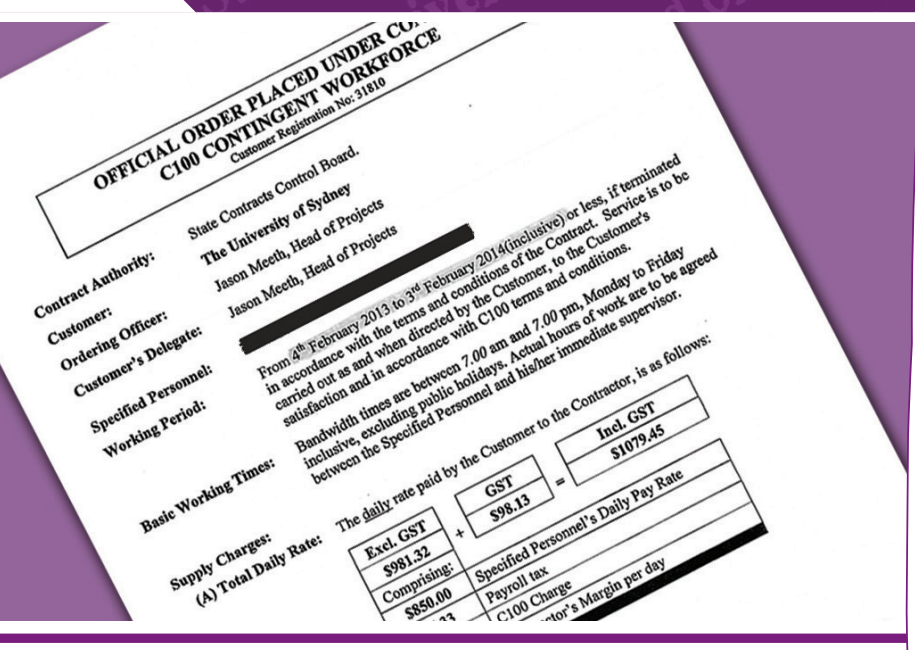


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 Customer Registration No: 31810  
 State Contracts Control Board,  
 University of Sydney  
 of Projects

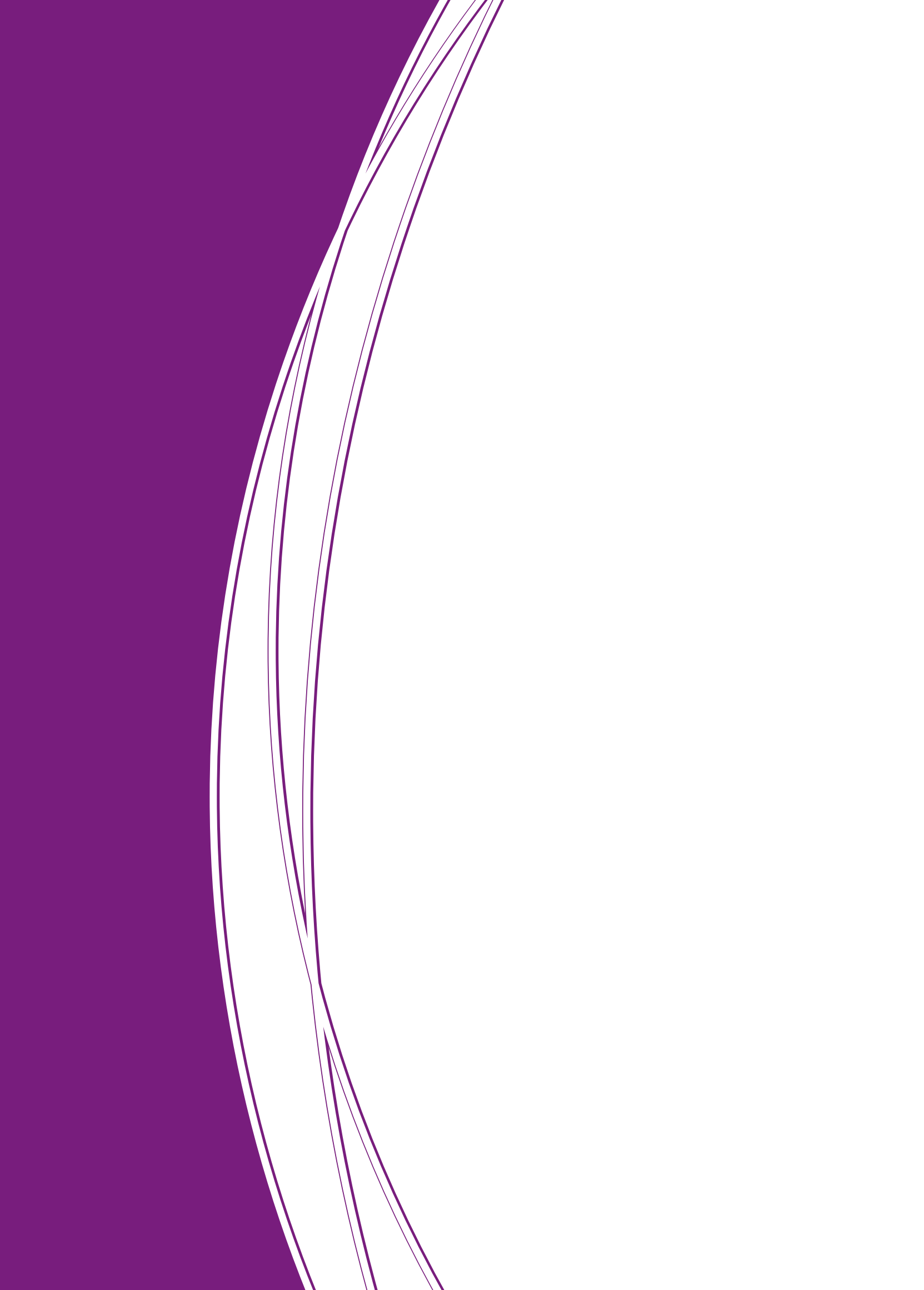
**ICAC**

INDEPENDENT COMMISSION  
 AGAINST CORRUPTION  
 NEW SOUTH WALES



**INVESTIGATION INTO  
 THE CONDUCT OF A  
 UNIVERSITY OF SYDNEY  
 ICT MANAGER**

**ICAC REPORT  
 MAY 2016**



**ICAC**

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AGAINST CORRUPTION  
NEW SOUTH WALES

**INVESTIGATION INTO  
THE CONDUCT OF A  
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Mr President  
Madam Speaker

In accordance with s 74 of the *Independent Commission Against Corruption ACT 1988* I am pleased to present the Commission's report on its investigation into the conduct of a University of Sydney ICT manager.

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

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

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

Yours sincerely

A handwritten signature in black ink, appearing to read 'M Latham'.

The Hon Megan Latham  
Commissioner

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## Summary of investigation and results

This investigation by the NSW Independent Commission Against Corruption (“the Commission”) examined allegations that, between 2012 and 2013, Jason Meeth, an information and communication technology (ICT) manager at the University of Sydney (“the university”) improperly exercised his public official functions to favour Balu Moothedath and Mr Moothedath’s business, Canberra Solutions Pty Ltd (“Canberra Solutions”), in relation to the engagement of university ICT contractors.

### Results

The Commission found that, while Mr Meeth was employed by the university from 21 February 2012 to 19 July 2013, he arranged for nine Canberra Solutions ICT contractors to be engaged by the university. In each case, Mr Meeth had arranged for the contractors to be nominated through an accredited supplier of ICT contractors when, in fact, they were Canberra Solutions contractors. Canberra Solutions benefitted financially from this arrangement, receiving \$1.6 million from the university, of which it kept approximately \$800,000 as profit. This compared with the standard contractual arrangement whereby the recruitment company received about 10% of the fee paid by the university with the balance going to the contractor.

The Commission found that, in 2012 and 2013, Mr Meeth engaged in serious corrupt conduct by improperly exercising his functions as a university official by giving preferential treatment to Canberra Solutions in the selection of Canberra Solutions candidates to work at the university as ICT contractors.

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 Moothedath for the criminal offences of:

- giving false and misleading evidence, contrary to s 87 of the *Independent Commission Against*

*Corruption Act 1988* (“the ICAC Act”), by giving evidence during a public inquiry that he did not discuss the Commission’s investigation with Pranav Shanker on 29 June 2015

- giving false and misleading evidence, contrary to s 87 of the ICAC Act, by giving evidence during a public inquiry that Pooja Naik worked for Canberra Solutions
- attempting to procure false evidence from Mr Shanker on 29 June 2015, contrary to s 89 of the ICAC Act.

Chapter 6 of this report sets out the Commission’s review of the corruption risks present at the time the relevant conduct occurred. The Commission found that labour hire processes conducted by the university’s ICT business unit were undermined through subcontracting from a whole-of-government labour hire arrangement and allowing Mr Meeth to have almost complete control over ICT labour hire processes. Since the occurrence of the conduct under investigation, a new whole-of-government labour hire process has been adopted, which forbids subcontracting arrangements, and the university has taken action to more tightly control its labour hire processes. In the circumstances, the Commission does not consider it necessary to make any recommendations concerning those matters.

### 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 on how the investigation originated, how it was conducted and the people principally involved in the investigation.

### How the investigation came about

On 27 May 2013, an ICT contractor made a complaint to the university's procurement and contracts manager, Sean McNulty, about the difference between her pay and the amount the university was paying the company for her services. Further inquiries by Mr McNulty revealed that Mr Meeth had approached accredited contractor supplier companies to engage Canberra Solutions contractors and that those contractors had been paid significantly less than the amount the university paid Canberra Solutions for their services. An investigation was then commenced by the university's Audit and Risk Management unit.

On 23 August 2013, the university reported Mr Meeth's conduct to the Commission. The Commission did not pursue an investigation of the matter at that time as Mr Meeth was no longer employed by the university and the university was conducting its own investigation into the allegations.

On 17 October 2013, the Audit and Risk Management unit completed its investigation. Various procedural recommendations were made in the report.

On 14 July 2014, Mr McNulty, who had since left the employment of the university, made a complaint to the Commission about Mr Meeth's conduct. He alleged that Mr Meeth played a principal part in a corrupt scheme that led to the university being defrauded of possibly as much as \$1 million. It was alleged that, as part of that scheme, Mr Meeth directed the university's accredited suppliers of personnel to put forward contractors sourced from Canberra Solutions. Canberra Solutions obtained a significant benefit from this scheme because it paid the contractor considerably less than it was paid by the university.

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

The Commission has jurisdiction to investigate allegations concerning the conduct of public officials that constitutes the dishonest or partial exercise of the officials' functions. The University of Sydney is a public authority for the purpose of the ICAC Act, as it is subject to the powers of the Auditor-General of NSW to inspect, examine or audit its accounts pursuant to s 35 of the *Public Finance and Audit Act 1983*.

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

In determining to conduct an investigation, the Commission considered the substantial amount of money



involved, that the university did not consider reporting the matter to the NSW Police Force, and that the conduct was designed to specifically avoid steps by the university to strengthen procurement processes. The Commission also wished to ascertain, given the clear benefit conferred on Canberra Solutions, whether Mr Meeth had been improperly rewarded for his conduct and, if so, the nature and extent of any such reward.

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

## Conduct of the investigation

During the course of the investigation, the Commission:

- interviewed and/or obtained statements from a number of persons, including independent ICT contractors and university employees
- obtained documents from various sources, by issuing 38 notices under s 22 of the ICAC Act and one notice under s 21 of the ICAC Act
- conducted nine compulsory examinations.

## The public inquiry

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

- it was necessary to establish whether or not Mr Meeth had received any rewards for favouring Canberra Solutions

- the allegations concerning the favouring of Canberra Solutions raised issues about the management of procurement processes and payment authorisation in a prominent educational institution
- the allegations involved the expenditure of a substantial amount of public funds, approximately \$1.6 million
- there was substantial benefit in exposing to the public, and making it aware of, the allegations of corrupt conduct
- it was in the public interest to identify any systemic weaknesses in the university's contractor procurement procedures.

The public inquiry was conducted over five days, between 9 and 13 November 2015. The Hon Megan Latham, Commissioner, presided at the public inquiry and Warwick Hunt acted as Counsel Assisting the Commission. During the public inquiry, evidence was taken from 16 witnesses.

At the conclusion of the public inquiry, Counsel Assisting prepared submissions setting out the evidence and identifying findings and recommendations that the Commission could make based on that evidence. These submissions were provided to all relevant parties. Mr Meeth and Mr Moothedath did not make any submissions in response.

## Mr Meeth

Mr Meeth was employed by the university from 21 February 2012 to 19 July 2013, initially on a contract. In early January 2013, he was promoted to the permanent role of head of projects. Mr Meeth was responsible for the project management office within the university's ICT business unit. This office was charged with ensuring the proper management of the university's ICT projects, as well as the recruitment of external ICT contractors

needed to complete those projects. The project management office managed up to 30 different projects every year and had an annual budget of \$8 million in 2012 and \$15 million in 2013.

## Mr Moothedath and Canberra Solutions

Mr Moothedath and his wife, Sonata Devadas, started Canberra Solutions in 2010. Ms Devadas was the sole director and sole shareholder of Canberra Solutions. The Canberra Solutions financial statement for the 2012–13 financial year said that she was paid \$105,000, while her husband was paid \$7,000. Despite this, both Mr Moothedath and Ms Devadas gave evidence that Mr Moothedath had total control of Canberra Solutions and made all of the decisions concerning the business. Ms Devadas said that she had no role, and very little interest, in the company and that her only function was to sign company documents at the direction of her husband. Evidence before the Commission, such as documentary evidence and the evidence of contractors, indicates that Ms Devadas was involved in the operation of Canberra Solutions. However, none of the evidence indicates that Ms Devadas had any dealings with Mr Meeth or was responsible for the arrangements for Canberra Solutions contractors to be employed by the university.

Mr Moothedath told the public inquiry that the company had not been in operation since June 2014. He also told the public inquiry that the core business of Canberra Solutions was as a procurement and information technology services company, as opposed to a recruitment company. He said that he ran Canberra Solutions from his family home, aided only by a serviced office in Sydney's central business district, a website and a post office box. Mr Moothedath said that he sought potential ICT contractors by attending ICT conferences in Sydney and later contacting attendees through the social media site, LinkedIn.

Mr Moothedath told the public inquiry that Canberra Solutions only had two clients other than the University of Sydney.

## How Mr Meeth and Mr Moothedath met

Mr Meeth told the Commission that he first met Mr Moothedath in 2011. He said that he was working for a large gaming technology company and Mr Moothedath worked for a large multinational company where he managed an in-house team of ICT professionals. Mr Moothedath was responsible for providing ICT services to Mr Meeth for their respective employers. Mr Meeth then sought to use Mr Moothedath's Canberra

Solutions to test applications for his employer on one or two occasions. For this work, Canberra Solutions received fees totalling from \$10,000 to \$15,000.

Though he did not know him well, Mr Meeth said that he was impressed by Mr Moothedath and Canberra Solutions' work. He told the Commission that he did not know that Canberra Solutions was effectively a two-person business operating out of the family home.

## Credibility of the witnesses

### Mr Meeth as a witness

Mr Meeth's evidence did not sit comfortably with independent evidence before the Commission or the evidence of other witnesses. He gave inconsistent and contradictory evidence, such as his evidence about his authorisation of payments for a contractor who was working overseas.

Mr Meeth was unable to adequately answer questions on several issues. These issues include his communications with Mr Moothedath throughout 2012 and cash deposited into his personal bank account from a "cash tin" kept under his (Mr Meeth's) bed at his home. Mr Meeth's evidence about his interview of his friend, Ben Hall, for a university job is also directly contradicted by university documents under his own hand. The Commission is wary of relying on Mr Meeth's evidence where it is not corroborated by other evidence.

### Mr Moothedath as a witness

Mr Moothedath was not a reliable witness. His answers were vague and he was unresponsive when asked basic questions concerning Canberra Solutions. There were also instances where his evidence was untruthful.

A particular instance concerns his evidence relating to Ms Naik. Canberra Solutions records show that she was paid a salary. Mr Moothedath claimed this was because Ms Naik worked for Canberra Solutions. Ms Naik's husband, Mr Shanker, told the Commission that Ms Naik was in effect a ghost employee who did not work for Canberra Solutions and whose "pay" was referred to Mr Moothedath. This matter is examined in more detail in chapter 4.

Mr Moothedath's credibility is further undermined by his evidence about his meeting with Mr Shanker on 29 June 2015. Mr Shanker gave evidence that Mr Moothedath called him in late June 2015 to talk about the Commission's investigation. They arranged to meet later that day in North Sydney where they spoke for about an hour in Mr Moothedath's car. Mr Shanker said that, during that meeting, they spoke about the

Commission's investigation and that Mr Shanker should lie and say that his wife, Ms Naik, worked at Canberra Solutions. Mr Shanker said that he reluctantly agreed to go along with Mr Moothedath's plan.

In contrast, Mr Moothedath told the public inquiry that he only met Mr Shanker at North Sydney by chance. He said they then arranged to meet later that day at North Sydney and chatted for between 15 and 30 minutes but did not discuss the Commission's investigation. He said he could not remember talking to Mr Shanker in his car. The Commission does not accept Mr Moothedath's evidence.

Commission investigators attended Mr Moothedath's residence on 29 June 2015 to talk to his wife, Ms Devadas. Mr Moothedath was at the residence but did not speak to the Commission investigators. Telephone records show that after the investigators left, a telephone call was made from Mr Moothedath's mobile telephone service to Mr Shanker's mobile telephone service. Commission officers then video recorded Mr Moothedath and Mr Shanker sitting in Mr Moothedath's car for approximately two hours. On being presented with this evidence, Mr Moothedath said that he did, in fact, meet with Mr Shanker on that day but only to discuss a potential business venture. He said that he sat in his car because it was more convenient than for Mr Shanker to call in on his residence, and rejected the suggestion that he made the arrangements to sit in his car to avoid being overheard. The Commission is satisfied that Mr Moothedath and Mr Shanker arranged to meet on 29 June 2015 and discussed the Commission's investigation.

## Chapter 2: The C100 scheme

From 2009, the NSW Government implemented the Contingent Workforce State Contract. Commonly known as the “C100 scheme”, this statewide procurement scheme was designed to streamline the recruitment of labour by government agencies. The aim of the scheme was to deliver greater buying power and better value for government agencies, reduce total costs and provide greater access to the best labour contractors in the market. As discussed in chapter 6, the C100 scheme has since been replaced by the SCM0007 Contingent Workforce Prequalification Scheme, known as the “0007 scheme”.

The premise of the C100 scheme was that approved recruitment companies would be appointed to a panel. When a government agency needed to hire contract personnel, including ICT personnel, they would contact a C100 company on the panel who would supply three candidates for the vacancy. Alternatively, the government agency could contact three C100 companies and seek a candidate from each. Once the government agency appointed a candidate, the successful recruitment company would receive a payment of 10% of the contractor’s rate, which would be reduced to 8% after 12 months.

### The C100 scheme and the University of Sydney

From early 2012, the university began to reform and centralise the way that it hired ICT contractors. This was in response to a previous Commission investigation into the conduct of a university ICT manager who was involved in the recruitment of contractors and staff for the university. In that investigation, known as Operation Citrus, the Commission found that the manager had engaged in corrupt conduct by using a company to recruit contractors for the university despite having a conflict of interest caused by his wife’s employment with the company and, later, by his and his wife’s financial interest

in the company. He had also engaged his brother-in-law and a friend to work for the university.

Part of the reform of the university’s labour hire practices was the adoption of the C100 scheme. The scheme was phased in from early 2012. Bruce Meikle, the university’s chief information officer, implemented a requirement that all ICT contractors should be sourced through C100 companies. This was clearly understood by others involved in the process.

Jovan Apostolovic, who was Mr Meeth’s subordinate at the university’s project management office, said that he was told before Mr Meeth commenced at the university that the university required that ICT contractors be sourced from C100 companies. Andrew Cooper was Mr Meeth’s direct line manager. In a statement provided to the Commission, he confirmed that Mr Meeth was required to seek applicants only from C100 labour hire firms.

Mr Meeth initially told the public inquiry that the use of the C100 scheme was the university’s “preference” rather than mandatory. He later conceded that he was obliged to use contractors sourced from C100 companies; he added, however, that C100 companies could subcontract candidates from non-C100 companies, such as Canberra Solutions.

### Could C100 companies subcontract to non-C100 companies?

Mr Meeth told the public inquiry that he believed that the C100 scheme allowed candidates from non-C100 companies to be hired by the university if they were referred to a C100 company before commencing work with the university. He claimed that, if he referred contractors from a company that was not part of the C100 scheme to a C100 company, he would be complying

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with the C100 scheme.

The C100 scheme contract guide contained extensive information on how the C100 scheme worked. Mr Meeth said that he had never seen this document. University records show, however, that Mr Meeth had been sent a copy no later than 3 May 2012, when it was emailed to him by a university procurement manager. This is before any Canberra Solutions contractors started work at the university. The C100 contract guide required C100 companies to declare potential subcontractors, provide a list of all potential contractors and charge a reduced margin when subcontracting. Canberra Solutions was not a C100 company nor was it listed as a subcontractor to any C100 company.

Although the scheme permitted a C100 company to subcontract, this was in circumstances where a C100 company itself identified that it lacked contractors with particular skill sets and needed to fill those gaps through selecting a suitable subcontractor. It was not part of the scheme that a client, such as the university, should nominate a subcontractor or direct that a particular subcontractor be used.

In the present case, the C100 companies did not lack contractors with relevant ICT skills. The C100 companies that Mr Meeth organised to use Canberra Solutions did not need to subcontract to Canberra Solutions in order to engage suitably qualified contractors. Had they even lacked suitably qualified staff, it was a matter for them to select a suitable subcontractor, not for Mr Meeth to nominate one.

Mr Meikle said that Mr Meeth was required to ensure the standard procedure for engaging contractors was followed. This included ensuring that contractors were recruited from a C100 company. He also said that the university's intent on directing the use of C100 companies to engage candidates for ICT contract positions was that three C100 companies would be approached. He said that he would

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not expect anyone engaged with ICT recruitment at the university to be approaching non-C100 companies.

The Commission is satisfied that Mr Meeth knew that he was required to comply with the C100 scheme and recruit ICT contractors from C100 companies. The Commission is satisfied that Mr Meeth knew that, by nominating a particular non-C100 subcontractor, he was not acting in accordance with the C100 scheme. In reaching this conclusion, the Commission has taken into account that Mr Meeth arranged matters so that it was never documented on university records which candidate originated from Canberra Solutions. This intentional lack of transparency was designed to obscure the role of Canberra Solutions – something which would not have been necessary if Mr Meeth truly believed his actions were proper. This obscuring of the role of Canberra Solutions is discussed in more detail in the next chapter.

## Chapter 3: Mr Meeth and Canberra Solutions

Mr Meeth favoured Canberra Solutions during his time as head of projects at the university. He demonstrated his favouritism in a number of ways. This included taking active steps to put Canberra Solutions in contact with C100 companies so that it would appear that Canberra Solutions candidates were directly contracted from C100 companies. He controlled the recruitment of ICT contractors at the university in order to recruit Canberra Solutions contractors. He did this despite some of the Canberra Solutions contractors lacking appropriate skills and expertise to properly undertake the work for which they were engaged. Mr Meeth also took steps to disguise the university's use of Canberra Solutions on official university documentation and did so because he knew that it was contrary to university policy. Because of Mr Meeth's favouritism, Canberra Solutions was able to make a substantial profit.

Mr Meeth's partiality to Canberra Solutions was first demonstrated soon after he commenced work at the university when he actively advocated on behalf of Canberra Solutions. On 21 March 2012, a month after starting work at the university, Mr Meeth sent an unsolicited email to a university manager to promote the services of Canberra Solutions. In the email, Mr Meeth included Mr Moothedath's mobile telephone number and stated that he worked with Canberra Solutions previously and that they were "highly cost competitive and helped [Mr Meeth] put together a good ongoing support solution for the business".

### Mr Meeth and the C100 companies

Mr Meeth arranged with C100 companies to submit Canberra Solutions candidates to the university, and thereby overcome the fact that Canberra Solutions was not an accredited C100 company. Four C100 companies agreed to submit Canberra Solutions candidates to the university. These were Small & Associates Pty Ltd, trading as Smalls Recruiting and Greythorn Smalls

("Greythorn Smalls"), Michael Page International (Australia) Pty Ltd ("Michael Page"), Paxus Australia Pty Ltd ("Paxus Australia") and Talent International (NSW) Pty Ltd ("Talent International").

Representatives from the four C100 companies gave evidence at the public inquiry. These were Davina Marshall from Greythorn Smalls, Niall O'Rourke from Michael Page, Samuel Williams from Paxus Australia and Jean Gazo from Talent International. They all said that they facilitated the submission of Canberra Solutions contractors to the university at the request of Mr Meeth. They said that they had no contact with the individual contractors other than for administrative matters, such as the processing of timesheets. Three of the C100 representatives (Mr Gazo was not asked directly) said that, if they had refused to accept Canberra Solutions contractors, they would be concerned that they would not get any further contract opportunities from the university.

The C100 representatives also said that the usual vetting and reference checks they would employ to process a potential candidate were not conducted in the case of Canberra Solutions candidates with the rigour they would apply to a candidate who came to them directly. They said this was because, by the time the candidates were referred to them from Canberra Solutions, Mr Meeth had already approved them for an interview.

### Mr Meeth's control over the recruitment process

Records obtained from the university and Canberra Solutions show that Mr Meeth was the head of the selection panel for seven ICT selection processes where one or more Canberra Solutions candidates were interviewed. A total of 29 candidates were interviewed during these seven selection processes. Ten of these candidates were sourced by Canberra Solutions, with

the remainder submitted by C100 companies. Canberra Solutions candidates were ranked first in six of the seven selection processes. The one successful non-Canberra Solutions candidate declined the job offer by the university and a Canberra Solutions candidate then accepted the position.

Only one Canberra Solutions candidate was deemed “not suitable” by Mr Meeth. A recruitment confirmation form for this candidate states that his “communication skills are not impressive”. Another Canberra Solutions candidate was successful in this interview selection process. Eight of the Canberra Solutions contractors who were interviewed were hired by the university. Another Canberra Solutions contractor, Mr Hall, did not take up a role offered to him. Evidence relating to Mr Hall’s selection committee interview is discussed below.

Mr Apostolovic and Neill Li were project coordinators who worked for Mr Meeth in the project management office. Mr Apostolovic told the public inquiry of the recruitment practice within the project management office until he left the university in July 2012. He said that, on Mr Meeth’s instructions, he would disseminate a brief job description to the C100 companies preferred by Mr Meeth. These companies would send back resumes of potential candidates. The candidates would then be shortlisted by Mr Meeth.

The evidence established that, during the shortlisting process, Mr Meeth directly received resumes from Mr Moothedath. He then shortlisted these Canberra Solutions candidates, or arranged for Canberra Solutions candidates to be registered with one of the four preferred C100 companies prior to being shortlisted. Because of this, Mr Meeth knew which candidates were sourced from Canberra Solutions.

After shortlisting was completed, the relevant C100 company would be contacted to arrange interview times. University records show that at least three candidates

were interviewed for each ICT vacancy. Mr Meeth was always on the selection committee. In 2012, Mr Meeth conducted five selection processes involving Canberra Solutions candidates. In each selection process, the interview selection committees consisted of Mr Meeth and either Mr Apostolovic or, in one instance, Mr Li.

In a statement to the Commission, Mr Cooper, Mr Meeth’s manager, said that ICT interview selection committees should have consisted of Mr Meeth, one of his project coordinators and another ICT manager. He said that when he became aware that Mr Meeth was conducting interviews with only a subordinate project coordinator, he met with him to convey the need to follow interview procedures. He said that Mr Meeth assured him that the procedures would be observed in the future. While Mr Cooper did not state the date he had this conversation with Mr Meeth, university documentation shows that the last two selection processes involving Canberra Solutions candidates, held in early 2013, were conducted with Mr Meeth in the company of two university project managers. At both of these 2013 selection processes, the Canberra Solutions candidate was successful.

Mr Apostolovic and Mr Li said that, at the interviews they attended, Mr Meeth asked generic questions concerning the candidate’s capacity for managing the project. The questions included how the candidate managed difficult people and their motivation for working at the university. Mr Apostolovic and Mr Li said that there were very few questions about the candidate’s technical prowess. Mr Meeth accepted that he did not hold any formal qualifications in information technology and did not ask technical questions as the vacancies in question were project management roles.

Mr Meeth then decided which candidate would be awarded the job. Mr Apostolovic told the public inquiry that Mr Meeth appointed candidates, who were subsequently identified as being clients of Canberra

Solutions, in inexplicable circumstances. In one instance, he said that he was on an interview panel with Mr Meeth and raised a concern that Mr Meeth's preferred candidate held a tentative visa status dependant on her partner. He said that he told Mr Meeth that this was a risk that would make the candidate unsuitable. He said Mr Meeth acknowledged his concern but appointed the candidate in any event. Mr Meeth did not accept that Mr Apostolovic raised a concern about the candidate. The candidate gave evidence at the public inquiry that was consistent with Mr Apostolovic's version, including a recollection that Mr Apostolovic specifically asked her about her visa status.

Mr Apostolovic and Mr Li gave accounts of other occasions where their concerns with candidates were dismissed by Mr Meeth. Mr Meeth maintained that all of his appointments were made on merit. While Mr Meeth acknowledged that he invited Mr Apostolovic and Mr Li on to various interview panels to create rigor in the process, he also accepted that he always had the final say in who was selected.

A ninth Canberra Solutions contractor was engaged by the university to work from 3 June 2013. There is no documentation indicating that this candidate was interviewed in the process described above. The only information available concerning the recruitment of this candidate is from the university's internal investigation report into Mr Meeth's conduct. That report quotes one of Mr Meeth's staff members stating that Mr Meeth had nominated this contractor for a position. The staff member advised Mr Meeth that he could not do that as he would need to go to a "request for hire" procurement process. The staff member said that Mr Meeth did go to a request for hire process and selected the Canberra Solutions candidate anyway. During the public inquiry, Mr Meeth was not asked directly about this contractor.

## The cost competitiveness of Canberra Solutions candidates

Mr Meeth said that he sought the services of Canberra Solutions because they were "highly cost competitive". Mr Meeth told the Commission at an earlier examination that this meant the Canberra Solutions candidates would perform better than their competitors for the same cost to the university. There was other evidence, however, that Canberra Solutions candidates were less cost competitive than other candidates and that, in some cases, their performance was unsatisfactory.

The daily rate paid by the university for each contractor was negotiated between Mr Meeth, the relevant C100 company representative and, in the case of Canberra Solutions candidates, Mr Moothedath. The Canberra

Solutions candidates were not notably cheaper than their competitors. Canberra Solutions candidates had the highest daily rate in three of the seven selection processes undertaken by Mr Meeth. Of the seven candidates interviewed in Mr Meeth's first selection process in April 2012, the four Canberra Solutions candidates all had a higher daily rate than the three candidates from other C100 companies. This included the only Canberra Solutions candidate who was not deemed suitable for a position.

Once appointed, the performance of the Canberra Solutions candidates was in some cases unsatisfactory. Three of the nine Canberra Solutions contractors engaged by the university had their services terminated prematurely, or their contracts were not renewed, due to their poor work performance. A further Canberra Solutions contractor did not have his contract renewed by Mr Meeth's successor at the university as he was considered too junior for the requirements of his position. Mr McNulty gave evidence that a further two Canberra Solutions candidates were clearly not at a point in their careers to warrant the daily rate the university paid for them.

Mr Williams of Paxus Australia, an accredited C100 company, said that he submitted three or four candidates to the university that were referred to him by Canberra Solutions, as arranged by Mr Meeth. These candidates were successful while competing against candidates Mr Williams sourced directly, even though he felt the non-Canberra Solutions candidates were stronger candidates.

Mr Meeth continued to engage Canberra Solutions contractors even after he was aware of concerns about their skill and expertise. Two Canberra Solutions contractors commenced university contracts on 18 June 2012. One of the contractors, who had commenced a 12-month contract, sent an email to Mr Meeth on 28 June 2012 asking for help as he was struggling with his work. He was dismissed for poor performance on 6 September 2012. By this time, Mr Meeth had already received complaints about the inadequate work output of the other contractor. On 24 October 2012, Mr Meeth called an urgent meeting with this contractor as he had feedback that "not much was happening in this space". In early 2013, Mr Meeth sought approval from his manager to replace this contractor who he said "was dismissed for poor service". At the same time, he was convening another selection committee that recruited a Canberra Solutions contractor who was also subsequently dismissed for poor performance.

Mr Meeth accepted that he appointed Canberra Solutions candidates even after some Canberra Solutions



contractors had proved to be unsuitable and after three Canberra Solutions candidates performed so poorly that their services were dispensed with by the university. While he conceded that a one-third failure rate is much too high, he said that it was not specifically better or worse than other recruitment agencies. He said, however, that on each occasion a Canberra Solutions candidate was selected they were the best available candidate and that the majority of Canberra Solutions candidates were good quality candidates. He said later in his evidence that he raised with Mr Moothedath the unsatisfactory quality of the Canberra Solutions candidates. Mr Meeth said that Mr Moothedath told him the candidates were of high quality and that he would improve their skills through further training.

The Commission is satisfied that Mr Meeth knew that at least some Canberra Solutions candidates were not performing satisfactorily, yet continued to engage the services of other Canberra Solutions contractors.

Mr Moothedath denied that the candidates he submitted to the university lacked the required skills and expertise. He said that they were very good candidates and, when asked about particular contractors, said that the contractors told him that their contracts were terminated due to “office politics”. Mr Moothedath’s evidence is contradicted by university documentation detailing these candidates’ poor work performance.

## Concealing the involvement of Canberra Solutions

Reference to the involvement of Canberra Solutions was omitted from relevant university documentation. The project management office was responsible for the documents that recorded the hiring of ICT contractors. Two categories of documents recorded the source of each ICT candidate: these were the formal C100 contracts, and the internal university recruitment confirmation forms that recorded the selection process. In every case that a Canberra Solutions candidate was hired by the university, these documents recorded the candidate being sourced from a C100 company and made no reference to Canberra Solutions. Mr Meeth said that this was because the candidate was subcontracted through Canberra Solutions to the C100 company and that the university dealt with the C100 company. In at least one instance, however, the university recruitment confirmation forms signed by Mr Meeth recorded candidates being sourced from non-C100 companies, such as the recruitment company ecareer. By not identifying Canberra Solutions as the source of the candidate, any audit of university documentation would not reveal the involvement of Canberra Solutions. Mr Meeth denied that Canberra Solutions was omitted from university records in order

to disguise Canberra Solutions’ involvement with the university.

The Commission does not accept Mr Meeth’s evidence and is satisfied that Mr Meeth, in creating or authorising these documents, intended to conceal Canberra Solutions as the source of the candidates.

Email correspondence of 4 April 2012 between Mr Meeth, Mr Moothedath, Mr Apostolovic and Mr Williams demonstrates Mr Meeth’s deceitful conduct. The sequence of the emails is set out as follows:

Time	Details
12.12 pm	Mr Moothedath forwards the resumes of two Canberra Solutions candidates to Mr Meeth.
12.52 pm	Mr Williams emails his contact details to Mr Meeth.
2.44 pm	Mr Meeth forwards Mr Moothedath’s email with the two resumes to Mr Apostolovic and asks him to “shortlist both of [the candidates] but first find out which C100 panel Canberra Solutions is using”.
2.46 pm	Mr Apostolovic replies two minutes later attaching a link to the C100 contract guide and asks for advice as he did “not see Canberra Solutions on the C100 list at all”.
2.46 pm	Mr Meeth emails Mr Moothedath a copy of Mr Williams’ contact details from earlier that day and tells him that “you will need to confirm which C100 company [he is] providing resources through. You might want to consider [Mr Williams’ contact details] below but it is up to you”.
2.48 pm	Mr Meeth emails a reply to Mr Apostolovic, saying, “[They] are not but maybe they are subcontracting through the C100? You will need to contact them to confirm or advise them that we can’t use them unless they are”.

The 2.48 pm email to Mr Apostolovic gives the impression that Mr Meeth is unaware of whether or not Canberra Solutions would be contracting through a C100 company. Mr Meeth, however, was clearly aware that Canberra Solutions would be using a C100 company and had already provided Mr Williams’ details to Mr Moothedath for that purpose.

The Commission is satisfied that Mr Meeth was deliberately deceiving Mr Apostolovic, as he did not want Mr Apostolovic to know that he was directly involved in arranging for Canberra Solutions to provide its candidates through a C100 company.

## The recruitment of Mr Hall

A particular instance which demonstrates that Mr Meeth favoured Canberra Solutions was when he attempted to recruit Mr Hall. Mr Hall and Mr Meeth were long-time friends, having known each other since high school. Mr Meeth said that he referred Mr Hall to Canberra Solutions for the purpose of recruitment to the university. Mr Moothedath passed Mr Hall's resume on to Greythorn Smalls, a C100 company. Mr Meeth could have referred Mr Hall directly to a C100 company. By instead referring him to Canberra Solutions he was providing a potential benefit to Canberra Solutions that would be realised in the form of contract fees received by Canberra Solutions, in the event Mr Hall was engaged by the university. It seems that given Mr Meeth's involvement in the recruitment process, there is little risk that Mr Hall would not be selected and, therefore, little risk that Canberra Solutions would not benefit.

Mr Meeth said that before the interview with Mr Hall, he told his subordinate, Mr Apostolovic, that he had known Mr Hall for a long time. He conceded that this disclosure did not constitute an adequate declaration of a conflict of interest. Mr Meeth told the Commission that he interviewed Mr Hall initially to see if he was suitable for the role. If he was suitable then, because of the potential conflict of interest arising from their friendship, he said that he would convene a panel of other university staff members to conduct a further interview. He said that Mr Hall withdrew his application shortly after the initial interview, which made it unnecessary to convene a second panel.

Contrary to Mr Meeth's evidence, a recruitment confirmation report, signed by Mr Meeth, states that Mr Hall "was considered appropriate for the position, but he rejected the employment offer". The confirmation recruitment report makes it clear that Mr Meeth offered a position to Mr Hall following the interview and had no intention of convening another panel. Mr Meeth's evidence, that he would hold two interviews of Mr Hall (the latter interview being where he would recuse himself), is entirely inconsistent with the rational management of a potential conflict of interest.

## Canberra Solutions' profit

As a result of Mr Meeth's favouritism towards Canberra Solutions, the university paid approximately \$1.6 million, via C100 companies, to Canberra Solutions. Mr Moothedath made a profit of about \$800,000. He made this profit because all of the nine Canberra Solutions contractors who worked at the university were compelled to enter into contractual arrangements with Canberra Solutions for rates that were less than what they would

have received if directly contracted by a C100 company. Contractors engaged directly from a C100 company were entitled to 90% of the contract fee. In the case of those engaged through Canberra Solutions, the amount they received was considerably less. This was because of their pressing personal circumstances, such as financial hardship due to extended unemployment or lack of relevant work experience in Australia.

The contractors' daily rate for university ICT contracts was in the range of \$800 per day for business managers, \$1,000 per day for project managers and \$1,200 per day for program managers. The Canberra Solutions' candidates accepted rates of around \$400 to \$500 per day. As a consequence, Canberra Solutions' profit margin was in the order of 50% of the contract price, for each of the contractors. Mr Moothedath told the Commission that he offered contract prices that contractors were happy to accept. He rejected the assertion that a recurring feature of his recruitment strategy was to engage contractors who were desperate for work and take advantage of their situation to pay them below market rates.

Mr Moothedath ensured that the contractors he sourced for the university were not aware of the daily rate the university was paying for their services. This is illustrated in the case of Dhawal Parekh. When Mr Parekh was hired by Mr Meeth, a C100 contract was executed between the university and Paxus Australia and a second contract was executed between Paxus Australia and Canberra Solutions. Canberra Solutions then executed a third contract directly with Mr Parekh. The C100 contract between the university and Paxus Australia shows the university was paying \$980 per day to Paxus Australia for Mr Parekh's services. The contract between Canberra Solutions and Mr Parekh shows that Canberra Solutions was paying Mr Parekh \$500 per day. Mr Moothedath caused Paxus Australia to create two versions of the contract between Canberra Solutions and Paxus Australia. One version described Mr Parekh's daily contract rate as \$980. The second version was identical, except that the daily contract rate was described as "As Per Schedule A". No schedule was attached to the contract. Mr Parekh said that he was only given the contract that referred to Schedule A and was never advised of the total amount paid by the university, or the margin retained by Canberra Solutions, for his services.

Mr Meeth told the public inquiry that he did not know that Canberra Solutions was making such a large profit from his recruitment of its contractors. He said that he thought the standard C100 contract margin of 10% would be split between the C100 company and Canberra Solutions. He did, however, concede that he should have made more enquiries into how the money paid by the university would be distributed between the C100

company and Canberra Solutions. In the absence of any positive evidence, the Commission is unable to find that Mr Meeth knew that Canberra Solutions made a substantial profit for supplying contractors that were engaged to work at the university.

## Chapter 4: Mr Meeth's motivation for favouring Canberra Solutions

The Commission explored why Mr Meeth favoured Canberra Solutions. For reasons discussed in the previous chapter, the Commission does not accept Mr Meeth's evidence that he engaged Canberra Solutions contractors because they were highly cost competitive. The Commission then examined whether Mr Meeth favoured Canberra Solutions candidates for a reward. Both Mr Meeth and Mr Moothedath denied that Mr Meeth was provided with any reward in return for favouring Canberra Solutions.

### Telephone communications

At the public inquiry, Mr Meeth gave unsolicited evidence of a telephone conversation he had with Mr Moothedath, which he said occurred in late 2014 or early 2015. He failed to recall much about the telephone conversation other than Mr Moothedath said words to the effect of "What about all the bribes?" in the context of the Commission's investigation. Mr Meeth said he took the comment as a joke and replied by saying, "We've got nothing to worry about. We haven't done anything wrong. I don't know what you are worried about." Mr Moothedath denies the telephone conversation took place. Mr Meeth's evidence is bizarre and difficult to reconcile with his rejection of any involvement in the solicitation or receipt of "bribes" from Mr Moothedath. It does, however, demonstrate that he saw a connection between his dealings with Mr Moothedath and being rewarded by Mr Moothedath in some way.

Another factor that supports the inference that Mr Meeth sought or obtained some form of reward from Mr Moothedath is the level of their communications in 2012. There were around 40 communications between the mobile telephone services of Mr Meeth and Mr Moothedath in the month of April 2012, and slightly fewer per month in the following three months. From August 2012, the telephone contact decreased. These communications included text messages but

excluded any calls to either of their land lines.

At the public inquiry, Mr Moothedath initially said that they contacted each other at least once a week about the Canberra Solutions contractors the university had placed and whether other opportunities had arisen. When he was shown the extent of the communications, he said that he was surprised by the number of them but denied it indicated any arrangement to reward Mr Meeth for his support. Mr Meeth said that he recalled that Mr Moothedath's telephone service used to "drop out" frequently, which required one of the parties to return a call. He also said that, from April to August 2012, he and Mr Moothedath were discussing setting up a joint business and that some of the telecommunications would be related to that commercial venture. The Commission is satisfied that the telecommunications between Mr Meeth and Mr Moothedath are indicative of a relationship that goes beyond that of a mere supplier and consumer of labour services.

### Canberra Solutions' finances

The Commission also examined the financial positions of both Mr Moothedath and Mr Meeth to determine if they had any financial dealings that would be consistent with Mr Moothedath secretly paying Mr Meeth money.

Canberra Solutions made a substantial profit in its dealings with the university. Mr Moothedath gave evidence that Canberra Solutions made no more than \$50,000 from the time of its incorporation in 2010 until it commenced dealing with the university in early 2012. Over the next 18 months, Canberra Solutions turned over approximately \$1.6 million, almost all of which came from the supply of contractors to the university. Of this amount, approximately \$800,000 profit remained after wages were paid to the contractors supplied to the university. Canberra Solutions made virtually no money at all after Mr Meeth left the university in July 2013.

The Commission also found evidence that Mr Moothedath put in place arrangements that allowed him to turn some of the profit from Canberra Solutions into untraceable cash. Mr Moothedath did this by falsely purporting to employ Ms Naik at Canberra Solutions. The Canberra Solutions financial statement for the financial year 2012–13 shows that Ms Naik was paid \$15,200. Mr Moothedath said that Canberra Solutions trained Ms Naik, a qualified architect, to provide back office support services to a well known international online service company. Mr Moothedath could not remember the company's name.

Mr Shanker was a Canberra Solutions contractor who worked at the university and is Ms Naik's husband. He told the public inquiry that Mr Moothedath devised a scheme whereby Ms Naik would be paid by Canberra Solutions but did not have to do any work for the company. He said that, once Canberra Solutions deposited her pay into Ms Naik's personal bank account, Mr Shanker would withdraw the money in cash and return it to Mr Moothedath. Mr Shanker said that he thought this scheme provided a tax benefit to Mr Moothedath, while he and Ms Naik received a benefit from the superannuation accruing to her for her false employment. The Commission did not consider it necessary to call Ms Naik to the public inquiry. Mr Moothedath denied Mr Shanker's version.

The Commission is satisfied that Ms Naik was paid by Canberra Solutions but did not do any work for Canberra Solutions. The Commission is further satisfied that the money paid by Canberra Solutions to Ms Naik was withdrawn by Mr Shanker and returned to Mr Moothedath. This is because Mr Moothedath struggled to provide any clarity as to Ms Naik's role at Canberra Solutions. Also, Ms Naik's bank account statements were consistent with her pay being withdrawn in cash after being deposited. In addition, Mr Shanker's version is credible as he made admissions against his own interests about his and Mr Moothedath's behaviour

during the Commission's investigation. The Commission is satisfied that Mr Moothedath had access to a clandestine cache of funds that was potentially available to him to secretly reward Mr Meeth for favouring Canberra Solutions.

### Mr Meeth's cash tin

The Commission found evidence that Mr Meeth also had a clandestine cache of funds. From December 2012 to November 2013, nine cash deposits totalling \$24,000 were made into personal bank accounts operated by Mr Meeth.

Mr Meeth told the public inquiry that these deposits were from cash he stored in a "cash tin" under his bed. He said that his practice was to withdraw between \$2,500 and \$3,000 from an automatic teller machine (ATM) each year and put that money in his cash tin. He kept as much as \$10,000 to \$15,000 in the cash tin.

Mr Meeth also said that he received cash gifts from his mother and his wife's parents that he put in the cash tin with his savings. He said that he received a total of \$12,000 from his mother, comprising \$6,000 in late 2011 and a further \$6,000 in 2013. He also said that he received \$3,000 from his wife's parents in late 2011 as well as \$500 for a pram when his child was born. He said that he had always kept money at home because he "liked the security of having some money at home". Mr Meeth said he has now stopped the practice because it can "cause a lot of misunderstanding" and he has "changed his thinking" because "it is not too hard to go to an ATM". Mr Meeth said that he then deposited the money from the cash tin into one of his personal bank accounts when he was required to make a payment related to the renovations of his house in 2013. Mr Meeth said that in 2012 he would have had over \$24,000 in his cash tin at any one time.

Mr Meeth's father-in-law provided information to the Commission that was largely consistent with Mr Meeth's

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evidence, saying that he gave \$3,500 to his daughter and Mr Meeth in 2011 when they had a child. Mr Meeth's mother, Diana Meeth, told the Commission in an earlier examination that she gave Mr Meeth a total of \$10,000 in gifts, comprising \$6,000 at the end of 2011 and another \$4,000 in 2012. She said that in November 2007 she found \$6,000 in cash secreted amongst her late husband's possessions. She then gave this money to Mr Meeth in 2011 when he was about to buy a block of land as he had previously expressed his disappointment that he had not inherited anything from his father. The money was given in two lots of \$3,000 as \$6,000 was "a lot of money to hand over at once". Mrs Meeth also said that she gave her son a further \$4,000 in two or three payments over 2012 to assist him in building his house. The \$4,000 was taken from her cashbox at home. Mr Meeth told the Commission that he did not accept his mother's evidence that she gave him \$4,000 in 2012. He maintained the last payment from his mother was \$6,000 in 2013. When asked if he wanted his mother cross examined on this issue he did not answer the question directly but said that he could only tell the Commission what he remembered.

While aspects of this evidence cannot be satisfactorily resolved and may suggest that Mr Meeth did receive cash payments from Mr Moothedath, there is no direct evidence that Mr Moothedath did pay Mr Meeth. After having carefully considered the available evidence, the Commission has accepted the submission of Counsel Assisting that the fact and scale of any financial benefit flowing to Mr Meeth from Mr Moothedath cannot be established to the requisite standard.

## Chapter 5: Corrupt conduct

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

First, the Commission makes findings of relevant facts on the balance of probabilities. The Commission then determines whether those facts come within the terms of s 8(1), s 8(2) or s 8(2A) of the ICAC Act. If they do, the Commission considers s 9 and the jurisdictional requirements of s 13(3A) of the ICAC Act. In the case of subsection 9(1)(b), the Commission considers whether, if the facts as found were to be proved on admissible evidence to the civil standard of 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 committed a disciplinary 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.

### Jason Meeth

One of Mr Meeth's responsibilities at the university was to recruit external ICT contractors. In doing this, Mr Meeth was required by the university code of conduct to act fairly and reasonably. The same code required him to exercise his best professional and ethical judgment and carry out his duties and functions with integrity and objectivity. When applied to the recruitment of ICT contractors, these obligations meant that Mr Meeth was required to treat each candidate equally and not give any ICT candidate an unacceptable advantage for any ICT vacancy. Mr Meeth failed to fulfil this obligation by knowingly and improperly giving Canberra Solutions contractors preferential treatment.

The Commission has found that, in engaging ICT contractors, Mr Meeth knew that he was obliged to use contractors sourced from C100 companies. Although a C100 company could use subcontractors, such use was only necessary where the C100 company lacked

sufficiently skilled contractors, in which case the C100 company could select a suitable subcontractor in accordance with the requirements of the C100 scheme.

Mr Meeth knew that it was not appropriate for him to nominate which company a C100 company should use as a subcontractor. Despite this, Mr Meeth arranged for Canberra Solutions to be put in touch with C100 companies so that Canberra Solutions ICT contractors could be engaged by the university knowing this was contrary to the C100 scheme. This arrangement was organised by him to give the appearance that the ICT contractors had been directly engaged through a C100 company. Mr Meeth controlled the subsequent recruitment process so that Canberra Solutions ICT contractors were selected despite knowing that, in at least some cases, Canberra Solutions candidates lacked appropriate skills and were not cost competitive with other candidates. He took steps to ensure that there were no references to Canberra Solutions in the university recruitment documentation. When he thought that Mr Hall might be able to provide suitable services to the university he put him in contact with Canberra Solutions rather than a C100 company. Ultimately, because of Mr Meeth's conduct, nine Canberra Solutions candidates were engaged to work at the university.

The Commission is satisfied that, in 2012 and 2013, Mr Meeth improperly exercised his functions as a university official by giving preferential treatment to Canberra Solutions in the selection of Canberra Solutions candidates to work at the university as ICT contractors. This conduct comes within s 8(1)(b) of the ICAC Act because it is conduct of a public official that constitutes or involves the partial exercise of his official functions.

Mr Meeth's conduct also comes within s 9(1)(b) of the ICAC Act because his conduct could involve a disciplinary offence of misconduct. At the public inquiry, Mr Meeth acknowledged that he was aware of, and was obliged to comply with, the university code of conduct.

In acting partially, by giving preferential treatment to Canberra Solutions candidates, Mr Meeth failed to fulfil his duty to act with integrity and objectivity. The code of conduct states that the university may take disciplinary action against staff for a breach of the code of conduct.

Under the university's external interests policy, Mr Meeth also had an obligation to declare any actual, potential or perceived conflict of interest with his duties to the university. The policy also states that failure to disclose information about a conflict of interest may result in the university taking disciplinary action. Mr Meeth failed to declare his friendship with Mr Hall at the time he interviewed Mr Hall for a position at the university. Mr Meeth also told the Commission that, in 2012, he was involved in discussions with Mr Moothedath about a possible commercial venture. Mr Meeth was obliged to declare these discussions with Mr Moothedath as an actual, potential or perceived conflict of interest would arise due to Mr Meeth's involvement in determining if Canberra Solutions contractors were engaged by the university.

The Commission is satisfied that, if the facts were proved on admissible evidence to the civil standard of the balance of probabilities, an appropriate tribunal would find that Mr Meeth committed a disciplinary offence by breaching the university code of conduct and external interests policy by not acting with integrity and objectivity, while also failing to declare actual, potential or perceived conflicts of interest with respect to his commercial dealings with Mr Moothedath and his personal friendship with Mr Hall.

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 Meeth's conduct is serious corrupt conduct. In reaching this conclusion, the Commission has taken into account the following factors:

- Mr Meeth's conduct had the effect of subverting a whole-of-government procurement plan, namely the C100 scheme, which was intended to control labour hire practices
- Mr Meeth's senior role at the university, including his effective control of labour hire processes, which he systematically abused to favour Canberra Solutions
- the amount of money involved – Canberra Solutions received approximately \$1.6 million of university money over 18 months, of which Canberra Solutions was able to retain about \$800,000 as profit
- Mr Meeth's conduct could impair public

confidence in public administration as a result of the engagement of substandard ICT contractors to provide ICT services to the university

- Mr Meeth's misconduct was such that it would warrant his dismissal by the university.

## Balu Moothedath

Despite his unscrupulous profiteering in his management of Canberra Solutions, the evidence available to the Commission does not substantiate any finding that Mr Moothedath engaged in corrupt conduct within the definition of that term in the ICAC Act. This is because the facts as found by the Commission about his conduct could not constitute or involve a criminal offence.

## Section 74A(2) statements

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

- obtaining the advice of the Director of Public Prosecutions (DPP) with respect to the prosecution of a person for a specific offence
- the taking of action against the person for a specific disciplinary offence
- the taking of action against the person as a public official on specific 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 Meeth and Mr Moothedath are "affected" persons.

## Mr Meeth

The Commission is not satisfied that the admissible evidence available warrants the Commission seeking the advice of the DPP with respect to Mr Meeth's prosecution for a specific offence.

Mr Meeth resigned from the university in July 2013, negating the need to consider whether his conduct requires the taking of action against him for a specific disciplinary offence or with a view to dismissing, dispensing with the services of or otherwise terminating his services.



## Mr Moothedath

Mr Moothedath gave his evidence subject to a declaration made pursuant to s 38 of the ICAC Act. The effect of this declaration is that his evidence cannot be used against him in any criminal prosecution other than a prosecution for an offence under the ICAC Act. Mr Moothedath's evidence is, therefore, available for his prosecution for the offence of giving false and misleading evidence, contrary to s 87 of the ICAC Act. Other evidence is also available, such as photographic and video evidence taken by Commission surveillance officers, telephone records, evidence from Mr Shanker and potentially Ms Naik, and documents from the university and Canberra Solutions.

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 Moothedath for the following criminal offences:

- giving false and misleading evidence, contrary to s 87 of the ICAC Act, by giving evidence during a public inquiry that Ms Naik worked for Canberra Solutions
- giving false and misleading evidence, contrary to s 87 of the ICAC Act, by giving evidence during a public inquiry that he did not discuss the Commission's investigation with Mr Shanker on 29 June 2015
- attempting to procure false evidence from Mr Shanker on 29 June 2015, contrary to s 89 of the ICAC Act.

The Commission is also of the opinion that it is appropriate in all of the circumstances to refer Ms Naik's purported employment at Canberra Solutions to the Australian Tax Office. This is because Canberra Solutions may have falsely claimed tax credits related to Ms Naik's purported employment.

## Chapter 6: Corruption prevention

Labour hire processes conducted by the university's ICT business unit were undermined in two ways. The first was improper subcontracting from a whole-of-government arrangement and the second was that Mr Meeth had almost complete control over the labour hire processes. Subcontracting is now forbidden under current whole-of-government arrangements and the university's labour hire processes are now more tightly controlled.

### Subcontracted labour hire under the C100 contract

During the time period applicable to this investigation, the ICT business unit was meant to exclusively source labour hire contractors from C100 companies. Labour hire engagements allowed the ICT business unit to temporarily hire workers with specialist skills that it did not need on an ongoing basis and the requirement to use C100 companies was designed to help control the engagement of these workers.

Under the C100 contract, subcontracting was conditionally permitted. C100 companies were required to provide the department managing the C100 contract with a list of all their potential subcontractors, although they were not required to declare any subcontracting relationships into which they entered. Additionally, if a hiring manager had introduced a labour hire contractor to a C100 company, the C100 company was only entitled to a markedly reduced fee<sup>1</sup>.

Despite not being a C100 company, Canberra Solutions received considerable university funds as a result of subcontracted labour hire. It ultimately sourced nine candidates for the ICT work and indirectly charged the university over \$1.6 million. Canberra Solutions received this money because four C100 companies that supplied

labour hire contractors to the ICT business unit – namely, Greythorn Smalls, Michael Page, Paxus Australia and Talent International – subcontracted to it. The university was unaware of these subcontracting relationships and the sizeable margins that Canberra Solutions received.

The 0007 scheme, which replaced the C100 contract, now forbids any subcontracting arrangements. Additionally, unlike the C100 contract, the same margins apply to different suppliers, although the applicable margins naturally differ according to the type of engagement in question. These changes to whole-of-government arrangements make labour hire engagements easier to manage.

The challenge, however, for organisations managing such engagements is to ensure that the margin charged is that specified in the contract. In effect, the organisation needs to compare the rate paid to the contractor against the rate charged by the recruitment agency.

One mechanism that can be used to facilitate such a comparison is to confirm with a labour hire contractor that they are being paid the rate that the 0007 company claims they are paying them. This could be done by simply confirming the rate with the labour hire contractor as part of the process by which they commence working for the organisation.

### Control of ICT labour hire processes

This investigation showed that Mr Meeth had extensive control over many ICT labour hire processes at the applicable time. He chaired the selection committees, for example, that were responsible for both shortlisting and interviewing candidates. At one stage, these selection

<sup>1</sup> The precise margins in the C100 contract varied across both the different C100 companies and specifics of the actual engagements. In total, 1,152 different supplier fees could be charged under the C100 contract.

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committees consisted solely of Mr Meeth and one of his subordinates, with Mr Meeth having the deciding vote in terms of both shortlisting and hiring candidates.

Mr Meeth repeatedly used his control over selection processes to ensure that candidates provided by Canberra Solutions were ultimately hired. For instance, when Mr Apostolovic served on selection committees with Mr Meeth, he expressed concern about a number of candidates supplied by Canberra Solutions but was overruled by Mr Meeth on each occasion. If Mr Meeth's control of the selection process had been diluted, it is likely that at least some of these candidates would not have been hired.

Since the time period applicable to this investigation, ICT labour hire processes at the university have been made more robust. Recruitment companies are now approached by a representative of SydneyRecruitment, the university's recruitment business unit. Additionally, there are enhanced requirements for the composition of selection committees, including the need for at least three selection committee members, with one of these members being independent of the ICT business unit.

Further changes to the university's human resources function should strengthen its ability to control ICT labour hire. On 1 March 2016, a new workforce engagement policy came into effect that more deliberately presents procedural requirements surrounding labour hire. Additionally, the university has commissioned an end-to-end review of its recruitment processes and improved its ability to analyse human resources-related data.

As a result of the university's changes to its ICT labour hire processes, the Commission does not make any recommendations concerning these processes.

## Appendix 1: The role of the Commission

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

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

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

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

The Commission may report on its investigations and, when 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 corrupt conduct.

The role of the Commission is to act as an agent for changing the situation which 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 *Rejfeek v McElroy* (1965) 112 CLR 517, the *Report of the Royal Commission of inquiry into matters in relation to electoral redistribution, Queensland, 1977* (McGregor J) and the *Report of the Royal Commission into An Attempt to Bribe a Member of the House of Assembly, and Other Matters* (Hon W Carter QC, Tasmania, 1991).

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





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