mr Kabir were agreeing that they had no conflict of interest as they had no direct or indirect involvement or influence in the current negotiations between Oscillosoft and One TAFE NSW. The second paragraph of the MOU stated that the purpose of the MOU was:

- "establish the fairness and recognize respective contributions among all the parties for future enhancements of Horizon Engine"
- "avoid any confusion or disputes"
- "avoid any legal risks"
- "recognising risk and liabilities of both parties especially OSC [Oscillosoft] in terms of distribution and distribution methods".

Mr Ibrahim told the Commission that he prepared the MOU with the intention that it would deter Mr Mamun and Mr Kabir from asking for more money. Mr Ibrahim stated:

Right, so I wanted to put it in writing ... yes, you've been telling me you have no conflict, you've been telling me you have no authority or whatever, influence [on the negotiations between Oscillosoft and One TAFE NSW]. Sign it and then all these things can be done.

He said that Mr Hassan and Mr Suza-Ud-Dawllah also contributed to the contents of the MOU.

Mr Ibrahim said that, in early February 2018, they held a meeting at Mr Mamun's house. Mr Mamun, Mr Kabir and the three Oscillosoft directors attended the

meeting. Mr Ibrahim said that Mr Mamun sighted the document but pushed it away. According to Mr Ibrahim, Mr Mamun said, “Why do we need to write things down, right. It’s, you know, we’re going to help each other”. Mr Ibrahim said that they advised Mr Mamun and Mr Kabir about the legal advice they had received and they said, “Oh lawyers say that all the time, they want to make money”. Mr Ibrahim said that Mr Mamun was asking for money to be paid to him in different ways but he did not want to sign the MOU.

According to Mr Ibrahim, Mr Suza-Ud-Dawllah, from nowhere, offered to do “something” in his personal capacity. Mr Ibrahim said that he and Mr Hassan were very upset with Mr Suza-Ud-Dawllah and, after the meeting, argued with Mr Suza-Ud-Dawllah for making such a promise. He said that Mr Mamun and Mr Kabir then started chasing Mr Suza-Ud-Dawllah for money they believed was owed to them.

According to Mr Hassan, Mr Ibrahim drafted an MOU in an effort to stop further payments to Mr Mamun and Mr Kabir. Mr Hassan said that Mr Ibrahim wrote the MOU because he wanted to:

...deter [Mr Mamun and Mr Kabir] and put a stop 'cause all this time it was just talking, talking, talking ... Right, so I wanted to put it in writing in front of it so they can. Yes you've been telling me you have no conflict, you've been telling me you have no authority or whatever, no influence. Sign it and then all these things can be done. No problem right.

Mr Hassan told the Commission that the Oscillosoft directors attended a meeting with Mr Mamun and Mr Kabir at Mr Mamun’s home. Mr Hassan said that they indicated to Mr Mamun and Mr Kabir that, unless they signed the MOU, they could not continue their dealings. Mr Hassan said that they did not sign the MOU and Mr Suza-Ud-Dawllah ultimately said that he might be able to do “something” for them in his personal capacity. According to Mr Hassan, he and Mr Ibrahim were very upset with Mr Suza-Ud-Dawllah for making such a promise.

Mr Suza-Ud-Dawllah told the Commission that, after receiving legal advice, he was adamant that they should have no further dealings with Mr Mamun and Mr Kabir, stating, “I have advised Kazi [Hassan] and Ash [Ibrahim] made enough mistake [sic] so let’s not make any more”. He said that Mr Hassan and Mr Ibrahim came up with the idea of drafting the MOU to “scare them [Mr Mamun and Mr Kabir] off”.

Mr Suza-Ud-Dawllah said that, in late February 2018, the Oscillosoft directors met with Mr Mamun and Mr Kabir at Mr Mamun’s house. The Oscillosoft directors showed Mr Mamun the MOU. Mr Mamun did not read it and

returned it to them, telling them that he trusts them and, with trust, he does not need to sign anything. He said that Mr Mamun is a “personality [that] can convince pretty much anyone” and was asking to be paid his “outstanding balance” in cash.

Mr Suza-Ud-Dawllah said that Mr Hassan said to Mr Mamun, “ask Mohammad if he can do something by his personal capacity because he has other business”. In these circumstances, Mr Suza-Ud-Dawllah said that he agreed to see if he could do something in order to end the meeting: “Till that day I was fully unaware of who I was dealing with. HM [Hasan Mamun] is very clever and with [sic] the ability of manipulation”. He said that Mr Mamun was a “nightmare” when it came to “money chasing”. He said that Mr Hassan and Mr Ibrahim were upset with him for making the offer to do something in his personal capacity. Mr Suza-Ud-Dawllah said that, after this conversation, he became the contact person for Mr Kabir and Mr Mamun.

Mr Mamun remembered when Oscillosoft drafted an MOU in January 2018. He said he read it but did not sign it. Mr Kabir recalled discussions about an MOU but he had not seen a copy of it until the Commission provided it to him.

Cash payments in late 2018

Mr Suza-Ud-Dawllah told the Commission that, in June or July 2018, Mr Mamun approached him and requested that Mr Suza-Ud-Dawllah purchase a small boat for him for \$5,000 or \$6,000. Mr Suza-Ud-Dawllah refused the request and told him: “We are an IT company. How can we buy a boat and give it to you? Sorry I am unable to assist you”. Mr Suza-Ud-Dawllah said that, a few weeks later, Mr Mamun approached him with another request. This time he told Mr Suza-Ud-Dawllah that he was planning a family holiday in December 2018 and needed Oscillosoft to buy four or five aeroplane tickets. Again, he said he refused Mr Mamun’s request.

Mr Suza-Ud-Dawllah said that Mr Kabir approached him in October 2018 and asked for payment of the balance of monies he believed were owed to him. Mr Suza-Ud-Dawllah said that he advised Mr Hassan:

It is very hard for me to manage them without giving them their dues because last 4-5 years they are use [sic] too [sic] with the payments from Mr Ibrahim and Mr Hassan. So my advice was clears [sic] their past dues and stop dealing with them. Kazi [Hassan] agreed with me and told me to handle the matter.

Mr Suza-Ud-Dawllah gave Mr Kabir money in his personal capacity and not from Oscillosoft’s accounts. He could not remember the amount provided to Mr Kabir.

He said that, within a few days of making a cash payment to Mr Kabir, Mr Mamun approached him for a cash payment and he paid him. Mr Suza-Ud-Dawllah said he felt “trapped”.

Mr Suza-Ud-Dawllah said he made second cash payments to Mr Mamun and Mr Kabir in December 2018, and that he made it clear to Mr Mamun and Mr Kabir that there was no further money owed to them.

Mr Hassan said that, in November 2018, after the One TAFE NSW contract was signed, Mr Suza-Ud-Dawllah was approached for cash payments by Mr Mamun and Mr Kabir. Mr Hassan said he and Mr Ibrahim were against making cash payments to Mr Mamun and Mr Kabir, but he was aware that they had been made. Mr Hassan said that the Commission’s intervention was “the best thing ever happened to us that ICAC as a superior authority intervene on this matter. Otherwise for us, it would be never ending”.

Mr Ibrahim was aware of the cash payments made by Mr Suza-Ud-Dawllah but did not approve of them.

Mr Mamun agreed that he asked Mr Suza-Ud-Dawllah to buy a small boat for him but claimed he was joking because he already had a boat. He agreed that he asked Mr Suza-Ud-Dawllah to purchase airline tickets for a European holiday but Mr Suza-Ud-Dawllah refused to do so. He admitted to accepting a further two cash payments from Mr Suza-Ud-Dawllah in late 2018. He agreed that, in November or December 2018, he received \$9,120 cash payment from Mr Suza-Ud-Dawllah, which represented what he was owed from the sale to the Northern Sydney Institute of TAFE NSW. He agreed there was a second cash payment from Mr Suza-Ud-Dawllah in December 2018, at which time he received \$7,349.95.

Mr Kabir said that, after Oscillosoft received legal advice, the Oscillosoft directors were not in favour of paying them because Mr Kabir and Mr Mamun were still working at WSI TAFE and there was a conflict of interest. However, Mr Kabir gave evidence that two cash payments were made by Mr Suza-Ud-Dawllah totalling around \$20,000. Mr Kabir said that, at the time Oscillosoft stopped paying him, he believed there was still money owed to him by Oscillosoft.

The Commission’s findings

Mr Mamun

The Commission is satisfied that, in mid-June 2014, Mr Mamun approached Oscillosoft and sought an arrangement with Oscillosoft whereby he and Mr Kabir would be engaged as “subject matter experts” by

Oscillosoft and, in return, they would receive 20% of the profits from the sale of the iPlan program to other TAFE NSW institutes, to be shared equally between Mr Mamun and Mr Kabir. This was a verbal arrangement.

The Commission is also satisfied that Mr Mamun knew there was a conflict of interest by accepting payments from Oscillosoft and that his conduct was dishonest. This finding is consistent with Mr Mamun’s admissions and the evidence that he knowingly signed declarations in 2015, 2016 and 2017, in which he falsely declared that his private and financial interests did not conflict with his duties as a member of the Tender Evaluation Team for the procurement of the iPlan program, and that his independence and objectivity had not been or was not likely to be compromised.

The Commission is satisfied that Mr Mamun received gifts from Oscillosoft (a laptop computer, a cordless telephone and built-in cupboards). He did not declare the gifts to WSI TAFE.

The Commission is satisfied that Mr Mamun set up the ABN in his wife’s name, issued invoices in her name and arranged for Oscillosoft to make payments into his wife’s bank account, in an effort to hide his conduct and deceive TAFE NSW. The Commission is satisfied that Mr Mamun’s wife did not carry out any work for Oscillosoft.

The Commission is satisfied that, between 20 August 2014 and 16 June 2017, Mr Mamun solicited and received payments totalling \$206,683.61 from Oscillosoft, which were paid to his wife’s bank account but intended for him. In January 2018, Mr Mamun arranged for Oscillosoft to transfer between \$4,000 and \$5,000 in Australian dollars to a Bangladeshi bank account. In late 2018, Mr Mamun solicited and received two cash payments from Mr Suza-Ud-Dawllah totalling approximately \$16,469.

Further, the Commission is satisfied that Mr Mamun provided three false declarations (in 2015, 2016 and 2017) to TAFE NSW that his private and financial interests did not conflict with his duties as a member of the Tender Evaluation Team for the procurement of the iPlan program, knowing that these declarations were false.

Finally, the Commission is satisfied that Mr Mamun received the payments into his wife’s bank account, cash payments and gifts as a reward for securing work for Oscillosoft, and that Mr Mamun did this by promoting the iPlan program to other TAFE NSW institutes.

Mr Kabir

The Commission is satisfied that Mr Kabir agreed to the arrangement to receive money from Oscillosoft for financial gain.

The Commission is satisfied that Mr Kabir solicited and received his first payment from Oscillosoft by issuing an invoice to Oscillosoft on 4 August 2014 in an amount of \$16,000 in his friend's name, which was paid into his friend's bank account and then transferred to Mr Kabir. The Commission is satisfied that, between 4 November 2014 and 16 June 2017, Mr Kabir solicited and received payments totalling \$200,435 from Oscillosoft, which were paid into Mr Kabir's wife's account but were intended for Mr Kabir. Then, in late 2018, Mr Kabir solicited and received around \$20,000 in cash payments from Mr Suza-Ud-Dawllah of Oscillosoft.

The Commission rejects Mr Kabir's evidence that he trusted Mr Mamun as a mentor and guide and therefore did not question Mr Mamun's assertions that there was no issue in Mr Kabir accepting payments. While the Commission accepts that Mr Mamun and Mr Kabir had a close personal relationship, Mr Kabir, as a TAFE employee, had his own obligations and responsibilities to his employer.

The Commission is satisfied that Mr Kabir knew it was wrong to receive payments from a TAFE NSW contractor, namely Oscillosoft, and, by doing so, there was a conflict of interest. In the Commission's view, Mr Kabir received his first payment via his friend, set up the ABN in his wife's name, issued invoices in her name and arranged for Oscillosoft to make payments into his wife's bank account, in an effort to hide his conduct because he knew his conduct was dishonest and impermissible as an employee of TAFE NSW. The Commission rejects Mr Kabir's evidence that he set up an ABN in his wife's name and arranged for the payments to be made to her account because he believed he was somehow avoiding a conflict of interest. The Commission is satisfied that Mr Kabir's wife did not carry out work for Oscillosoft. The Commission notes that Mr Kabir did not disclose this arrangement to anyone at TAFE NSW, even though he gave evidence that he had undertaken code of conduct training in which he learnt about conflicts of interest, secondary employment and pecuniary interests.

The Commission accepts Mr Hassan's evidence that Oscillosoft ceased using Mr Mamun and Mr Kabir as subject matter experts in November 2014, but that it continued to pay Mr Mamun and Mr Kabir in accordance with the original arrangement (20% of sales to be shared equally between them). In the Commission's view, this occurred not because Oscillosoft was committed to honouring the original arrangement, but because the iPlan program was being promoted and sold to other TAFE NSW institutes by Mr Mamun and Mr Kabir. While the Commission considers that Mr Mamun was the driving force behind the iPlan program, the Commission is satisfied that Mr Kabir also played a role in promoting the iPlan program.

The Commission is satisfied that Mr Kabir demonstrated the capability of the iPlan program and helped implement the iPlan program for other TAFE NSW institutes and, in this way, exercised his public official functions in order to ensure that other TAFE NSW institutes purchased the iPlan program.

Mr Hassan, Mr Ibrahim, Mr Suza-Ud-Dawllah

The Commission is satisfied that, in mid-June 2014, Mr Mamun and Mr Kabir were verbally engaged as consultant subject matter experts by Oscillosoft and, in return, would receive 20% of any sale of the iPlan program to other TAFE NSW institutes. The evidence from the Oscillosoft directors was that they intended to sell this product to educational institutes beyond TAFE NSW and needed information about the education industry from Mr Mamun and Mr Kabir. It is noted that there is only oral evidence from the Oscillosoft directors, Mr Mamun and Mr Kabir about the consultancy services carried out by Mr Mamun and Mr Kabir. There is no documentary evidence evidencing what work was carried out by Mr Mamun and Mr Kabir. Nevertheless, the Commission is satisfied that this was the basis of their initial engagement and some consultancy services were possibly carried out by Mr Mamun and Mr Kabir.

However, Mr Hassan said that, by November 2014, Oscillosoft was no longer using Mr Mamun and Mr Kabir as consultant subject matter experts as Oscillosoft had the information it needed from them. He said that they were committed to honouring their original agreement and continued to pay Mr Mamun and Mr Kabir when the iPlan product was sold to other TAFE NSW institutes.

The Commission accepts that Oscillosoft stopped using Mr Mamun and Mr Kabir as subject matter experts by November 2014, but does not accept that Oscillosoft continued to pay Mr Mamun and Mr Kabir out of a desire to honour the original arrangement. In the Commission's view, it is implausible that Oscillosoft would continue to pay Mr Mamun and Mr Kabir between November 2014 and late 2018, when no services had been provided by Mr Mamun and Mr Kabir since November 2014. The Commission is satisfied that it was the intention and belief of Mr Hassan and Mr Ibrahim that, by making payments to Mr Mamun and Mr Kabir, in return, Mr Mamun and Mr Kabir would secure work for Oscillosoft at TAFE NSW. The arrangement provided significant revenue to Oscillosoft. The Commission is satisfied the payments were not given innocently, but rather were given with the intention of influencing Mr Mamun and Mr Kabir in their public official duties in relation to the affairs of Oscillosoft at TAFE NSW.

Further, the Commission is satisfied that, in return for payments from Oscillosoft, Mr Mamun and Mr Kabir exercised their public official functions by promoting and demonstrating the iPlan program to other TAFE NSW institutes. As previously noted, the iPlan program was ultimately adopted by nine of the 10 TAFE NSW institutes and then by One TAFE NSW in November 2018. The Commission is satisfied that it was Mr Mamun and his team, including Mr Kabir, who promoted and assisted in the implementation of the program in the other TAFE NSW institutes, and in return Mr Mamun and Mr Kabir received payments and gifts from Oscillosoft. The Commission is satisfied that Mr Mamun was considered the “driving force” behind the iPlan program’s success among the individual TAFE NSW institutes and he was also involved in securing Oscillosoft’s contract with One TAFE NSW in November 2018.

Further, in the Commission’s view, Mr Ibrahim’s and Mr Hassan’s evidence, that they believed Mr Mamun and Mr Kabir had set up ABNs in their wives’ names, retrospectively issued invoices in their wives’ names, and arranged for payments to be made into their wives’ bank accounts for tax purposes, is implausible. It is rejected. The Commission also rejects Mr Hassan’s evidence that the issuing of “legitimate” invoices in Mr Mamun’s and Mr Kabir’s wives’ names made him believe the arrangement was above board.

The Commission is satisfied that Mr Ibrahim and Mr Hassan knew that Mr Mamun and Mr Kabir, by carrying out the transactions in their wives’ names, were attempting to hide their conduct. The contemporaneous record of the conversation between Mr Ibrahim and Mr Suza-Ud-Dawllah on 16 November 2017 reflects the true position. In the words of Mr Ibrahim, he “knew this was wrong from the beginning” but “got used to it so ... didn’t want to hamper it”. It is inconceivable that Mr Ibrahim’s fellow directors did not also believe the arrangement between Oscillosoft, Mr Mamun and Mr Kabir was “wrong”.

The contemporaneous records confirm that, throughout Oscillosoft’s relationship with Mr Mamun and Mr Kabir, Mr Hassan and Mr Ibrahim were concerned about their financial dealings with Mr Mamun and Mr Kabir and the possibility of the existence of a conflict of interest. However, neither Mr Hassan nor Mr Ibrahim raised concerns with anyone at TAFE NSW at any point or with any other authority. Indeed, even after Mr Suza-Ud-Dawllah received legal advice that Oscillosoft could not establish a new company or a partnership with Mr Mamun or Mr Kabir, they still failed to report their relationship with Mr Mamun and Mr Kabir to anyone at TAFE NSW or any other authority. Instead, the Oscillosoft directors drafted an

MOU, purportedly in an attempt to have Mr Mamun and Mr Kabir commit to writing that they had no conflict of interest and they had no involvement or influence in the negotiations between Oscillosoft and One TAFE NSW.

However, their attempts, in early February 2017, to have Mr Mamun and Mr Kabir sign the MOU failed. Despite this, the Oscillosoft directors still did not report the issue to anyone at TAFE NSW. It is noted that the evidence establishes that Mr Mamun was considered a respected member of the Bangladeshi community and an elder whom they trusted, but the Commission does not consider that this adequately explains Oscillosoft’s failure to report Oscillosoft’s relationship with Mr Mamun and Mr Kabir. The Commission is satisfied that Oscillosoft failed to report the relationship because its directors were deeply concerned about the implications for them personally and for Oscillosoft if TAFE NSW became aware of the relationship; particularly because Oscillosoft had made payments to Mr Mamun and Mr Kabir in return for Oscillosoft securing work at TAFE NSW.

The evidence of the cash payments to Mr Mamun and Mr Kabir is damning. Even after legal advice was received, cash payments were made to Mr Mamun and Mr Kabir. As previously noted, on 22 January 2018, Mr Hassan and Mr Ibrahim arranged for one payment of between \$4,000 and \$5,000 in Australian dollars to be made to a Bangladeshi bank account on Mr Mamun’s behalf. Mr Hassan and Mr Ibrahim said that Mr Mamun told them he needed the money for a family emergency, they wanted to help him and made the payment in a personal capacity, not thinking that Mr Mamun would ask for the money to be deducted from what he believed was owed to him from the sale of the iPlan product.

The Commission is satisfied that it was clear to both Mr Hassan and Mr Ibrahim that no payments should be made to Mr Mamun and, despite this, they still facilitated the payment, knowing it was wrong to do so. The Commission is satisfied that the payment was made by Oscillosoft to Mr Mamun as a payment or reward for securing work for Oscillosoft at TAFE NSW.

Later, in 2018, Mr Suza-Ud-Dawllah made further cash payments to Mr Mamun and Mr Kabir. Mr Suza-Ud-Dawllah said he felt “trapped” and wanted to pay them what they believed was owed to them in an effort to put an end to the relationship. Mr Hassan and Mr Ibrahim were aware of cash payments made by Mr Suza-Ud-Dawllah to Mr Mamun and Mr Kabir and, while they stated they did not approve of the cash payments, they also did not take steps to stop them. The Commission is satisfied that the payments were made by Mr Suza-Ud-Dawllah to Mr Mamun and Mr Kabir as a payment or reward for securing work for Oscillosoft at TAFE NSW.

The Commission is satisfied that Mr Suza-Ud-Dawllah's involvement was limited to the cash payments and the evidence indicates that he was not involved in dealing with Mr Mamun and Mr Kabir until late 2017.

The Commission has taken into account all the circumstances and, in particular:

- the clandestine nature of the payments (both the payments into the bank accounts and the cash payments)
- Mr Hassan's and Mr Ibrahim's failure to raise their concerns about conflicts of interest with anyone at TAFE NSW or any other authority
- the significant amount of work obtained by Oscillosoft from TAFE NSW
- the cash payments made by Mr Suza-Ud-Dawllah to Mr Mamun and Mr Kabir after legal advice had been received in November 2017.

In all the circumstances, the Commission is satisfied that the payments made by Oscillosoft and Mr Suza-Ud-Dawllah to Mr Mamun and Mr Kabir were payments or rewards for securing work for Oscillosoft at TAFE NSW.

Corrupt conduct

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

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

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

Hasan Mamun

The Commission is satisfied that, between August 2014 and December 2018, Mr Mamun solicited and received payments totalling between approximately \$227,153 and \$228,153. Of this amount, the sum of \$206,683.61 was paid by Oscillosoft into his wife's bank account. In January 2018, a further amount of between \$4,000 and

\$5,000 was transferred by Oscillosoft into an account in Bangladesh on his behalf. The balance of approximately \$16,469 was comprised of cash payments. The cash payments were made by Mr Suza-Ud-Dawllah. There were also gifts provided by Oscillosoft to Mr Mamun. The payments and gifts were provided by Oscillosoft and Mr Suza-Ud-Dawllah as an inducement or reward for Mr Mamun exercising his official functions to favour Oscillosoft in relation to its business with TAFE NSW, or the receipt of which would tend to influence Mr Mamun to show favour to Oscillosoft's business interests in the exercise of his official functions.

The Commission is satisfied that this was corrupt conduct on the part of Mr Mamun because it was conduct that could adversely affect, either directly or indirectly, the honest or impartial exercise of his official functions and therefore comes within s 8(1)(a) of the ICAC Act. The conduct was also corrupt conduct within the meaning of s 8(1)(b) of the ICAC Act. It involved the dishonest and partial exercise of his official functions. Further, it was corrupt conduct within the meaning of s 8(1)(c) of the ICAC Act, as Mr Mamun exercised his official functions in breach of public trust.

The Commission is also satisfied that on 15 December 2015, and in order to conceal the fact that proper procurement procedures had not been followed in the engagement of Oscillosoft, Mr Mamun made changes to the Oscillosoft proposal dated 13 December 2013 to bring the amount in the proposal under the threshold above which three quotations were required.

The Commission is satisfied that this was corrupt conduct on the part of Mr Mamun because it was conduct that could adversely affect, either directly or indirectly, the honest or impartial exercise of his official functions and therefore comes within s 8(1)(a) of the ICAC Act. The conduct was also corrupt conduct within the meaning of s 8(1)(b) of the ICAC Act. It involved the dishonest and partial exercise of his official functions. Further, it was corrupt conduct within the meaning of s 8(1)(c) of the ICAC Act, as Mr Mamun exercised his official functions in breach of public trust.

The Commission is further satisfied that Mr Mamun knowingly signed declarations in 2015, 2016 and 2017, in which he falsely declared that his private and financial interests did not conflict with his duties as a member of the Tender Evaluation Team for the procurement of the budgeting and planning program known as the iPlan program, and that his independence and objectivity had not been or was not likely to be compromised.

The Commission is satisfied that this was corrupt conduct on the part of Mr Mamun because it was conduct that could adversely affect, either directly or indirectly, the

honest or impartial exercise of his official functions and therefore comes within s 8(1)(a) of the ICAC Act. The conduct was also corrupt conduct within the meaning of s 8(1)(b) of the ICAC Act. It involved the dishonest and partial exercise of his official functions. Further, it was corrupt conduct within the meaning of s 8(1)(c) of the ICAC Act, as Mr Mamun exercised his official functions in breach of public trust.

In considering s 9(1)(a) of the ICAC Act, it is relevant to have regard to a number of possible offences.

Section 249B(1) of the *Crimes Act 1900*, “the Crimes Act” provides:

(1) If any agent corruptly receives or solicits (or corruptly agrees to receive or solicit) from another person for the agent or for anyone else any benefit—

(a) as an inducement or reward for or otherwise on account of—

(i) doing or not doing something, or having done or not having done something, or

(ii) showing or not showing, or having shown or not having shown, favour or disfavour to any person,

in relation to the affairs or business of the agent’s principal, or

(b) the receipt or any expectation of which would in any way tend to influence the agent to show, or not to show, favour or disfavour to any person in relation to the affairs or business of the agent’s principal,

the agent is liable to imprisonment for 7 years.

The word “agent” is defined by s 249A of the Crimes Act to include any person employed by, or acting for or on behalf of, any other person in any capacity.

The Commission is satisfied, for the purposes of s 9(1)(a) of the ICAC Act, that, if the facts it has found in relation to Mr Mamun’s solicitation and receipt of payments were to be proved on admissible evidence to the criminal standard of proof and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Mamun had committed offences under s 249B(1) of the Crimes Act of corruptly receiving an inducement or reward in return for showing favour to Oscillosoft in its business with TAFE NSW, or the receipt of which would tend to influence Mr Mamun to exercise his public official functions in a manner favourable to Oscillosoft.

In relation to Mr Mamun’s alteration of the Oscillosoft proposal on 15 December 2015, it is also relevant to

note the offences of making and using a false document contrary to s 253(b)(ii) and (iii) and s 254(b)(ii) and (iii) of the Crimes Act. Section 253 and s 254 provide as follows:

253 Forgery—making false document

A person who makes a false document with the intention that the person or another will use it—

(a) to induce some person to accept it as genuine, and

(b) because of its being accepted as genuine—

(i) to obtain any property belonging to another, or

(ii) to obtain any financial advantage or cause any financial disadvantage, or

(iii) to influence the exercise of a public duty,

is guilty of the offence of forgery.

[Note: Maximum penalty—Imprisonment for 10 years.]

254 Using false document

A person who uses a false document, knowing that it is false, with the intention of

(a) inducing some person to accept it as genuine, and

(b) because of its being accepted as genuine—

(i) obtaining any property belonging to another, or

(ii) obtaining any financial advantage or causing any financial disadvantage, or

(iii) influencing the exercise of a public duty,

is guilty of an offence.

[Note: Maximum penalty—Imprisonment for 10 years.]

Relevantly, for the purposes of s 253 and s 254 of the Crimes Act, a document is “false” if, and only if, the document (or any part of the document) purports to have been made in the form in which it has been made by a person who did not make it in that form (s 250(1)).

A person is to be treated as “making a false document” if the person alters a document so as to make it false within the meaning of this section, whether or not it is false in some other respect apart from that alteration (s 250(2)).

The Commission is satisfied, for the purposes of s 9(1)(a) of the ICAC Act, that, if the facts it has found

in relation to Mr Mamun's changes to the Oscillosoft proposal dated 13 December 2013 were to be proved on admissible evidence to the criminal standard of proof and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Mamun had committed offences contrary to s 253 and s 254 of the Crimes Act.

With respect to the signing of the declarations in 2015, 2016 and 2017, it is relevant to note s 192G of the Crimes Act, which is as follows:

192G Intention to defraud by false or misleading statement

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.

[Note: Maximum penalty—Imprisonment for 5 years.]

Section 192D provides that, for the purposes of s 192G, "obtain" a financial advantage includes:

- (a) obtain a financial advantage for oneself or for another person, and*
- (b) induce a third person to do something that results in oneself or another person obtaining a financial advantage, and*
- (c) keep a financial advantage that one has, whether the financial advantage is permanent or temporary*

The Commission is satisfied, for the purposes of s 9(1)(a) of the ICAC Act, that, if the facts it has found in relation to the declarations signed by Mr Mamun in 2015, 2016 and 2017 were to be proved on admissible evidence to the criminal standard of proof and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Mamun had committed offences contrary to s 192G of the Crimes Act.

In respect of each of the offences identified above, the Commission is satisfied that the jurisdictional requirements of s 13(3A) of the ICAC Act are satisfied.

The Commission is also satisfied, for the purposes of s 74BA of the ICAC Act, that Mr Mamun's conduct was serious corrupt conduct. The conduct was serious

because it took place over a significant period of time – between August 2014 and December 2018 – and involved a significant amount of money. Mr Mamun held a senior position and a position of trust at WSI TAFE. His conduct involved a significant breach of trust. The conduct could have impaired public confidence in public administration, given Mr Mamun was an experienced and senior public official. Mr Mamun's conduct was deliberate, premeditated, and motivated by self-interest. His conduct also involved a significant degree of planning and concealment. Finally, if proved on admissible evidence to the criminal standard of proof, Mr Mamun's conduct could have involved the serious indictable offences identified above.

Samiul Kabir

The Commission is satisfied that, between August 2014 and December 2018, Mr Kabir solicited and received payments totalling approximately \$220,435. The first payment of \$16,000 was paid by Oscillosoft into a friend's account. The balance of the payments made by Oscillosoft were paid into an account of Mr Kabir's wife. The balance of \$20,000 was paid in cash by Mr Suza-Ud-Dawllah. The payments were made by Oscillosoft and Mr Suza-Ud-Dawllah as an inducement or reward for Mr Kabir exercising his official functions, to favour Oscillosoft in relation to its business with TAFE NSW or the receipt of which would tend to influence Mr Kabir to show favour to Oscillosoft's business interests in the exercise of his official functions.

The Commission is satisfied that this was corrupt conduct on the part of Mr Kabir because it was conduct that could adversely affect, either directly or indirectly, the honest or impartial exercise of his official functions and therefore comes within s 8(1)(a) of the ICAC Act. The conduct was also corrupt conduct within the meaning of s 8(1)(b) of the ICAC Act. It involved the dishonest and partial exercise of Mr Kabir's official functions. Further, it was corrupt conduct within the meaning of s 8(1)(c) of the ICAC Act, as Mr Kabir exercised his official functions in breach of public trust.

The Commission is satisfied, for the purposes of s 9(1)(a) of the ICAC Act, that, if the facts it has found were to be proved on admissible evidence to the criminal standard of proof and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Kabir had committed offences contrary to s 249B(1) of the Crimes Act, of corruptly receiving an inducement or reward in return for showing favour to Oscillosoft in its business with TAFE NSW or the receipt of which would tend to influence Mr Kabir to exercise his public official functions in a manner favourable to Oscillosoft.

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

The Commission is also satisfied, for the purposes of s 74BA of the ICAC Act, that Mr Kabir's conduct was serious corrupt conduct. The conduct was serious because it took place over a significant period of time – between August 2014 and December 2018 – and involved a significant amount of money. Further, it was serious corrupt conduct because Mr Kabir held a position of trust at WSI TAFE and his conduct involved a significant breach of trust. The conduct was serious, as it could have impaired public confidence in public administration, given Mr Kabir was a relatively senior and experienced public official. Further, Mr Kabir's conduct was deliberate and motivated by self-interest. His conduct also involved a significant degree of planning and concealment. Finally, if proved on admissible evidence to the criminal standard of proof by an appropriate tribunal, Mr Kabir's conduct could have involved serious indictable offences contrary to s 249B of the Crimes Act.

Kazi Hassan

The Commission is satisfied that, between August 2014 and December 2018, Mr Hassan facilitated payments by Oscillosoft of between \$210,683.61 and \$211,683.61 as well as gifts to Mr Mamun, and facilitated payments by Oscillosoft of approximately \$200,435 to Mr Kabir, as an inducement or reward for Mr Mamun and Mr Kabir exercising their public official functions, to favour Oscillosoft in relation to its business with TAFE NSW or the receipt of which would tend to influence Mr Mamun and Mr Kabir to show favour to Oscillosoft's business interests in the exercise of their official functions.

This conduct was corrupt conduct for the purposes of s 8(1)(a) of the ICAC Act.

It was conduct that could adversely affect, either directly or indirectly, the honest or impartial exercise of the official functions of Mr Mamun and Mr Kabir.

In considering s 9(1)(a) of the ICAC Act, it is relevant to consider s 249B(2) of the Crimes Act. Section 249B(2) provides:

(2) If any person corruptly gives or offers to give to any agent, or to any other person with the consent or at the request of any agent, any benefit—

(a) as an inducement or reward for or otherwise on account of the agent's—

(i) doing or not doing something, or having done or not having done something, or

(ii) showing or not showing, or having shown or not having shown, favour or disfavour to any person,

in relation to the affairs or business of the agent's principal, or

(b) the receipt or any expectation of which would in any way tend to influence the agent to show, or not to show, favour or disfavour to any person in relation to the affairs or business of the agent's principal,

the firstmentioned person is liable to imprisonment for 7 years.

(3) For the purposes of subsection (1), where a benefit is received or solicited by anyone with the consent or at the request of an agent, the agent shall be deemed to have received or solicited the benefit.

The Commission is satisfied that Oscillosoft is a "person" within the meaning of s 249B (2) of the Crimes Act by reason of s 21 of the *Interpretation Act 1987* (NSW). So too is Mr Hassan. As a matter of procedure, it is relevant to note s 249F(1) of the Crimes Act which provides as follows:

249F Aiding, abetting etc

(1) A person who aids, abets, counsels, procures, solicits or incites the commission of an offence under this Part is guilty of an offence and is liable to imprisonment for 7 years.

The Commission is satisfied, for the purposes of s 9(1)(a) of the ICAC Act, that, if the facts it has found were to be proved on admissible evidence to the criminal standard of proof and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Oscillosoft and Mr Hassan committed offences contrary to s 249B(2) of the Crimes Act.

In any such proceedings, procedural issues may arise concerning whether Mr Hassan and Mr Ibrahim might have aided and abetted Oscillosoft's conduct, or whether Oscillosoft might be vicariously liable for the conduct of Mr Hassan and Mr Ibrahim (*Hamilton v Whitehead* (1988) 166 CLR 121). For the purposes of this report, the Commission has proceeded on the assumption that any prosecution would proceed on the basis that Mr Hassan offered to give, and aided and abetted the actual giving by Oscillosoft, of benefits to Mr Mamun and Mr Kabir. These are procedural issues only. The penalty of seven years imprisonment applies to both alternatives.

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

The Commission is also satisfied, for the purposes of s 74BA of the ICAC Act, that Mr Hassan's conduct was serious corrupt conduct. The conduct took place over a significant period of time – between 2014 and 2018

– and involved a significant amount of money. Further, his conduct could have impaired public confidence in public administration. The conduct was also deliberate, premeditated, and motivated by self-interest and the interests of Oscillosoft.

Ashique Ibrahim

The Commission is satisfied that, between August 2014 and December 2018, Mr Ibrahim facilitated payments by Oscillosoft of between \$210,683.61 and \$211,683.61 and gifts to Mr Mamun, and facilitated payments by Oscillosoft of approximately \$200,435 to Mr Kabir, as an inducement or reward for Mr Mamun and Mr Kabir exercising their public official functions, to favour Oscillosoft in relation to its business with TAFE NSW or the receipt of which would tend to influence Mr Mamun and Mr Kabir to show favour to Oscillosoft's business interests in the exercise of their official functions.

This conduct was corrupt conduct for the purposes of s 8(1)(a) of the ICAC Act. It was conduct that could adversely affect, either directly or indirectly, the honest or impartial exercise of the official functions of Mr Mamun and Mr Kabir.

The Commission is satisfied, for the purposes of s 9(1)(a) of the ICAC Act, that, if the facts it has found were to be proved on admissible evidence to the criminal standard of proof and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Ibrahim and Oscillosoft committed offences contrary to s 249B(2) of the Crimes Act.

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

The Commission is satisfied, for the purposes of s 74BA of the ICAC Act, that Mr Ibrahim's conduct was serious corrupt conduct. The conduct took place over a significant period of time – between 2014 and 2018 – and involved a significant amount of money. Further, such conduct could have impaired public confidence in public administration. The conduct was also deliberate, premeditated, and motivated by self-interest and the interests of Oscillosoft.

Mohammad Suza-Ud-Dawllah

The Commission is satisfied that, in late 2018, Mr Suza-Ud-Dawllah made cash payments to Mr Mamun of approximately \$16,469 and \$20,000 to Mr Kabir, as an inducement or reward for Mr Mamun and Mr Kabir exercising their public official functions, to favour Oscillosoft in relation to its business with TAFE NSW or the receipt of which would tend to influence Mr Mamun and Mr Kabir to show favour to Oscillosoft's business interests in the exercise of their official functions.

This conduct was corrupt conduct for the purposes of s 8(1)(a) of the ICAC Act. It was conduct that could adversely affect, either directly or indirectly, the honest or impartial exercise of the official functions of Mr Mamun and Mr Kabir.

The Commission is satisfied, for the purposes of s 9(1)(a) of the ICAC Act, that, if the facts it has found were to be proved on admissible evidence to the criminal standard of proof and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Suza-Ud-Dawllah committed offences contrary to s 249B(2) of the Crimes Act.

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

The Commission is satisfied, for the purposes of s 74BA of the ICAC Act, that Mr Suza-Ud-Dawllah's conduct was serious corrupt conduct. The conduct involved a significant amount of money. Further, his conduct could have impaired public confidence in public administration. The conduct was also deliberate, premeditated, and motivated by self-interest and the interests of Oscillosoft.

Section 74A(2) statements

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

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

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

The Commission is satisfied that Mr Mamun, Mr Kabir, Oscillosoft, Mr Hassan, Mr Ibrahim and Mr Suza-Ud-Dawllah are affected persons for the purposes of s 74A(2) of the ICAC Act.

Mr Mamun

The evidence Mr Mamun gave was subject to a declaration under s 38 of the ICAC Act and therefore cannot be used against him in criminal proceedings except for offences under the ICAC Act and disciplinary proceedings under s 114A of the ICAC Act. There is, however, other admissible evidence that would be available, including TAFE NSW records, financial records, Oscillosoft's records, and the evidence of other TAFE NSW employees.

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 Mamun for offences of soliciting and receiving corrupt commissions or rewards contrary to s 249B(1) of the Crimes Act, making and using a false document contrary to s 253 and s 254 of the Crimes Act, and publishing false or misleading statements with the intention of obtaining a financial advantage contrary to s 192G of the Crimes Act.

Mr Mamun is no longer employed at TAFE NSW. Accordingly, the question of whether consideration should be given to the taking of action against him for a disciplinary offence, or the taking of action with a view to his dismissal, does not arise.

Mr Kabir

The evidence given by Mr Kabir was subject to a declaration under s 38 of the ICAC Act and therefore cannot be used against him in criminal proceedings, except for offences under the ICAC Act and disciplinary proceedings under s 114A of the ICAC Act. There is, however, other admissible evidence that would be available, including TAFE NSW records, financial records, Oscillosoft's records, and the evidence of TAFE NSW employees.

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 Kabir for offences of soliciting and receiving corrupt commissions or rewards contrary to s 249B(1) of the Crimes Act.

Mr Kabir is no longer employed at TAFE NSW. Accordingly, the question of whether consideration should be given to the taking of action against him for a disciplinary offence, or the taking of action with a view to his dismissal, does not arise.

Oscillosoft

Oscillosoft did not engage with the Commission otherwise than through its directors. Nevertheless, as previously noted, the Commission is satisfied Oscillosoft is an affected person.

There is admissible evidence that would be available in respect of any prosecution of Oscillosoft, including TAFE NSW records, financial records and Oscillosoft's own records.

The Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Oscillosoft for offences of corruptly giving corrupt benefits or rewards contrary to s 249B(2) of the Crimes Act.

Mr Hassan

Mr Hassan participated in an interview with Commission investigators. This interview did not take place under caution and might not be able to be used in criminal proceedings against him. However, there is other admissible evidence that would be available, including TAFE NSW records, financial records and Oscillosoft's own records.

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 Hassan for offences of offering to give, and aiding and abetting the giving by Oscillosoft of, corrupt commissions or rewards to Mr Mamun and Mr Kabir contrary to s 249B(2) of the Crimes Act.

Mr Ibrahim

Mr Ibrahim participated in an interview with Commission investigators. The interview took place under caution. He made a number of admissions. The interview could potentially be used against him in criminal proceedings. There is also other admissible evidence that would be available, including TAFE NSW records, financial records and Oscillosoft's records.

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 Ibrahim for offences of offering to give, and aiding and abetting the corrupt giving by Oscillosoft of, corrupt commissions or rewards contrary to s 249B(2) of the Crimes Act.

Mr Suza-Ud-Dawllah

Mr Suza-Ud-Dawllah participated in an induced interview with Commission investigators, which may not be able to be used in evidence against him. The payments made by him to Mr Mamun and Mr Kabir in late 2018 were in cash. However, there is other admissible evidence that would be available, including financial records, Oscillosoft's records and potentially the evidence of one or more of the other Oscillosoft directors.

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 Suza-Ud-Dawllah for offences of giving corrupt commissions or rewards contrary to s 249B(2) of the Crimes Act.

Chapter 6: The recruitment of Mr Kabir and Mr Hoque

This chapter examines whether Mr Mamun was involved in the recruitment of two people in the finance unit at WSI TAFE who were personally connected to him; namely, Mr Kabir and Mr Hoque. It also examines Mr Kabir's involvement in the recruitment of Mr Hoque.

The employment of Mr Kabir

On 21 February 2012, Mr Kabir sent his resume and his application addressing the selection criteria for the position of manager of budget and performance at WSI TAFE to Mr Mamun's personal email address. Mr Mamun was a member of the panel who interviewed Mr Kabir. On 22 May 2012, Mr Kabir accepted the job with WSI TAFE.

Mr Mamun said he believed he reviewed the application and resume for Mr Kabir, stating, "I believe so, if he has sent it to me, I would have, I would have done that, yes". He told the Commission that he did not declare his personal relationship with Mr Kabir. He initially stated that he probably would not have declared his friendship with Mr Kabir because "it was not a friendship". He accepted he was a member of the panel responsible for the recruitment for the position, eventually won by Mr Kabir. He could not recall whether he spoke to anyone at WSI TAFE about his relationship with Mr Kabir after Mr Kabir started working at WSI TAFE. He stated, "I may have told Rick [Wilson] that, look, I knew this guy, all right, he, he's a good operator".

Mr Kabir described Mr Mamun as his "local guardian", "family friend" and "mentor", who he had known since around 2003 or 2004. Mr Kabir said that Mr Mamun told him about the job and reviewed his application before it was submitted. He said that Mr Mamun was on the panel that recruited him. Mr Kabir also did not disclose his connection to Mr Mamun:

Because I can't remember whether Hasan [Mamun] asked me not to mention that or not, we never really

talked about it so we never, I never acknowledged, I never told anyone ... it was my perception he might not be comfortable that if I disclose to anybody that I know Hasan [Mamun], people might think that he has done a favour to me.

Mr Wilson said that he was the convenor of the panel that recruited Mr Kabir. Mr Mamun was also on the panel. Mr Wilson said that Mr Mamun did not declare an existing friendship or relationship with Mr Kabir at the time of his recruitment. Mr Wilson said, "No, no. I was not aware that they had a strong friendship outside of work ... I would be surprised if they did because they kept that very secretive to me if that was the case".

The relevant code of conduct provided that an employee should not be involved in any appointment, or any other decisions relating to discipline, promotion or pay and conditions for any employee, or prospective employee, to who you were related, or with whom you had a close personal or business relationship. The code did not define the nature of a close personal or business relationship. Further, the code provided that selection panel members should declare to the panel any prior personal knowledge or interest in any of the applicants to ensure that any conflicts of interest, which might unduly influence that person in the panel's deliberations, were carefully managed.

The Commission's findings

The Commission is satisfied that Mr Mamun and Mr Kabir had a close personal relationship at the time of Mr Kabir's recruitment and rejects Mr Mamun's evidence that they were not close. The Commission accepts Mr Kabir's evidence on this issue. The Commission is satisfied that Mr Mamun assisted Mr Kabir in the preparation of his application for the position. The Commission is also satisfied that Mr Mamun did not declare to the panel his prior personal knowledge or interest in Mr Kabir, and therefore failed to manage

his conflict of interest in accordance with the terms of the code of conduct. However, the Commission is not satisfied that the conduct is sufficiently serious to warrant findings of corrupt conduct.

The employment of Mr Hoque

On 18 March 2013, Mr Kabir sent an email to Mr Mamun's personal email address. The email was written in the Bengali language. In effect, Mr Kabir wrote to Mr Mamun requesting that Mr Mamun review Mr Hoque's resume for a position at WSI TAFE. Mr Kabir wrote that he was not sure what experience should be added to Mr Hoque's resume, as Mr Wilson wanted a person with more experience in the role. Mr Hoque's draft resume was attached to the email.

On 19 March 2013, Mr Mamun sent Mr Kabir an email attaching Mr Hoque's revised resume. He asked Mr Kabir to check the alterations he had made to Mr Hoque's resume about the company, Thomson Reuters. In the email, Mr Mamun concluded by stating, "May Allah forgive me for this action". The resume attached to the email had a number of alterations made to it. The resume claimed that, between April 2009 and July 2011, Mr Hoque had worked for Thomson Reuters Asia Pacific as an assistant management accountant. It claimed that, while Mr Hoque was employed at Thomson Reuters, he had played a significant role in the implementation of the Cognos software program for consolidated group reporting. Cognos is a web-based business intelligence tool, which facilitates budgeting and reporting. The resume claimed that Mr Hoque was a proficient user of the Cognos and Oracle systems.

On 6 May 2013, the employment agency, Randstad, sent Mr Hoque an email confirming that he was the successful candidate for a four-month contract role as a business analyst/financial resource analyst at WSI TAFE. Mr Hoque forwarded this email to Mr Mamun's

personal email address. Mr Wilson was to be Mr Hoque's supervisor. Mr Mamun was Mr Wilson's supervisor.

In evidence before the Commission was an undated reference check form completed by an employee of Randstad, which indicates that the employee spoke with Mr Kabir. Mr Kabir provided a reference in respect of the time Mr Hoque and Mr Kabir had allegedly worked together at Thomson Reuters in support of Mr Hoque's application for the contract position at WSI TAFE. Mr Kabir told her that Mr Hoque was an ex-colleague with whom he had worked at Thomson Reuters for almost 10 months. Mr Kabir stated that Mr Hoque had been employed there as an assistant management accountant and was responsible for management reporting, reconciliation of accounts and cost-centre management. Mr Kabir also rated and assessed Mr Hoque's purported performance at Thomson Reuters.

In 2017, Mr Hoque applied for other positions at TAFE NSW and submitted a resume that included the parts altered by Mr Mamun. On 6 October 2017, Mr Hoque was interviewed for the role of senior finance advisor at WSI TAFE. Mr Hoque secured the position. Mr Kabir was the convenor of the panel. Mr Mamun provided a reference for Mr Hoque on 10 October 2017, and was the delegate who approved Mr Hoque's appointment on 19 October 2017. Mr Hoque secured the position over two other candidates.

Mr Mamun's evidence

Mr Mamun told the Commission that he had known Mr Hoque since 2010 through his wife. Mr Mamun admitted to altering Mr Hoque's resume to include false information. For instance, Mr Mamun changed Mr Hoque's resume to state that he had worked for Thomson Reuters when, in fact, he had never worked at Thomson Reuters. He said he wrote the words, "May Allah forgive me for this action" because:

It is wrong ... We've added few of the experiences in there. Yes ... That's not right. That's not true. Some of it is true, but ... not entirely true. Yeah ... So it looks like I, it looks like, good for the CV, but he didn't get the job anyway.

Mr Mamun knew that Mr Hoque had not worked at Thomson Reuters and that Mr Hoque did not have experience with the Cognos and Oracle systems. The Commission notes that, contrary to Mr Mamun's evidence, Mr Hoque did in fact obtain the contract position for which he applied in 2013.

Mr Kabir's evidence

Mr Kabir told the Commission he knew Mr Hoque through Mr Mamun and through the Bangladeshi community. Mr Kabir said he sent Mr Hoque's resume to Mr Mamun. Mr Mamun changed the resume to suggest that Mr Hoque had worked at Thomson Reuters when, in fact, he had not. Mr Kabir had worked for Thomson Reuters and Mr Mamun asked him to check that part of the resume to make sure it was accurate.

Mr Kabir agreed that he provided a reference check for Mr Hoque and, during the reference check, he said that Mr Hoque was previously employed at Thomson Reuters, when he knew that this was not true. Mr Kabir said that Mr Mamun wanted Mr Hoque to be hired for the role because Mr Mamun believed Mr Hoque had the requisite skills and education for the role. Mr Kabir did not believe he was on the panel because it was a contract position and did not require a panel to be formed.

Mr Kabir said that he was the convenor of the recruitment panel in 2017 when Mr Hoque applied for a permanent position at WSI TAFE as a senior finance advisor of planning system and tools. He said that Mr Hoque secured the position. Mr Kabir believed that he declared a conflict of interest on this occasion.

Mr Wilson's evidence

Mr Wilson said that Mr Hoque was hired on a contractual basis because of uncertainty around restructuring. Mr Wilson said that they approached the recruitment agency, Randstad, to provide a candidate for the position and he was engaged through Randstad. He was aware that Mr Kabir knew Mr Hoque but formed the impression that they were not close friends. He was not sure whether they knew one another through work or the Bangladeshi community. He believed that Mr Hoque and Mr Kabir had both worked for Thompson Reuters at the same time for a short period. Mr Wilson did not believe that Mr Mamun knew Mr Hoque outside of work.

During his interview, Mr Wilson was shown a copy of Mr Hoque's original resume (before Mr Mamun altered it) with the name redacted. Mr Wilson stated that he believed such an applicant would not have the requisite experience to obtain a role with WSI TAFE as a business analyst/financial resource analyst in 2013 because he had limited accounting experience. Mr Wilson was shown a copy of the resume altered by Mr Mamun, and submitted by Mr Hoque through Randstad, which included Mr Hoque's purported experience with Thomson Reuters and the Cognos and Oracle systems. Mr Wilson indicated that someone with the experience outlined in the altered resume was suitable for the position. Mr Hoque was initially employed on a four-month contract and Mr Wilson was happy with his performance.

Mr Serratore's evidence

Mr Serratore was hired at the same time as Mr Hoque as a financial resource analyst. He said he had no knowledge of a relationship between Mr Hoque and Mr Mamun or Mr Kabir.

Mr Hoque's evidence

On 20 May 2013, Mr Hoque commenced a four-month contract position as a financial resource analyst role at WSI TAFE, after applying through Randstad. Mr Kabir was his supervisor and also interviewed him for the role.

It was Mr Hoque's evidence that he knew Mr Kabir through the Bangladeshi community and that Mr Kabir had told him about the position. He had also met Mr Mamun on three or four occasions through the Bangladeshi community. He said that Mr Kabir asked Mr Hoque to send him his resume. Mr Hoque said that Mr Kabir changed his resume on his behalf and told him that he should submit the amended resume when applying for the position of financial analyst at WSI TAFE. Mr Hoque said the changes were made to make him more appealing for the role at WSI TAFE. He said Mr Kabir amended the resume to indicate that Mr Hoque had worked at the company Thomson Reuters when, in fact, he had never held a job there. He later stated that Mr Kabir may have mentioned that he had sent Mr Hoque's resume to Mr Mamun.

Mr Hoque provided the altered resume to Randstad in support of his job application for WSI TAFE. It included experience that he did not possess, including employment at Thomson Reuters and experience with the Cognos and Oracle systems. Mr Kabir had previously worked for Thomson Reuters and Mr Hoque provided Mr Kabir's name to Randstad as a contact person to confirm he spent time at the company. He provided Mr Kabir's details, knowing they were false. Mr Hoque said that he did not know that Mr Kabir would interview him for the position.

Mr Hoque agreed that he used a resume that included the purported experience at Thomson Reuters when he applied for other jobs at TAFE NSW in 2017. Mr Hoque said that he completed the online application himself and updated his resume to include his experience at WSI TAFE. He claimed that he overlooked that Thomson Reuters was included in the resume on the other occasions he applied for positions within TAFE NSW.

The Commission's findings

The Commission is satisfied that Mr Kabir sent Mr Hoque's resume to Mr Mamun. Mr Mamun reviewed Mr Hoque's resume and altered the resume to suggest that Mr Hoque had work experience at Thomson Reuters, and also had experience in the Cognos and Oracle systems, when he did not. Mr Hoque submitted the altered resume to Randstad in support of his application for the contract position as a business analyst/financial resource analyst at WSI TAFE and was the successful candidate for the position. Mr Kabir provided a reference for Mr Hoque and claimed that he had worked with Mr Hoque at Thomson Reuters, when he had not. Mr Hoque again used the false resume when applying for other positions at One TAFE NSW in September/October 2017.

Corrupt conduct

Hasan Mamun

The Commission is satisfied that Mr Mamun's conduct in March 2013, namely, altering the resume of Mr Hoque to include false and misleading representations concerning Mr Hoque's work history, to support Mr Hoque's application for the position of business analyst/financial resource analyst at WSI TAFE in order to improve Mr Hoque's prospects of gaining employment with WSI TAFE was corrupt conduct within the meaning of s 8(2A)(e) of the ICAC Act. This is because the conduct of Mr Mamun impaired, or could impair, public confidence in public administration and could involve fraudulently obtaining or retaining employment or appointment as a public official.

In considering s 9(1)(a) of the ICAC Act, it is relevant to have regard to the offence of making or publishing false or misleading statements with intention to defraud contrary to s 192G of the Crimes Act. The terms of s 192G have already been addressed in chapter 5.

The Commission is satisfied, for the purposes of s 9(1)(a) of the ICAC Act, that, if the facts it has found were to be proved on admissible evidence to the criminal standard of proof and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would

find that Mr Mamun committed offences of making and concurring in the making or publication of false or misleading statements with the intention of obtaining a financial advantage for Mr Hoque contrary to s 192G of the Crimes Act.

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

The Commission is also satisfied, for the purposes of s 74BA of the ICAC Act that Mr Mamun's conduct was serious corrupt conduct. Mr Mamun held a senior position and a position of trust at WSI TAFE and his conduct involved a significant breach of trust. The conduct could have impaired public confidence in public administration given Mr Mamun was an experienced and senior public official. Mr Mamun's conduct was also deliberate. Finally, if proved on admissible evidence to the criminal standard of proof this conduct could involve a serious indictable offence contrary to s 192G of the Crimes Act, which has a maximum penalty of five years.

Samiul Kabir

The Commission is satisfied that Mr Kabir's conduct in arranging, in March 2013, for Mr Mamun to alter Mr Hoque's resume to include false and misleading representations concerning Mr Hoque's work history, to support Mr Hoque's application for the position of business analyst/financial resource analyst at WSI TAFE in order to improve Mr Hoque's prospects of gaining employment with WSI TAFE, and the provision of a reference containing false and misleading representations as to Mr Hoque's work history, was corrupt conduct within the meaning of s 8(2A)(e) of the ICAC Act. This is because the conduct of Mr Kabir impairs, or could impair, public confidence in public administration and could involve fraudulently obtaining employment or appointment as a public official.

The Commission is satisfied, for the purposes of s 9(1)(a) of the ICAC Act, that Mr Kabir's conduct could constitute or involve offences of making and concurring in the making or publication of false or misleading statements with the intention of obtaining a financial advantage contrary to s 192G of the Crimes Act.

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

The Commission is satisfied, for the purposes of s 74BA of the ICAC Act, that Mr Kabir's conduct was serious corrupt conduct. This is because Mr Kabir held a position of trust at WSI TAFE and his conduct involved a significant breach of trust. The conduct could have impaired public confidence in public administration, given Mr Kabir was an experienced public official. Mr Kabir's

conduct was deliberate. Finally, if proved on admissible evidence to the criminal standard by an appropriate tribunal, this conduct could involve serious indictable offences contrary to s 192G of the Crimes Act.

Monzurul Hoque

The Commission is satisfied that, in March 2013, Mr Hoque's conduct, in submitting a resume, which contained false and misleading representations concerning Mr Hoque's work history, in his application for the position of business analyst/financial resource analyst at WSI TAFE and in order to improve his prospects of gaining employment with WSI TAFE, and then subsequently using a resume containing the same false and misleading representations information to apply for other positions at TAFE NSW, was corrupt conduct within the meaning of s 8(2A)(e) of the ICAC Act. This is because the conduct of Mr Hoque impairs, or could impair, public confidence in public administration and could involve fraudulently obtaining or retaining employment or appointment as a public official.

The Commission is satisfied, for the purposes of s 9(1)(a) of the ICAC Act, that, if the facts it has found were to be proved on admissible evidence to the criminal standard of proof and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Hoque committed offences of making or publishing false or misleading statements with the intention of obtaining a financial advantage contrary to s 192G of the Crimes Act.

The Commission is also satisfied that, for the purposes of s 9(1)(b) of the ICAC Act, Mr Hoque's conduct could constitute or involve a disciplinary offence for breaches of the code of conduct in relation to the provisions concerning recruitment by TAFE NSW or, for the purposes of s 9(1)(c) of the ICAC Act, his conduct could constitute or involve reasonable grounds for dismissing, dispensing with the services of or otherwise terminating his services.

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

The Commission is also satisfied for the purposes of s 74BA of the ICAC Act that Mr Hoque's conduct was serious corrupt conduct. The conduct could have impaired public confidence in public administration. Mr Hoque's conduct was deliberate, pre-meditated and dishonest. Finally, if proved on admissible evidence to the criminal standard of proof, this conduct could involve serious indictable offences contrary to s 192G of the Crimes Act.

Section 74A(2) statements

Mr Mamun

The evidence Mr Mamun gave was subject to a declaration under s 38 of the ICAC Act and therefore cannot be used against him in criminal proceedings, except for offences under the ICAC Act. There is, however, other admissible evidence that would be available, including TAFE NSW records and email records.

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 Mamun for offences of making and concurring in the making or publication of false or misleading statements with the intention of obtaining a financial advantage for Mr Hoque, contrary to s 192G of the Crimes Act.

As Mr Mamun is no longer employed by TAFE NSW, the question of whether consideration should be given to the taking of action against him for a disciplinary offence, or the taking of action with a view to his dismissal, does not arise.

Mr Kabir

The evidence Mr Kabir gave was also subject to a declaration under s 38 of the ICAC Act and therefore cannot be used against him in criminal proceedings, except for offences under the ICAC Act. There is, however, other admissible evidence that would be available, including TAFE NSW records, email records and Mr Hoque's interview.

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 Kabir for offences of making and concurring in the making or publication of false or misleading statements with the intention of obtaining a financial advantage for Mr Hoque, contrary to s 192G of the Crimes Act in relation to the recruitment of Mr Hoque, altering of Mr Hoque's resume and the provision of a false reference by Mr Kabir on Mr Hoque's behalf.

As previously noted, Mr Kabir is no longer employed by TAFE NSW. Accordingly, the question of whether consideration should be given to the taking of action against him for a disciplinary offence, or the taking of action with a view to his dismissal, does not arise.

Mr Hoque

Mr Hoque participated in an interview under caution, which could potentially be used against him in criminal proceedings. There is also other admissible evidence that would be available, including TAFE NSW records and email records and Mr Hoque's interview.

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 Hoque for offences of making or concurring in the making or publication of false or misleading statements with the intention of obtaining a financial advantage for himself contrary to s 192G of the Crimes Act.

Further, the Commission is of the opinion that consideration should be given to the taking of action against Mr Hoque for a specified disciplinary offence by TAFE NSW, and the taking of action against Mr Hoque on specified grounds, with a view to dismissing, dispensing with the services of or otherwise terminating the services of Mr Hoque.

Chapter 7: Corruption prevention

The Commission is satisfied that the corrupt conduct found in this investigation could have been prevented or at least identified earlier. The latter would have markedly reduced the impact of the corrupt conduct.

The corrupt conduct identified in this investigation occurred in a context where, as part of a broad reform initiative, TAFE NSW had undergone several years of substantial change. The potential for corruption in an environment when significant change is occurring has previously been raised by the Commission in its corruption prevention publications.³ TAFE NSW's 2014-16 ICT strategy also acknowledged that, "insufficient governance and/or executive buy-in to coordinate and deliver transformational change" was a strategic risk with a high-to-medium impact.

This risk of corruption manifested when the iPlan program was developed outside an ICT governance framework. In the Commission's view, had there been adequate governance of the iPlan program as an ICT project, there would have been greater scrutiny regarding whether it met TAFE NSW's business needs, represented value for money, and aligned with TAFE NSW's strategic ICT objectives.

At a transactional level, the corrupt conduct was facilitated by repeated non-compliance with procurement policy and procedure, which allowed work to be partially awarded to Oscillosoft. This included non-compliance with both TAFE NSW and whole-of-government policies and processes.

Finally, robust complaint management processes would have allowed TAFE NSW to detect and respond to Mr Mamun's corrupt conduct in a timely manner.

Reform of TAFE NSW

TAFE NSW underwent a series of substantial changes both before and during the period applicable to this investigation, including changes to policy, funding, structures, systems, operating models, and organisational culture. Both the frequency and size of such change can degrade corruption controls. A summary of these changes follows.

Competitive footing

On 23 October 2012, the NSW Government announced reforms to the vocational education and training sector that were to commence on 1 July 2014. The reforms were intended to increase competition for TAFE NSW and deliver current or potential students with a wider choice of providers and to initiate changes to the government's funding model.

The budgetary process became revenue-based, where product costing was critical to profitability. This required a change in mindset to adapt from being reliant on government funding to a competitive business model, whereby revenue was derived from attracting fee-paying students and overheads were reduced to maximise profit.

To be competitive, institutes of TAFE NSW urgently needed to implement a solution that projected revenue. This shifted focus away from proper process. The fact that TAFE NSW institutes were in competition with each other reduced the incentive, at least initially, to collaborate on a solution to their revenue projection needs.

New systems

Over this same period, DEC's Learning Management and Business Reform (LMBR) program was under way. The LMBR program included delivery of a new Student Administration and Learning Management System (SALM) designed to assist TAFE with student enrolment

³ *Keeping it together: systems and structures in organisational change* (March 2017).

and management of student and course outcomes. This was intended to service the 10 TAFE NSW institutes as well as the Open Training and Education Network (OTEN).⁴

The ICT program of work being rolled out also included financial and human resource management systems. Corporate focus by TAFE NSW on these larger systems meant that the iPlan program developed in isolation and without the normal controls in place.

Organisational structure

Associated with these reforms were machinery of government changes that altered the departmental cluster within which TAFE NSW reported. TAFE NSW had operated as separate institutes reliant on the parent department for support in relation to governance policies and procedures. The change in cluster from education to industry meant that it was not always clear what the applicable policy or procedure was. For example, TAFE NSW's transition from the former DEC cluster led to it having no chief information officer or ICT governance process.

In 2015–16, TAFE NSW developed a new vision and values and began work on a "One TAFE" structure, which it planned to enact in stages. This would bring together 10 autonomous TAFE NSW institutes "as one commercially focussed organisation, supported by a single, lean corporate office". On 1 March 2017, a new One TAFE operating model and interim organisational structure came into effect. Full implementation was achieved in December 2018.

The structural and governance changes took several years to implement and contributed to a reduction in:

- TAFE NSW executive's visibility of the finance unit within WSI TAFE and expenditure on the iPlan program
- the ability to independently verify information within and across reporting lines to inform decision-making
- the level of senior executive assurance on whether procurement policies and procedures were being complied with.

Budget pressures

The concurrent changes created uncertainty in relation to budget and direction concerning ICT projects and put pressure on resources. The scope of the LMBR program required change to accommodate new business requirements in relation to product costing, revenue forecasting and budget planning. TAFE NSW institutes needed the functionality to support these requirements from the first semester of 2014. Release dates for LMBR were dependent on SALM and SAP releases. TAFE NSW institutes were reliant on budget and technical support from central units within their departmental cluster, which changed midstream in relation to significant ICT projects.

The budget pressures were twofold. First, business requirements had to be prioritised within budgets made available. Secondly, the machinery of government changes reduced TAFE NSW's overall budget. This meant that TAFE NSW institutes looked for workarounds when urgent requirements were not able to be implemented because of budgetary prioritisation. The development of the iPlan program and its subsequent enhancement was a prime example.

⁴ An online open education service offered by TAFE NSW, in which students may enrol from anywhere in Australia. The program is run by the WSI TAFE.

ICT project governance

The failure to deliver the iPlan program within an ICT governance framework made it easier for Mr Mamun to engage in the corrupt conduct identified in this investigation. This is because it allowed him to significantly influence planning, the allocation of resources, and iPlan development decisions with minimal independent scrutiny.

The 2011 TAFE NSW ICT strategy included an ICT principle that TAFE NSW institutes could locally deploy tools and technologies without having to be supported through the Information Technology Directorate. Furthermore, TAFE NSW institutes were given responsibility for providing responsive ICT products and services to support local business processes and local innovation.

Because TAFE NSW institutes could pursue their own solutions under what was termed an “architectural exception”, no one clear ICT solution had been agreed between them. A corporate solution to support business planning and reporting for all TAFE NSW institutes, known as the Educational Planning and Integrated Costing (EPIC) system, was under development in 2013. However, there were issues with acceptance of EPIC and the timeliness of releases to meet the business requirements. This allowed Mr Mamun to initiate development of iPlan as a temporary solution.

When EPIC did not deliver, impetus grew for further enhancements to the iPlan program. Even though EPIC was managed within the TAFE NSW ICT governance framework, there was no similar requirement for the iPlan program, and this did not change when TAFE NSW updated its ICT strategy in 2014.

Permitting architectural exceptions

The 2014–16 TAFE NSW ICT strategy continued to allow architectural exceptions (solutions not included in the overall system design framework) and permitted these to have primacy over ICT and architectural governance. By permitting each TAFE NSW institute to pursue local-level ICT capabilities as an architectural exception without imposing any ICT governance discipline over these local solutions, TAFE NSW lost oversight of whether:

- that localised ICT capability would align with or duplicate TAFE NSW’s ICT strategy or corporate interests
- localised ICT solutions represented value for money
- TAFE NSW institutes were diverging from enterprise solutions

- procurement controls were being bypassed partly because of the dilution of threshold amounts created by dividing expenditure among the participating TAFE NSW institutes.

This lack of oversight did not change following the 10 November 2015 decision of the TAFE NSW Executive Group (TEG) to support the “continued use of iPlan by the current and future user institutes”.

Inadequate budget oversight

The anticipated cost of the initial iPlan development at WSI TAFE was approximately \$30,000, funded from the finance area of WSI TAFE’s standard operating budget. Subsequent funding was sourced by Mr Mamun from other areas of WSI TAFE’s budget and through cost-sharing arrangements with other institutes. At no time was a specific ICT project and associated budget for the iPlan program set up by WSI TAFE (or any other part of TAFE NSW). Hence, the WSI TAFE senior executive was not given visibility over iPlan development costs.

During early development of the iPlan program, members of the WSI TAFE senior executive, such as Ms Hartigan and Ms Westbrook, assumed that most of the work was being done using internal resources. This view was fed by the WSI finance unit having up to six staff visibly working on iPlan. This assumption was also perpetuated by the lack of budget oversight. It was not until July 2017 that there seemed to be an appreciation of the reliance by TAFE NSW on Oscillosoft. In an email to Mr Mamun on 1 July 2017, his then supervisor, Mr Foster (then general manager of financial planning and analysis) wrote:

I’m not 100% clear exactly how much work we are able to undertake internally versus how much we need to get Oscillosoft involved, it seems we have a much heavier reliance on them than I had appreciated.

The initial quotation dated 26 November 2013 from Oscillosoft indicated a whole-of-life cost of \$82,227.20 (calculated over three years inclusive of GST). A second quotation dated 13 December 2013 indicated a whole-of-life cost of \$89,698.40 (inclusive of GST). Mr Mamun did not obtain two other quotations as required under TAFE NSW policy. As discussed later in this chapter, Mr Mamun also did not pay attention to the Procure IT Framework or the fact that Oscillosoft was not, at the time, an accredited supplier under the NSW Government’s standard commercial framework for ICT Services (SCM0020).

The estimate from Oscillosoft was exceeded within 14 months, during which \$138,930 was paid to Oscillosoft. By 30 June 2015, over \$300,000 had been paid to Oscillosoft across the various institutes

participating at that time. By 30 June 2016, this reached over \$865,000 with WSI TAFE accounting for approximately \$315,000 of this amount. WSI TAFE executive did not have visibility of this expenditure.

On 20 May 2015, Mr Mamun signed a proposal from Oscillosoft that had an estimated whole-of-life cost of \$336,781.50 (based on a three-year term inclusive of GST). There was no budget approval for this amount. Mr Mamun then sought additional budget to enhance iPlan. On 30 June 2015, he was advised by then WSI TAFE director, Mr Shreeve, that TEG had discussed iPlan funding and there was little chance of any corporate money for iPlan. Despite this, expenditure on iPlan continued by both WSI TAFE and other institutes.

Between 1 July 2015 and 30 June 2017, Mr Mamun continued to approve and sign multiple change requests for iPlan worth more than \$400,000. In July 2017, Mr Foster escalated the issue of change requests being approved without budget approval and the fact that, by 30 June 2016, approximately \$1.35 million had been paid to Oscillosoft without established procurement arrangements. Despite the escalation, there appeared to be no short-term resolution of these issues as, between 14 June and 4 October 2017, a further seven purchase orders were approved (this time by Mr Foster) relating to Oscillosoft totalling \$524,840.34.

The implication of the expenditure pattern – beginning in 2014 and extending for over three years – was that there was poor alignment of budget with expenditure and a poor value-for-money outcome. Because TAFE NSW never understood how much it was paying for iPlan in total, it overestimated the value for money of the purchase (addressed later in this chapter).

iPlan project oversight – Mr Mamun’s excessive influence

Mr Mamun was in a position of influence by virtue of his role as the manager of finance and administration services at WSI TAFE. The implementation of the iPlan program in March 2014 met an urgent business need and iPlan’s evolution ensured it continued to do so. The success of the iPlan program in this regard added to Mr Mamun’s level of influence.

Mr Mamun was able to deploy several of his own staff, some of whom he recruited, on the development of the iPlan program. The iPlan program was not managed under the discipline of the TAFE NSW ICT governance framework and, as a result, Mr Mamun effectively became the sponsor and project manager of the iPlan program.

Mr Mamun controlled the relationship with Oscillosoft. Mr McGowan, director of finance and business services

at the Riverina institute, recalled that, in the various demonstrations of the iPlan program that he attended, Oscillosoft was never in the room and Mr Mamun was, “basically the ... TAFE based relationship manager ... for us between us and Oscillosoft.”

In January 2015, an iPlan Reference Group (IRG) was set up to manage input from the various TAFE NSW institutes on further development, change control and cost-sharing. Mr Mamun was a leading member of this group. It did not follow the discipline of a Project Control Group consistent with the TAFE NSW ICT governance framework. No ICT specialist was a member of IRG. There was no risk or issues register. This lack of project management discipline meant that early issues raised about the contractual arrangements with Oscillosoft, including evidence of the initial procurement sign-off, were not followed up nor effectively resolved.

Mr Mamun’s involvement in this group allowed him to control the agenda and actions arising from the group’s deliberations. Mr Mamun’s level of control enabled him to:

- keep a close eye on which TAFE NSW institutes were part of what he referred to as the “iPlan family” and the cost-sharing arrangements, thereby being able to manipulate and dilute the true cost of the iPlan program
- restrict back-end access to the iPlan database, thereby limiting capacity for independent assessment of risk (such as compliance with architectural standards, duplication of functionality or integration with alternative systems)
- act quickly to resolve issues that might have exposed his corrupt conduct (such as the fact that Oscillosoft was not, at the time, a member of SCM0020 and had been engaged without a competitive process)
- control information flow by omitting relevant facts and providing false or misleading information leading to less than optimal decisions by TAFE NSW executives, particularly in relation to the decision to directly negotiate with Oscillosoft.

Even after the advent of the need for an enterprise-level solution, Mr Mamun continued to have significant active influence. He was a signatory to, and assisted with preparation of, documentation for the enterprise solution of iPlan and was a member of the negotiation team.

The Commission is satisfied that a greater level of ICT governance would have limited this influence.

Implementation of enhanced measures to improve oversight of ICT solutions

In its submissions to the Commission, TAFE NSW advised that it has enhanced its ICT governance, including establishment of an Architecture Review Board, implementation of a standard operating environment, and implementation of a “knowledge factory”.

TAFE NSW further advised that the ICT Group has established a governance framework that ensures clear, robust and measurable criteria are used in relation to decision-making for the governance of ICT projects, including approvals and monitoring. This includes establishment of a Service Transition Board to manage all ICT projects.

In summary, TAFE NSW advised it has implemented a system of oversight for ICT solutions that:

- establishes controls for all local and TAFE NSW-wide ICT projects that either restrict or limit, by way of clear thresholds, their commencement without prior approval (including removing the ability for ad hoc local ICT projects to scale outside established architecture practice, through the establishment of the One TAFE organisation and a single ICT Group)
- constrains the ability for local ICT projects that are “architectural exceptions” to extend outside local TAFE institutes unless subject to an independent evaluation
- subjects ICT projects to a risk-based program of audit both during and after delivery, as well as overlaying TAFE NSW’s enterprise risk management framework for all projects
- ensures clear, robust and measurable criteria are used in relation to decisions for the governance of ICT projects, including approvals and monitoring.

The Commission notes TAFE NSW’s actions to improve its oversight of ICT projects and that these address all the recommendations proposed by the Commission in its submissions. TAFE NSW has also identified further improvements that it intends to implement, and the Commission recommends that TAFE NSW implements these further measures.

Recommendation 1

That TAFE NSW further constrains local information and communications technology (ICT) projects that are “architectural exceptions” by:

- closing regional data centres, and moving applications and software into the TAFE NSW Private Cloud or a local cloud provider

- evaluating local software modules, applications and versions for requirement and removal, where appropriate.

Recommendation 2

That TAFE NSW ensures robust and measurable criteria are used in relation to decision-making for the governance of ICT projects by uplifting capability to members of project control boards to better understand aspects of approvals, risk monitoring and seeking assurance.

Procurement policy and procedure

WSI TAFE commenced development of the iPlan program in September 2013, at a time when it was within the DEC cluster. The awarding of iPlan development work to Oscillosoft should have been subject to the NSW Procurement Board’s Direction 2012-05 and the relevant procurement guidelines of DEC’s Procurement Solutions Directorate (PSD). It was not.

Under examination, Mr Mamun cited intense pressure to do the budget as the reason he did not follow the right process. The Commission does not accept that, in this case, the urgency of the business outcome justified a departure from process. In any event, Mr Mamun did not seek written approval for doing so. The Commission is satisfied that, had the failure to follow process been rectified earlier, the corrupt conduct may have been prevented and certainly detected sooner.

Failure to declare a conflict of interest

From the outset of TAFE NSW’s engagement of Oscillosoft, it was incumbent on Mr Mamun to declare to TAFE NSW his association with one or more of its directors so that TAFE NSW could appropriately manage the conflict of interest this presented. The fact that he did not cannot be attributed to a failure by TAFE NSW. Accountability for making declarations rested with Mr Mamun but also Oscillosoft.

As an accredited supplier, Oscillosoft was obliged to follow the rules of the SCM0020 scheme, including to conduct business with government in a fair and honest manner and declare all potential conflicts of interest and ensure they were managed transparently. In October 2014, shortly after Oscillosoft achieved accreditation under SCM0020, Mr Mamun met with one of the Oscillosoft directors, Mr Hassan, to discuss the conflict of interest presented by their financial dealings. As indicated in chapter 5, the decision to rationalise Mr Mamun’s involvement as “consultancy services” did not remove his inherent conflict of interest.

The inappropriate rationalisation of the financial arrangements by Mr Mamun and Oscillosoft highlights the importance of independent input into the management of conflicts of interest. It also highlights the importance of robust complaint management (whistleblowing) mechanisms, which are dealt with later in this chapter. An agency cannot simply rely on all conflicts being declared. The corruption control framework should address the risk of undeclared conflicts of interest and minimise their effects.

Inadequate vendor due diligence

Minimal due diligence on Oscillosoft was undertaken at the time of its initial engagement by WSI TAFE. For example, Oscillosoft's financial viability, resource capability or supplier status under whole-of-government scheme arrangements were not examined. Additionally, when other TAFE NSW institutes subsequently entered arrangements with Oscillosoft, they effectively piggy-backed off WSI TAFE vendor-creation processes, meaning that these subsequent engagements with Oscillosoft also did not result in any further due diligence.

The vendor-creation process system failed to adhere to TAFE NSW policy requirements, which embraced the NSW Procurement Board's ICT policy, insofar as it did not appear to recognise that Oscillosoft was:

- providing ICT-related services
- not a pre-qualified supplier under SCM0020.

In addition, iPlan was under development at this time and Oscillosoft had no other customers for its product.

When it was identified that Oscillosoft did not have SCM0020 accreditation, Mr Mamun acted quickly to advise Oscillosoft this was required. However, the accreditation process was circular, in that it involved Oscillosoft providing two references from TAFE institutes, including one from Mr Mamun. In other words, the due diligence conducted by the Department of Finance Services and Innovation in accrediting Oscillosoft was partly based on references from TAFE NSW where:

- TAFE NSW itself had done minimal due diligence on Oscillosoft
- one of the references was provided by an individual involved in a corrupt scheme with Oscillosoft.

The fact that Oscillosoft was subsequently accredited was then used as part of an inherently flawed argument to support direct negotiations.

The Commission is satisfied that, if adequate due diligence had been conducted on Oscillosoft at the time of initial

engagement, TAFE NSW would have likely pursued a different procurement strategy and sought quotations from members of SCM0020, thereby preventing Mr Mamun from acting partially in relation to Oscillosoft.

Failure to detect the absence of three quotations

Information about procurement policies was available to TAFE NSW personnel through the NSW Procurement website and the TAFE NSW intranet. This included the advice that, unless an approved panel was in place, procurements between \$30,000 and \$150,000 (inclusive of GST) required a minimum of three written quotations and should not be split into components or placed as a succession of orders. As the most senior financial executive at WSI TAFE, Mr Mamun was particularly aware of these policies.

On 13 December 2013, Mr Mamun received a proposal (version 1.2) from Oscillosoft that included some scope changes to an initial proposal dated 22 October 2013. Oscillosoft's base quotation was \$45,544, with an additional minimum \$1,000 per month for support. Even without including the estimated whole-of-life cost of this quotation, it exceeded the threshold that required three quotations.

Oscillosoft was not a member of an approved panel at that time. The fact that Mr Mamun did not source quotations from other providers, as required by the PSD's Procurement Easy Reference Guide, was not picked up. At the time, the process in place at WSI TAFE did not require Mr Mamun to provide evidence of three quotations for amounts under \$30,000. Members of the WSI TAFE executive – Ms Hartigan, Ms Westbrook and Ms Saccaro – did not question Mr Mamun's assertion that the cost would be under \$30,000 and did not ask to see the quotation he did obtain. By utilising two separate allocations of \$25,000 over two semesters, and not raising a purchase order for the initial purchase, Mr Mamun was able to mask that he was exceeding the \$30,000 threshold.

Failure to comply with delegated authority

Under the delegation instrument that applied from 22 June 2010, no one at WSI TAFE had authority to approve purchase or lease of software. On 1 July 2015, the previous delegation authorities T015 and T025 were replaced by T8.11. While sub-delegated authority extended to Mr Mamun, delegation T8.11 was limited in its application to the authority:

To approve the purchase, or lease where the purchase option does not exist, of computer software, under approved agreements between Information Technology Directorate and the manufacturers, for resale to TAFE NSW centres for educational and administrative use by TAFE NSW staff and students. [Emphasis added]

No approved agreement existed between the Information Technology Directorate and Oscillosoft. Mr Mamun did have a delegation to authorise purchase of general goods and services limited to a maximum of \$150,000. He also held a delegation to approve the method of procurement up to that limit. The wording of the delegation authority for purchase of general goods and services does not indicate whether software purchases are specifically excluded under that authority.

Mr Mamun was aware of the delegation instrument and associated thresholds. The knowledge was critical to his oversight of the implementation at WSI TAFE of the new SAP for TAFE in 2010, and his sign-off on a review of the delegation instrument on 10 December 2014. Yet, despite not having the delegation to do so, Mr Mamun approved the original quotation from Oscillosoft in 2013 for the initial development of iPlan and signed an Oscillosoft proposal on 20 May 2015 for its ongoing licensing, maintenance, and development. Between 2014 and 2017, he also signed off on multiple invoices and change requests.

The Commission is satisfied that, had an authorised delegate considered the engagement of Oscillosoft, the procurement would not have proceeded as it did. In fact, it is more likely that the Procure IT Framework would have been enforced, thereby restricting the corrupt conduct from occurring (discussed below). An authorised delegate did not consider the procurement from Oscillosoft because iPlan was treated as a temporary solution outside of the ICT architectural framework. This enabled Mr Mamun to work within, and around, procurement rules to suit himself.

In signing agreements with Oscillosoft, other institutes perpetuated this. Senior finance officials from at least four institutes were aware that proper processes had not been followed. Each institute treated its purchase of iPlan as a separate procurement to that of WSI TAFE. This meant that it did not matter if WSI TAFE had not followed the right process. For example, in the case of Western TAFE, its initial purchase price of \$62,000 was under the \$150,000 threshold that required a procurement strategy and the iPlan solution was seen as a fit-for-purpose unique product provided by a single supplier.

Failure to comply with the Procure IT Framework

On 1 September 2012, the NSW Procurement Board issued direction 2012-05, which stated:

A government agency must use the Procure IT Framework when entering an arrangement with a supplier for the procurement of information and communications technology (ICT) related goods and service.

Oscillosoft began providing services to WSI TAFE by late 2013, yet no executed contract existed between Oscillosoft and WSI TAFE in respect of iPlan. The earliest signed document relating to work provided by Oscillosoft to WSI TAFE is dated 20 May 2015. It is worth noting that a previous (and separate) Commission investigation into a TAFE NSW institute also found that a vendor had been engaged without an approved contract.⁵

On 20 May 2015, Mr Mamun electronically signed a proposal from Oscillosoft that provided for eight modules of the iPlan program. The proposal provided by Oscillosoft did not comply with the Procure IT Framework, which set standards for contract documents. On 11 September 2015, Mr Mamun and others at TAFE NSW were advised that future procurements must be under the Procure IT Framework v3.1 contract. The failure to use Procure IT Framework contract templates was not just an issue for WSI TAFE but also the other TAFE NSW institutes that signed proposals received from Oscillosoft – indicating a systemic issue in TAFE NSW regarding the use of the Procure IT Framework.

Non-compliance with the mandated terms of the Procure IT Framework resulted in poor value for money for TAFE. The Procure IT Framework contained several terms designed to protect agencies; for instance, it required suppliers to grant “a broad free-of-charge licence to use the IP and transfer it between agencies”.

Failure to follow procurement and procure to pay processes

TAFE NSW did not detect at relevant times that Mr Mamun was either ignoring normal procurement processes or contributing to an environment where these could be bypassed without detection, such as:

- Mr Mamun awarding work to Oscillosoft outside any formal budget approval and without delegated authority for ICT expenditure (even based on his own evidence that he had permission

⁵ Investigation into the conduct of a TAFE NSW ICT manager, March 2016. Also known as Operation Sonet.

to spend \$60,000 (as set out in chapter 2), by May 2015, \$138,930 had been spent on iPlan)

- payments exceeding financial delegation thresholds (for example, even if Mr Mamun did have the delegation to authorise ICT-related contracts, the agreement with Oscillosoft that Mr Mamun signed on 20 May 2016 represented a whole-of-life cost that was more than double the \$150,000 threshold requiring a higher-level delegate's approval)
- split-orders, evidenced by the fact that between 17 July 2014 and 2 March 2017, Mr Mamun approved 22 separate purchase orders relating to services by Oscillosoft for WSI TAFE totalling over \$330,000 (including approving up to four on one day)
- contrary to TAFE procedure, 11 instances where the relevant purchase order was raised after receipt of the Oscillosoft invoice
- allowing significant expenditure on the iPlan program by WSI TAFE to be shared with other institutes without escalating the issue to WSI TAFE executive or TEG
- allowing WSI TAFE to record expenditure on the iPlan program in the amount of \$284,623 under a general ledger cost code described as "food and entertainment".

The Commission is satisfied that, had TEG had full visibility over the total expenditure on iPlan, the fact that procurement policy and procedures were not being followed and, had it been in possession of all the advice provided by the procurement directorates at the DEC and the DISRD, it would have been in a position to act and make informed decisions to prevent or limit the corruption risks.

The breaches of procurement policy and procedure that did come to light in 2015 and 2017, were not reported to the Procurement Board as required under the terms of TAFE NSW's accreditation (the action taken by TAFE NSW in relation to these breaches is discussed later in this chapter). The Commission is satisfied that, had they been reported, it is likely that TAFE NSW would have taken action to ensure its procurement accreditation status was not compromised by rectifying the breaches that had occurred and increasing its focus on any further procurements from Oscillosoft to ensure compliance with the Procure IT Framework.

Unwarranted decision to directly negotiate

TAFE NSW considered applications to approve direct negotiation with Oscillosoft on two occasions.

The first occasion was in early 2015 when members of IRG realised that procurement guidelines relating to the development of iPlan had not been followed. IRG initiated inquiries with the PSD.

Under policy at that time, where the value of the contract exceeded \$150,000 or there was any doubt, direct negotiation had to be approved by the chief procurement officer at DEC. On 30 June 2015, the request to directly negotiate with Oscillosoft initiated by IRG was denied:

as it appears that TAFE WSI entered into an agreement with the Supplier for \$308K, which is [sic] exceeds the procurement threshold for engaging with DEC Procurement Solutions Directorate as to ensure that the market was tested through an open engagement.

The following day, (1 July 2015), TAFE NSW came under the DISRD cluster. Members of IRG then proceeded to consult with the DISRD procurement directorate, which provided a template and advice concerning considerations relevant to the adoption of a direct negotiation procurement strategy. On 18 August 2015, the advice from DISRD in relation to iPlan procurement identified that there was no approved business case. Importantly, this advice included that:

Following the business case, the next step is to complete the attached Procurement Strategy and seek CPO endorsement and the Ministers [sic] approval prior to negotiating with the supplier. I suggest the strategy includes the whole of life procurement, the background and which Institutes will be participating. In addition, include that the supplier will consider registering with the ICT Services scheme.

On 11 September 2015, following Oscillosoft's accreditation under SCM0020, three members of IRG were advised by DISRD procurement staff that, "as an approved supplier, this means that any future purchases will be under the Procure IT Framework V3.1 contract".

These advices were not brought to the attention of TEG and not followed. In fact, the paper that went to TEG on 10 November 2015, which Mr Mamun co-authored, recommended that TEG, "endorse the recommendations of the Department of Industry to direct negotiate with Oscillosoft". DISRD procurement staff had not made any such recommendation. TEG did not question whether DISRD was likely to have provided such advice. The recommendation to TEG was not accompanied

by a business case; hence, TEG was not provided with information that DISRD procurement staff had recommended be included in the procurement strategy, such as:

- detail on the scope of the requirements and specification
- evidence to demonstrate whether iPlan represented the most cost-effective option (and no information to justify not pursuing alternative options)
- information to explain how TAFE NSW was able to determine there was only one supplier able to meet its requirements
- detail on how direct negotiation would occur to ensure value for money was achieved and probity ensured.

The Commission is satisfied that, had TEG been fully informed of the actual advice from the procurement staff at DEC and DISRD, and considered the risks associated with direct negotiation, it would not have endorsed the recommendations put to it and is more likely to have pursued testing the market through open engagement. This course of action would have reduced Mr Mamun's capacity to continue to act partially in relation to Oscillosoft. It is unreasonable to expect TEG to have picked up the false statement that DISRD had recommended direct negotiation. However, had TEG applied a healthy level of scepticism and thought to question the information presented to it, it may have quite easily discovered that the proposal was inadequate in form and substance.

The second occasion that TAFE NSW considered direct negotiation with Oscillosoft was when it moved to consolidate the various instances of iPlan into a single enterprise solution. Mr Mamun was a signatory to the proposed procurement strategy put to TEG in late 2017 but did not declare his conflict of interest. This proposal was expressed in terms of the solution rather than the underlying business need and did not include any actual market research on the options available and how value for money could best be achieved.

Similarly, the risk assessment focused more on contract negotiation and project implementation risks rather than risks associated with the procurement strategy. No mention was made of the historical non-compliance with procurement policy and procedure, and the risk this presented. Relevant risks outlined in the Commission's 2006 direct negotiations guidelines were not addressed.

Despite the deficiencies in the risk assessment, the covering submission was endorsed by several senior TAFE NSW executives and approved by the then chief financial

officer, the general manager of procurement and the chief information officer.

Mr Mamun's influence and control over procurement decisions

As manager of finance and administration services, Mr Mamun was the most senior financial executive at WSI TAFE. The main purpose of his position included, "leadership, direction and expert advice on all aspects of Finance and Administration Services" and the provision of "financial stewardship and governance for the Institute" as well as "compliance with Departmental and TAFE NSW policies and procedures, government legislation and other statutory requirements".

Mr Mamun had specific responsibility to manage the internal control environment of WSI TAFE, including leading the management of its delegations of authority and providing analysis and input into the annual certification process relating to portfolio accreditation as a purchasing agency. His responsibility included ownership and review of several procurement-related policies and procedures.

Due to the position of trust associated with Mr Mamun's leadership role, it is reasonable that his line management did not need to check the veracity of every piece of information he provided. However, Mr Mamun's non-compliance with procurement policy and procedure had been brought to the attention of Mr Shreeve (WSI TAFE director) in early 2015, the chief finance officer of TAFE NSW in April 2015, and his immediate manager, Ms Saccaro, in September and November 2015. By July 2017, Mr Foster, general manager of financial planning and analysis, was aware that Mr Mamun had been authorising work without budget approval over a considerable period.

This knowledge of non-compliance did not trigger closer monitoring or independent assessment of Mr Mamun's conduct in relation to procurement from Oscillosoft because it was not centrally held and accessible.

Implementation of enhanced measures to improve oversight of ICT procurement

In its submissions to the Commission, TAFE NSW advised that it has introduced a procurement policy and implemented new eProcurement systems, including TAFE Checkout, complemented by in-built preventative and detection controls. TAFE NSW further advised that it has reviewed its oversight of ICT procurement and introduced enhanced measures that:

- ensure compliance with the Procure IT Framework and the use of SCM0020 and other applicable schemes

- provide oversight of ICT expenditure against an approved budget
- provide assurance that process restrictions are being adhered to, including the use of data analytics through a sophisticated business intelligence tool that consolidates, analyses and reports on spend and transaction data
- ensure that significant ICT spend is brought under contract
- enhance procurement processes including automated “three-way match control”
- improve staff awareness and understanding of probity principles and the risks associated with direct negotiation.

The Commission notes TAFE NSW’s actions to improve its procurement processes and systems and that these address all the recommendations in the Commission’s submissions. TAFE NSW has identified further improvements that it intends to implement, and the Commission recommends that TAFE NSW implements these measures.

Recommendation 3

That TAFE NSW expands existing training material to cover risks associated with direct negotiations.

Recommendation 4

That TAFE NSW develops strategic category plans that:

- cover all ICT spend (in collaboration between ICT procurement category teams and stakeholders)
- denote which spend is significant.

This should include the formulation of a schedule and project plan to ensure all significant spend is brought under contract.

Complaint management

In its December 2018 publication, *Corruption and integrity in the NSW public sector: an assessment of current trends and events*, the Commission made the point that reporting by whistleblowers remained the number one method for detecting corruption. It stressed that agencies need to be aware that complaints about misconduct may not necessarily arrive by conventional channels and noted poorly managed change can have an adverse effect on the willingness of individuals to report misconduct.

Beginning in September 2014, peers of Mr Mamun periodically raised concerns about iPlan-related procurement processes. These included issues relating to:

- the Oscillosoft contractual arrangements (September 2014)
- probity, procurement, due diligence, contract management, strategic direction and alignment to corporate objectives (April 2015)
- pricing and cost-sharing (May 2015)
- failure to follow procurement policy and guidelines (June 2015)
- absence of an approved business case (August 2015)
- duplication of resources, use of a non-approved ICT supplier, escalating costs of iPlan and gaining value for money (September 2015)
- lack of a competitive tender process (November 2015).

None of the concerns and issues raised related to the development of iPlan were direct allegations of corrupt conduct but many were relevant to probity principles or related to an alleged breach of policy or procedure. The Commission is satisfied that, had there been better oversight by TAFE NSW of the totality of the issues embodied in these concerns, red flags that corrupt conduct was occurring may have been raised.

When conducting fact-finding inquiries, there is a duty to both collect relevant information and assess it. An important element is obtaining information independently and with appropriate levels of discretion, so that facts can be verified without the risk that the evidence is hidden or distorted. This may require consultation outside the immediate reporting line, such as with audit and risk personnel or a professional standards unit within an agency. It is important for agencies to ensure that capable, experienced personnel are allocated to the conduct of a fact-finding inquiry. The Commission is satisfied that, had there been better investigation of the issues and complaints raised, TAFE NSW would have been in a better position to limit the impact of Mr Mamun’s conduct.

Finally, at the conclusion of a fact-finding inquiry, where there is evidence of a breach of policy or procedure, or evidence of misconduct, it is important that appropriate action is taken to remedy the situation. Agencies need to ensure that staff do not interpret the outcome as indicating that the agency tolerates misconduct or other breaches. Doing so can discourage reporting and encourage poor behaviour.

Inadequate oversight of concerns raised about the iPlan program

Concerns about the iPlan program were mostly raised in writing but no one had visibility over the full spectrum of what was being raised because they were communicated by either to Mr Mamun directly, his manager, the WSI director or the TAFE NSW chief financial officer. As the iPlan program was not subject to ICT governance, there was no project issues register. Because each issue was considered in isolation, an emerging pattern was not identified.

Some members of IRG did have visibility over some of the concerns raised but this was not shared and so did not extend to most TEG members. The terms of reference of IRG focused on change management and cost-sharing agreements. Some members of IRG did pursue resolution of identified procurement breaches by seeking approval to directly negotiate with Oscillosoft. However, IRG's remit did not include assessment of corruption risks and it did not refer any of these breaches to a centralised area, such as TAFE NSW's Internal Audit unit.

The Commission is satisfied that, had there been a project issues register overseen by ICT governance mechanisms, TAFE NSW would have been in a better position to assess information received and identify any red flags of potential corrupt conduct for referral to a centralised area. This would have put TAFE NSW in a more informed position to make decisions about the level of action to be taken when dealing with repeated concerns about the iPlan development, including allegations about breaches of policy and procedure.

Inadequate investigation of complaints

The Commission's investigation revealed scant records of any investigations undertaken by TAFE NSW. An informal complaint in early 2015 about procurement non-compliance resulted in Mr Shreeve, then WSI TAFE director (who was a TEG member), making some enquiries with Mr Mamun and his immediate supervisor. The enquiries relied on the information provided by Mr Mamun without any independent verification of that information. During his compulsory examination, Mr Mamun admitted that he falsified records when responding to the enquiries made at that time.

A public interest disclosure (PID) verbally received in July 2016 alleged an association between Mr Mamun and Oscillosoft and raised concerns with overcharging, among other things. It was not investigated because the discloser withdrew the PID when asked to put it in writing.

One witness reported they received no response to the concern they had raised in September 2015 that Oscillosoft was not an approved supplier and that resources were being duplicated. In November 2015,

quite detailed information about the extent of expenditure on iPlan to that point and highlighting the need for open tender, was brought to the attention of a member of the WSI TAFE executive.

As noted above, six days later, TEG approved direct negotiation with Oscillosoft, and the issue raised was not followed up.

A complaint was received on 24 November 2016. Although uncertain about whether to treat the complaint as a PID, the WSI TAFE director drafted a template for reporting the matter to the Commission and forwarded this to the Internal Audit unit. Some internal background investigation was done. On 10 February 2017, further information was received from the discloser. The director was then advised that, if the discloser was willing, the complaint could be treated as a PID. The discloser signed a document to this effect on 20 May 2017.

TAFE NSW's management of these complaints failed to properly fulfil the requirements for classifying and managing PIDs. There is no requirement for a PID to be in writing or for the complainant to consent to a matter to be classified as a PID.

Delay in reporting to the Commission

It was not until 29 May 2017 that TAFE NSW reported this matter to the Commission pursuant to s 11 of the ICAC Act. In the meantime, it had engaged an external provider to investigate the allegations received.

Following receipt of the s 11 report from TAFE NSW, a Commission letter dated 7 June 2017 advised that it would not investigate the matter at that stage in view of TAFE NSW's engagement of an external investigator. The Commission asked that TAFE NSW both provide a copy of the investigation report once it had been completed and advise what action it proposed to take as a result. TAFE NSW was advised that that matter would be reviewed by the Commission's Assessment Panel at that time. TAFE NSW did not comply with this request.

The Commission followed up its request on several occasions with TAFE NSW, which subsequently advised:

- on 20 November 2017, it had concluded its investigation
- on 10 April 2018, "the matter was investigated by an independent service provider and [sic] concluded the matter was unsubstantiated".

On 8 May 2018, TAFE NSW provided a copy of the investigation report to the Commission. The information provided was insufficient to indicate whether appropriate action had been taken and further information was sought. This was provided on 18 July 2018.

Inadequate response to investigation findings

The final investigation report is dated 19 December 2017, but a draft was made available to TAFE NSW beforehand. In summary, the investigation report found that Mr Mamun may:

- not have complied with TAFE NSW procurement rules
- have exceeded TAFE NSW financial delegations
- be in breach of the TAFE NSW code of conduct if this conduct was substantiated.

The investigation report also noted that there was no evidence to indicate that efforts to obtain “retrospective” approval in relation to the procurements from Oscillosoft had been successful. While various witnesses interviewed suggested a relationship existed between Mr Mamun and persons at Oscillosoft, the report noted no evidence of this was found. The investigation report recommended that TAFE NSW consider putting four allegations to Mr Mamun and provided TAFE NSW with draft correspondence to assist it in doing so. As it transpired, the investigators did not have the opportunity to put allegations to Mr Mamun directly and the correspondence they prepared was not used.

The information available to the Commission indicates that Mr Mamun’s immediate supervisor and that person’s manager were closely involved in the decision-making process concerning the action to be taken in response to the report. This was less than ideal because:

- both were also involved in the development of the procurement strategy recommending direct negotiation with Oscillosoft
- Mr Mamun’s supervisor had approved seven purchases orders exceeding \$500,000 in that calendar year.

TAFE NSW advised the Commission that, based on insufficient evidence, it had decided not to put relevant allegations to Mr Mamun. Ultimately, it was Mr Mamun’s immediate supervisor (not a specialist investigator or human resources professional) who communicated information about the allegations to Mr Mamun. On 1 December 2017, Mr Mamun’s immediate supervisor informed him that a PID had been raised and that procurement activities with Oscillosoft regarding iPlan had been investigated. Mr Mamun offered to resign. He was advised this was not necessary. Mr Mamun was given the opportunity to pull together his version of events for a subsequent conversation.

On 11 December 2017, a follow up conversation between Mr Mamun and his immediate supervisor was held.

Mr Mamun provided several documents, mainly calendar entries, which the supervisor noted, “the evidence of the outcomes/agreements/decisions made at those meetings is scant, I only have Hasan’s verbal version of outcomes to go on”.

With the benefit of hindsight, TAFE NSW should have put the relevant allegations to Mr Mamun, as recommended by its investigator. In addition, there was available evidence that could have been used to challenge Mr Mamun’s “verbal version”.

The outcome in 2017 was a verbal instruction to Mr Mamun that he follow relevant procurement processes in the future and a verbal undertaking by Mr Mamun that he would do so. The Commission notes mitigating factors in the decision not to formally discipline Mr Mamun for his acknowledged breaches of procedure included a historical and current lack of adherence to procurement policy within TAFE NSW, and the opinion of his immediate manager that:

...the benefits to TAFE NSW of the procurement of iPlan through Oscillosoft outweigh the fact that due process and adherence to policy was not undertaken during its procurement.

The Commission is not suggesting this tolerance of a lack of adherence to policy was shared by the senior executive at TAFE NSW. It does, however, highlight the importance of independent and qualified experienced personnel determining disciplinary matters.

The Commission is satisfied that a more robust complaint-handling and investigative process would have resulted in a formal disciplinary process being instituted at that time. Disciplinary action is a deterrent and would have sent a message to staff that poor behaviour is not tolerated and that speaking up will result in action.

Revised policies and procedures

In its submission to the Commission, TAFE NSW advised it had introduced revised complaint-handling, investigative and disciplinary policies, and procedures that:

- ensure statutory obligations and managing requests for information from integrity agencies are met
- ensure staff are suitably and regularly trained in the management and identification of PIDs
- articulate decision-making and recordkeeping responsibilities.

TAFE NSW also advised that:

- from June 2020, all PIDs are being case managed

by an Internal Audit Unit (IAU) corruption prevention specialist (the IAU oversees PIDs and briefs the managing director on any matters requiring s 11 reporting to the Commission)

- it has developed a Fraud and Corruption Control Plan in line with Treasury Circular 18-02 (the plan has identified 37 actions to better improve the management of corruption risk).

The Commission notes TAFE NSW's actions to improve its complaints management processes and systems and that these address all the recommendations the Commission proposed in its submissions. TAFE NSW has identified further improvements that it intends to implement, and the Commission recommends that TAFE NSW implements these measures.

Recommendation 5

That TAFE NSW re-evaluates and strengthens the process by which corruption information requests from integrity agencies to it are case managed.

Recommendation 6

That TAFE NSW invests additional resources to:

- increase by 50% trained nominated disclosure officers, including a cohort that are accessible, diversified and distributed throughout TAFE NSW within various administrative and teaching areas
- refresh training related to current nominated disclosure officers to improve their skill levels
- refresh content regarding public interest disclosures (PIDs) in the annual mandatory training.

Recommendation 7

That TAFE NSW conducts targeted training for complaint-handling and investigation specialists regarding the identification of fraud and corruption reports and escalation of PIDs.

Recommendation 8

That TAFE NSW introduces robust and centralised serious-wrongdoing reporting mechanisms across all areas of the business.

Recommendation 9

That TAFE NSW analyses its treatment of prior reports of corruption, including PIDs, to further inform its corruption prevention planning efforts.

Recommendation 10

That TAFE NSW re-evaluates the staff complaints management framework with a view to investing in an appropriate centralised and secure complaints management system for all staff.

Recommendation 11

That TAFE NSW reconsiders the appropriate resourcing of the corruption investigation function, including the current practice of referring outside of the Internal Audit Unit to the Employee Relations Unit.

Recommendation 12

That TAFE NSW invests in a centralised records management database for grievances and wrongdoing that is accessible to complaints management, investigative, corruption prevention and audit units, noting the confidentiality provisions when designing this access.

Recommendation 13

That TAFE NSW provides greater transparency of serious conduct to senior managers at chief level on a periodic basis (for example, quarterly).

Recruitment

The investigation revealed that, in addition to failing to declare a conflict of interest in relation to his relationship with Oscillosoft, Mr Mamun also failed to declare his relationships with Mr Kabir and Mr Hoque at the time of their recruitment.

TAFE NSW advises it has established its own centralised recruitment function, including financial oversight via a team of Finance Business Partners. TAFE NSW also advises the following new actions are in place to minimise the risk of an undetected conflict of interest:

- all hiring managers and panel members are required to complete an online recruitment-specific training module prior to any recruitment
- dedicated talent acquisition advisers assist all hiring managers from start to finish of a recruitment, including undertaking the initial shortlist of candidates for the panel to complete on a comparative basis
- the definitions of conflict of interest are now broader and thereby effectively include the requirement to declare any kind of relationship a panel member may have with a candidate (the onus remains on the panel member only)

- any declared conflicts of interest are recorded and managed (including the seeking of approval to continue the recruitment from a senior delegate, where appropriate)
- the hiring manager receives individual conflict of interest guidance at the beginning of each recruitment.

The measures taken by TAFE NSW complement guidance set out in the Commission's February 2018 publication, *Strengthening employment screening practices in the NSW public sector*.

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

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

Review of systems changes

TAFE NSW has made substantial changes to its systems and processes to reduce corruption risks, and has addressed all the recommendations the Commission proposed in its submissions during the public inquiry. TAFE NSW has specified further actions that the Commission has reflected in the recommendations above. In addition to help improve TAFE NSW's corruption control capacity, this may assist other agencies to better manage similar corruption risks that exist in their operational environments.

While it is always important to evaluate whether corruption controls are working as intended, this becomes even more critical when there have been marked changes to controls. Reviewing the effectiveness of the measures implemented by TAFE NSW would give it assurance that its new suite of controls is working as planned.

Recommendation 14

That TAFE NSW undertakes a review within three years to provide assurance that the measures it has taken to improve ICT project governance, oversight of ICT procurement, complaint management and recruitment are achieving their objectives.

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 TAFE NSW and the responsible minister.

As required by s 111E(2) of the ICAC Act, TAFE NSW 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, details of the proposed plan of action.

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

Appendix 1: The role of the Commission

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

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

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

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

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

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

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

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

Appendix 2: Making corrupt conduct findings

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

See also *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 response to proposed findings

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

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

Counsel Assisting the Commission made written submissions setting out, inter alia, what adverse findings it was contended were open to the Commission to make against various parties. These were provided to the relevant legal representatives on 11 September 2020 and submissions in reply were received from the representatives of Mr Kabir, Mr Hoque and TAFE NSW. Supplementary submissions were provided to Mr Mamun's legal representative on 28 May 2021. No submissions in reply were received. On 31 July 2021, further submissions were provided to the legal representative of Oscillosoft, Mr Hassan and Mr Ibrahim. No submissions in response were received.

Mr Hoque requested that a summary of his response be included in the Commission's report. Mr Kabir's submissions are also dealt with in this appendix, although no request was made that a summary of his response be included in the Commission's report.

Submissions on behalf of Mr Kabir

The following submissions were made on behalf of Mr Kabir in relation to the findings made in chapter 5. First, it was submitted that the evidence lacked support for the conclusion that Mr Kabir knew what he was doing was wrong, and therefore the requisite element of intent had not been made out for any referral to the DPP for criminal prosecution. It was submitted that the evidence

supported a conclusion that Mr Kabir followed the advice and direction of Mr Mamun, a senior employee at WSI TAFE, whom Mr Kabir considered a mentor. While the Commission accepts that Mr Kabir viewed Mr Mamun as a mentor and a guide, the Commission rejects the submission that Mr Kabir lacked the requisite intent.

Secondly, it was submitted that there was insufficient evidence to show the money was received to show favour to Oscillosoft because there was no evidence that Mr Kabir was capable of having the requisite influence required to show favour with respect to the affairs of business at TAFE NSW and their decision to use Oscillosoft. It was submitted that the nexus between Mr Kabir's role in demonstrating the product and the alleged exercise of Mr Kabir's public official function was not available on the evidence. The Commission rejects this submission. The Commission is satisfied that, Mr Kabir, in demonstrating the product, was exercising his public official functions and did so in order to ensure that other TAFE NSW institutes purchased the iPlan program.

The following submissions were made on behalf of Mr Kabir in relation to the findings made in chapter 6. It was submitted that there was insufficient evidence to suggest that Mr Kabir had the requisite intention, when allegedly providing the false reference on Mr Hoque's behalf, to cause financial disadvantage or obtain a financial advantage. In addition, there was no evidence of Mr Kabir obtaining a financial advantage or WSI TAFE suffering a financial disadvantage from the alleged conduct. In summary, it was submitted that, while the alleged acts may constitute a breach of the TAFE NSW code of conduct, the acts did not amount to an offence pursuant to s 192G of the Crimes Act at a prima facie level. This argument is rejected. The Commission considers that Mr Kabir, by providing a false reference for Mr Hoque, intended that Mr Hoque would obtain a financial advantage when Mr Hoque secured work with WSI TAFE. The financial advantage did not need to be received by Mr Kabir himself.

More generally, it was submitted that the Commission should not seek the advice of the DPP with respect to the prosecution of Mr Kabir for offences contrary to s 249B of the Crimes Act (outlined in chapter 5) and an offence contrary to s 192G of the Crimes Act (outlined in chapter 6). In relation to offences contrary to s 249B of the Crimes Act, it was submitted that there was no evidence that the conduct described (payment of money into Mr Kabir's wife's bank account) was done with the intention to deceive WSI TAFE. It was submitted that Mr Kabir relied on the advice, guidance and seniority of Mr Mamun, a person whom he respected and saw as his mentor and he was assured by Mr Mamun that there was no conflict of interest.

It was submitted that there was insufficient evidence to suggest that Oscillosoft gave Mr Kabir money with the intention that Mr Kabir show favour, disfavour or influence at TAFE NSW. In relation to the offences contrary to s 192G of the Crimes Act, it was submitted that there was insufficient admissible evidence and that there was not a sufficient nexus between the element of dishonesty and the element of financial advantage or disadvantage. It was submitted that the advice of the DPP should not be sought in respect of Mr Kabir because Mr Kabir's admissions made during the compulsory examinations could not be used against Mr Kabir in criminal proceedings, there were identifiable weaknesses in the evidence available, and the Commission should consider the public interest. The Commission rejects these submissions. The Commission is satisfied that there is sufficient admissible evidence to seek the advice of the DPP with respect to the prosecution of Mr Kabir for offences contrary to s 249B of the Crimes Act and an offence pursuant to s 192G of the Crimes Act.

Submissions on behalf of Mr Hoque

A number of submissions were made on behalf of Mr Hoque. First, it was submitted that the Commission

could not be satisfied that Mr Hoque submitted the altered resume detailing the incorrect experience to WSI TAFE itself. It was submitted that the resume was submitted to Randstad recruitment agency in support of Mr Hoque's application for the first position at WSI TAFE. This was not in issue. It was never contended by Counsel Assisting that the altered resume was submitted to WSI TAFE, but that it was submitted to the recruitment agency, Randstad, in support of his claim for a contract position as a business analyst/financial resource analyst at WSI TAFE.

Secondly, it was submitted on behalf of Mr Hoque that there was no evidence that Mr Hoque had knowledge of the content or detail of the reference provided to Randstad by Mr Kabir. The Commission is satisfied that there is sufficient evidence to support an inference that Mr Hoque nominated Mr Kabir as his referee on the basis that he had purportedly worked with him at Thomson Reuters, and Mr Hoque knew that Mr Kabir would make representations to Randstad that he had worked with Mr Hoque at Thomson Reuters, when he had not. Mr Hoque stated that he provided Mr Kabir's name for the reference check because he had previously worked at Thomson Reuters.

Thirdly, it was submitted on behalf of Mr Hoque that, for the purpose of s 9(1)(a) of the ICAC Act, the Commission could not be satisfied that the conduct of Mr Hoque, in using and submitting a resume with false information to apply for positions at TAFE NSW, constituted a breach of law, or more particularly an offence contrary to s192G of the Crimes Act. It was argued that an offence contrary to s 192G of the Crimes Act could not be proved to the requisite standard in criminal proceedings because Mr Hoque possessed legitimate and considerable tertiary and professional experience. The Commission rejects this submission. The fact that Mr Hoque did possess relevant tertiary and professional experience does not detract from the false statements contained in the altered resume and submitted by Mr Hoque in order to obtain the contract

position at WSI TAFE. Further, for the purposes of s 9(1)(a) of the ICAC Act, the requisite test is 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 had committed a particular criminal offence. For these reasons, the Commission rejects these submissions.

Finally, it was submitted that Mr Hoque's conduct was not serious corrupt conduct because:

- Mr Hoque's resume was altered by Mr Mamun
- Mr Hoque, upon receiving the altered resume, challenged Mr Kabir in relation to the content of the altered resume and was told by Mr Kabir that it was fine
- Mr Hoque did not pre-meditatively seek out Mr Kabir or Mr Mamun to alter his resume to include false experience
- Mr Hoque submitted the altered resume to Randstad having been told by Mr Kabir that the altered content of the resume made him a more appealing candidate
- Mr Hoque did not submit his resume to WSI TAFE directly and Randstad recruitment was ultimately responsible for the submission of Mr Hoque's original application in 2013
- Mr Hoque did not have knowledge of the content or details of the reference provided by Mr Kabir for Mr Hoque to Randstad
- Mr Hoque was not aware that Mr Kabir would conduct the original interview in 2013
- Mr Hoque was in no way involved in the interview or decision-making process with respect to his employment with WSI TAFE or One TAFE NSW

- in 2017, Mr Hoque was nominated for a contract position as a senior revenue reconciliation officer due to his experience. He obtained the position after being interviewed by persons other than Mr Mamun and Mr Kabir
- Mr Hoque gave evidence that he overlooked the altered content of his resume when applying for other roles at TAFE NSW in September/October 2017, and that he relied on his WSI TAFE experience as reflected in his cover letter
- Mr Hoque demonstrated competence in all the positions he has held with WSI TAFE and TAFE NSW.

The Commission rejects Mr Hoque's submissions. In the Commission's view, Mr Hoque was fully aware that the resume had been altered by Mr Mamun and submitted it to Randstad in support of an application for a position at WSI TAFE in 2013. Mr Hoque's conduct, in putting forward a resume containing false statements, was deliberate, pre-meditated and dishonest.

It was submitted on behalf of Mr Hoque that he did not pre-meditatively seek out Mr Mamun and Mr Kabir to alter his resume. The Commission does not accept this submission. Mr Hoque sought out Mr Mamun and Mr Kabir to assist him with his application. He made the decision to forward the altered resume to Randstad in an effort to obtain the position at WSI TAFE in 2013. While Mr Hoque may not have specific knowledge of the content or details of the reference provided by Mr Kabir, there is evidence to support a finding that Mr Hoque provided Mr Kabir's name to Randstad and also advised them that he had worked with Mr Kabir at Thomson Reuters. Further, the Commission is satisfied that Mr Hoque's conduct could have impaired public confidence in public administration.

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

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

- The findings in respect of TAFE NSW are confined in nature, historical and occurred at a time prior to the significant One TAFE NSW modernisation program. It was submitted that the TAFE NSW operating structure has been substantially reformed and a number of the recommendations of the Commission have already been addressed. It was submitted that furnishing a public report may undermine the public confidence in TAFE NSW as it operates today, which would not be in the public interest.
- TAFE NSW intends to act on the Commission's recommendations and argued that the investment of resources in this activity is preferable to investing resources in addressing reputational damage due to public scrutiny as a result of the publication of a public report.
- TAFE NSW is well supported by its Audit and Risk Committee, whose members are very experienced and therefore well placed to provide oversight of progress and completion of the proposed actions as an added safeguard for integrity, and control of fraud and corruption monitoring and review.
- It was submitted that detailing information about TAFE NSW's outdated processes and control environment would undermine its true, current and strong position in its performance, control culture and risk management landscape, and this was not in the public interest.

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

If the Commission obtains any information in the course of its investigations relating to the exercise of functions of a public authority, the Commission may,

if it considers it desirable to do so:

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

The Commission is satisfied that the matters raised in this investigation are such that it should report its outcome by way of a public report pursuant to s 74(1) of the ICAC Act. The matters taken into account by the Commission included:

- The conduct, as outlined in this report, revealed serious corrupt conduct, involving a significant amount of money. A report furnished pursuant to s 14(2) of the ICAC Act cannot make findings of corrupt conduct, but provides information and makes recommendations to the authority or the minister for the authority.
- A report pursuant to s 14(2) of the ICAC Act is subject to the secrecy provisions of s 111 of the ICAC Act. The principal functions of the Commission include educating and informing the public about the detrimental effects of corrupt conduct, the promotion of the integrity and good repute of public administration, and the fostering of public support in combatting corrupt conduct. These functions, which are set out from s 13(1)(h) to s 13(1)(j) of the ICAC Act, would be not be achieved if the Commission reported pursuant to s 14(2) of the ICAC Act.



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