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17/08/2015

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pp 00001-00026

PUBLIC
HEARING

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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE MEGAN LATHAM

PUBLIC HEARING

OPERATION SONET

Reference: Operation E14/1727

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON MONDAY, 17 AUGUST 2015

AT 12.04PM

Any person who publishes any part of this transcript in any way and to any person contrary to a Commission direction against publication commits an offence against section 112(2) of the Independent Commission Against Corruption Act 1988.

This transcript has been prepared in accordance with conventions used in the Supreme Court.

THE COMMISSIONER: Yes. Firstly can I just apologise to the legal representatives and their clients in relation to the late start. There was a technical issue which we are endeavouring to overcome. I think we've found a solution. Could I just indicate that this public inquiry is expected to last for at least two or three days. I'll shortly ask Counsel Assisting, Mr Scott Robertson, to open the inquiry. Could I indicate that the standard directions will apply and the Commission will follow its usual practice, that is following the opening there will be a short adjournment after which I'll take the applications for leave to appear. Yes, Mr Robertson.

10

MR ROBERTSON: Commissioner, this is a public inquiry into allegations that Ronald David Cordoba engaged in corrupt conduct by firstly dishonestly exercising his public official duties relating to procurement in order to obtain a financial advantage of more than \$1.7 million and secondly by securing a payment of \$55,000 from Cloud People Pty Limited by, amongst other things, falsely claiming that he was authorised by his employer to undertake work for that company.

20

Mr Cordoba is an employee of the Technical and Further Education Commission, otherwise known as TAFE and is therefore a public official for the purposes of the Independent Commission Against Corruption Act. He commenced working at the South Western Sydney Institute of TAFE in 2002 as a casual teacher before becoming a fulltime teacher in 2005. He was promoted to the position of Senior Education Officer in 2009. In December 2012 Mr Cordoba was temporarily appointed to the position of Manager of Information and Communication Technology Services, a position which carried with it a financial delegation of \$150,000.

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The Commission is investigating an allegation that Mr Cordoba used that financial delegation and his official functions more generally to procure TAFE to pay him more than \$1.7 million and to procure TAFE to engage Cloud People Pty Limited with a view to profiting personally from that engagement.

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As to the first of those allegations it appears that Mr Cordoba was able to cause for large amounts of money to be paid into his personal bank account by cheating a number of aspects of TAFE's procurement policies and procedures. Under TAFE's procurement procedures four things ordinarily need to happen before a payment can be made to a particular supplier. First, the supplier must be created as a vendor within TAFE's finance system. Second, a purchase order must be issued to a supplier. That usually occurs once a shopping cart is created on the financial system and then approved by a person who has the appropriate financial delegation level. Third, an officer of TAFE must certify receipt of the goods or services which have been ordered and finally the supplier must issue an invoice to TAFE in the amount of the purchase order. Now if there's a three-way match between a purchase order, a receipt certificate and an invoice then a payment is made

by TAFE to the vendor. Mr Cordoba appears to have thwarted these procedures for his own advantage.

10 Towards the middle of January 2014 Mr Cordoba instructed a member of his staff, IT coordinator Sharon Ambrose, to create a new vendor in TAFE's finance system. That new vendor was recorded as ITD Pty Limited, a company with a strikingly similar name to one of Mr Cordoba's own business names, ITD Systems. Mr Cordoba specified his own bank account as the bank account to be associated with IDT Pty Limited in TAFE's finance system.

In the first half of 2014 Mr Cordoba approved more than \$1.7 million worth of shopping carts which were ostensibly in favour of IDT Pty Limited. He did this notwithstanding TAFE's policy of only using in contract and Government suppliers wherever possible. Mr Cordoba certified that the items in the shopping carts had been received even though they had not been received at the time of the certification.

20 Although Mr Cordoba ultimately provided some of the items that appear in the shopping carts some items were never provided. The items that Mr Cordoba did provide were purchased by him at a fraction of the cost that he charged to TAFE. Indeed, it seems that he spent less than \$500,000 on the hardware and licences which he on-charged to TAFE for more \$1.7 million. It thus appears that Mr Cordoba pocketed a net profit of somewhere in the vicinity of \$1.2 million through what seems to be a very significant fraud against TAFE.

30 As well as giving the requisite approvals and certifications at the TAFE end Mr Cordoba also pretended to act on behalf of ITD Pty Limited even though he had no relation to that company. To that end he prepared quotations and invoices which appeared as if they were created by ITD Pty Limited but which were in fact prepared by Mr Cordoba himself. In communicating those quotations and invoices to TAFE Mr Cordoba sought to cover his tracks by not using his own name in communications with TAFE but instead assuming the name Alicia, a person who he pretended was the accounts officer of IDT Systems. By adopting this scheme Mr Cordoba was able to subvert that three-way match system I referred to earlier. In point of fact the same person caused for the purchase orders to be issued, prepared matching invoices and certified that items were received even though they were not.

40 Given that the purchase orders invoices and receipt certifications all matched significant amounts of moneys were paid into the bank account which was recorded against IDT Pty Limited, that is to say Mr Cordoba's own bank account.

This public inquiry will further investigate the events that led to that large amount of money being paid by TAFE into Mr Cordoba's bank account and will consider whether Mr Cordoba's conduct amounts to a dishonest exercise of his functions as a public official of the kind which amounts to

corrupt conduct for the purposes of the Independent Commission Against Corruption Act.

The other principal allegation to be investigated in this public inquiry relates to TAFE's engagement of a firm called Cloud People Pty Limited to provide the South Western Sydney Institute with what has been referred to as a hosted private cloud. Mr Cordoba was heavily involved in that engagement, amongst other things he approved the relevant shopping carts and approved for advanced payment to be made by TAFE to Cloud People.
10 After that occurred Cloud People paid Mr Cordoba some \$55,000.

It appears that unbeknownst to other TAFE officers there was an agreement and understanding between a Mr Kinsella of Cloud people and Mr Cordoba that if Cloud people was engaged by TAFE to provide that hosted private cloud then Cloud People would subcontract some of the associated support work to Mr Cordoba. Mr Kinsella says that Mr Cordoba told him that TAFE had authorised him to act as a subcontractor in this way and would not have engaged him if he knew that Mr Cordoba was not authorised to be so engaged.
20

The agreement or understanding with Cloud People appears to have led Mr Cordoba to ensure that Cloud People was engaged regardless of whether that was an appropriate course having regard to TAFE's interests and TAFE's procurement procedures. Amongst other things it appears that Mr Cordoba lied his staff by saying that he complied with TAFE's procurement policies by obtaining three quotes and by saying that he had chosen Cloud People due to its expertise and price. These matters will be further investigated in this public inquiry as will the question of whether Mr Cordoba's conduct amounts to corrupt conduct within the meaning of the
30 ICAC Act.

In considering the allegations against Mr Cordoba this public inquiry will hear from five employees of TAFE who have been summoned to give evidence. First, Mr James Brassil, the director of Human Resources for the South Western Sydney Institute of TAFE, M Neil Stralow, a financial accountant for the Institute, Ms Sharon Ambrose, the person I referred to earlier as the IT co-ordinator who worked under Mr Cordoba, Ms Sylvia Arthur who is the Director of Electrotechnology Information and Communications Technology and Design Faculty at the Institute who is also
40 presently relieving as the Associate Institute Director of People, Planning and Performance, and also Mr Cordoba.

A sixth possible witness, Mr Humphrey, who has previously acted as a relieving Associate Institute Director has been excused from appearance at this public inquiry for health reasons, Mr Kinsella of Cloud People to whom I referred to earlier is unavailable to attend the public inquiry this week but may well be called at a later date should that become necessary. In due course I will tender a witness statement signed by Mr Humphrey as well as

a record of interview with Mr Kinsella. I will also tender a series of other statements which have been taken by ICAC investigators during the course of this investigation.

As well as investigating whether Mr Cordoba's conduct amounts to corrupt conduct, this public inquiry will also consider whether consideration should be given to obtaining the advice of the Director of Public Prosecutions with respect to the prosecution of Mr Cordoba for any criminal offences such as, for example, fraud in contravention of section 192A of the Crimes Act.

10 Whether consideration should be given to taking action against Mr Cordoba with a view to dismissing him, dispensing with his services or otherwise terminating his services and what recommendations should be made with a view to reducing the likelihood of the occurrence of corrupt conduct in the future.

If it please the Commission.

THE COMMISSIONER: Thank you. We'll take a short 10 minute adjournment. Thank you.

20

SHORT ADJOURNMENT

[12.14pm]

THE COMMISSIONER: Yes, just take a seat. Yes, I'll take applications for leave to appear. Yes.

MR NEWTON: Commissioner, my name is Newton and I am - - -

30 THE COMMISSIONER: Newton.

MR NEWTON: - - - seeking authorisation to appear on behalf of the Department of Education, New South Wales TAFE Commission and a number of employees of New South Wales TAFE Commission, Mr James Brassil, Neil Stralow, Sharon Ambrose and Sylvia Arthur.

THE COMMISSIONER: Yes. Thank you, Mr Newton. That leave is granted. Yes.

40 MR SINGH: Commissioner, I seek leave to appear for Mr Cordoba. My name is Singh, S-i-n-g-h, initial A.

THE COMMISSIONER: Yes, Mr Singh. Yes, that leave is granted. Thank you. Anyone else?

MR ROBERTSON: No. No, Commissioner.

THE COMMISSIONER: And I understand this is Mr Brassil, is it?

MR ROBERTSON: It is. I'll call him in a moment. Can I first deal with some tendering of documents.

THE COMMISSIONER: Yes.

10 MR ROBERTSON: The first documents to tender will be an eight volume hearing brief. Before I formally tender that, can I just indicate briefly what it contains. Volumes 1 through to 3 are a series of documents which I'm likely to take particular witnesses to. The remaining of the volumes are a series of statements which have been taken by ICAC investigators, the final volume of which is focused on crime prevention, the remaining volumes of which are based on aspects of the allegation of corrupt conduct. So with that in mind I tender the eight volume hearing brief.

THE COMMISSIONER: Yes, those volumes will be marked Exhibit S1.

20 **#EXHIBIT S1 - BRIEF OF EVIDENCE**

MR ROBERTSON: Next I tender a five page, five pages of spreadsheets which have been prepared by ICAC staff and which seek to chart the various payments which have been made to Mr Cordoba.

THE COMMISSIONER: Yes, those spreadsheets will be Exhibit S2.

30 **#EXHIBIT S2 - SPREADSHEETS OF RECEIPTS IDENTIFIED IN NAB STORM SOLUTIONS T/AS ITD SYSTEMS BUSINESS CHEQUE ACCOUNT**

MR ROBERTSON: And finally at this point I tender a Australian Securities and Investments Commission current and historical extract with respect to ITD Pty Limited, that being one that updates the one that's presently in volume 1, page 5 and following of Exhibit S1.

40 THE COMMISSIONER: Yes, that extract will be Exhibit S3.

#EXHIBIT S3 - ASIC CURRENT AND HISTORICAL EXTRACT IN RELATION TO ITD PTY LTD

MR ROBERTSON: Now, with respect to each of those exhibits I seek a direction under section 112 suppressing bank account numbers, personal

addresses, personal telephone numbers, email addresses and similar personal identifying information.

THE COMMISSIONER: Yes. Being satisfied that it is necessary and desirable to do so in the public interest, I direct that the personal identifying information outlined by Counsel Assisting in that material is suppressed from publication.

10 **BANK ACCOUNT NUMBERS, PERSONAL ADDRESSES,
PERSONAL TELEPHONE NUMBERS, EMAIL ADDRESSES AND
SIMILAR PERSONAL IDENTIFYING INFORMATION IS
SUPPRESSED FROM PUBLICATION**

THE COMMISSIONER: Thank you.

MR ROBERTSON: May it please the Commission. Mr Newton also has
20 an application under section 112. I don't oppose that application but I'll let
him make it.

THE COMMISSIONER: Mr Newton.

MR NEWTON: Yes, Commissioner. I make an application that all
references to [REDACTED], S, sorry, [REDACTED], be suppressed or that
there be a suppression order in relation to that. He's an employee of the
TAFE, Commissioner, who is mentioned in the brief but he has nothing to
do with it and my instructions are that the matters raised had some
sensitivity and as a matter of fairness to - - -
30

THE COMMISSIONER: So he's not proposed to be called as a witness nor
does he have any relevant connection with these events?

MR NEWTON: Yeah, that would be my submission, Commissioner.

THE COMMISSIONER: All right. Well, then in those circumstances I
suppress publication of the name of [REDACTED], [REDACTED], to the extent that
the material that's already in evidence needs to be redacted he can simply be
referred to by the initial Z.
40

**THE PUBLICATION OF THE NAME OF [REDACTED] IS
SUPPRESSED**

MR ROBERTSON: Thank you, Commissioner. I call James Martin
Brassil.

THE COMMISSIONER: Yes, Mr Newton, you appear for Mr Brassil?

MR NEWTON: I do, Commissioner.

THE COMMISSIONER: Have you informed him of the effect of a section 38 order?

MR NEWTON: I have and he seeks the benefit of such an order.

10 THE COMMISSIONER: Thank you. Mr Brassil, could I just make you aware that the order that I'm about to make protects you from the use of your answers against you in civil or criminal proceedings but it does not protect you if it's found that you've given false or misleading evidence before the Commission. You understand that?

MR BRASSIL: Yes, I do.

20 THE COMMISSIONER: Pursuant to section 38 of the Independent Commission Against Corruption Act, I declare that all answers given by this witness and all documents and things produced by this witness during the course of the witness's evidence at this public inquiry are to be regarded as having been given or produced on objection and there is no need for the witness to make objection in respect of any particular answer given or document or thing produced.

30 **PURSUANT TO SECTION 38 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT, I DECLARE THAT ALL ANSWERS GIVEN BY THIS WITNESS AND ALL DOCUMENTS AND THINGS PRODUCED BY THIS WITNESS DURING THE COURSE OF THE WITNESS'S EVIDENCE AT THIS PUBLIC INQUIRY ARE TO BE REGARDED AS HAVING BEEN GIVEN OR PRODUCED ON OBJECTION AND THERE IS NO NEED FOR THE WITNESS TO MAKE OBJECTION IN RESPECT OF ANY PARTICULAR ANSWER GIVEN OR DOCUMENT OR THING PRODUCED.**

40 THE COMMISSIONER: Mr Brassil, do you wish to sworn or affirmed?

MR BRASSIL: Affirmed please.

THE COMMISSIONER: All right. We will have you affirmed. Mr Brassil, could I just indicate that if you are in any difficulty at all just give us an indication that you need an adjournment and we'll do that. Yes, can we have him affirmed please.

THE COMMISSIONER: Yes, yes.

MR ROBERTSON: Can you state your full name please?---James Martin Brassil.

10 And are you the Director of Human Resources for the South Western Sydney Institute of TAFE?---Yes.

And have you held that position since about 2006?---Yes.

Can the witness please be shown volume 4 of Exhibit S1. Mr Brassil, do you now have a folder in front of you called Volume 4 Statements?---I do.

Can I ask you to turn to page 1 of that folder. Is that a copy of a statement which you've given to officers of the Commission?---Yes, it is.

20 And do you confirm that that statement's true and correct to the best of your knowledge and belief?---There is one matter, Mr Robertson, that I identified only yesterday.

Is that at paragraph 81 of that statement?---Correct, yes.

And can you identify that correction that needs to be made please?---It relates to paragraph 60 and dates around the service and acting arrangements of Mr John Humphrey.

30 Just pausing there for a moment, is 60 on page 19 of your statement?---Yes.

And that currently refers to dates between 14 November, 2013 and 10 August, 2014, do you see that there?---Yes.

And what's the correction that you seek to make to that paragraph?---No correction to that paragraph but I refer to that paragraph as having dates which I believe are correct and paragraph 81 indicating the date that Mr Humphrey would have been attending Board meetings I had indicated up until 3 October, I believe that that may be an error.

40 And so instead of 3 October paragraph 81, that should be what date do you think?---It would be a time in August 2014.

August 2014, is that right?---Correct, thank you.

Now I take it that as Human Resources Director you are quite familiar with the HR policies of TAFE?---Yes, I am although the majority of the policies

that TAFE operates under and South Western Institute being one institute of TAFE New South Wales are Department of Education policies.

So is it fair to say from that you don't necessarily create the policies but you need to implement them - - -?---Correct.

- - - within the Institute?---Yes.

10 And as part of your role you're responsible for the recruitment of new employees, is that right?---Yes.

And is it correct to say that before you make employment decisions criminal records checks are often performed, is that right?---That's correct.

20 And so who, in respect of what classes of employees or prospective employees are criminal records checks performed?---The criminal records checks for TAFE New South Wales for the South Western Sydney Institute are governed by the Working with Children policy and procedure. My understanding is that all employees of TAFE New South Wales have been determined to be in child-related work and as such we follow a procedure governed by the Department of Education where checks are conducted on all staff through both the Office of the Children's Guardian initially and then if further required through to an agency, a Commonwealth Government agency I believe known as CrimTrac.

30 And when you say all staff does that mean all, all employees or does it just mean permanent employees?---All, all employees who commence employment with TAFE New South Wales on the first occasion, so whether that be a permanent or temporary, when initially employed that screening is undertaken.

And is that the only screening that's performed during the course of someone's career at TAFE or is that check from time to time?---There are some additional checks I mentioned in my statement but they're more to do with people coming in from the Department for example, where the job may not have been deemed as child-related work. It's my understanding that no, there would be no subsequent checks of that nature run once somebody is an employee within TAFE New South Wales.

40 So to be clear about that if there was a particular employee at the institute and for example they're promoted that doesn't necessarily set off a further check being performed, is that right?---That's correct.

And for example if someone is temporarily appointed to a particular office that it doesn't follow with that that a further check's been done?---Correct.

Now is there any reason why it would be impracticable to do a check of that sort?---In which circumstance?

Well, say for example a criminal records check is done with respect to an individual is there any reason why further checks couldn't be done if they're promoted to some more senior position?---My understanding is that under the current policy that, that discretion is not available to institutes to undertake that further check.

10 And so it's inconsistent with the current policy but is there any reason of practicality that would make that difficult or impossible to do?---It would depend on if, if as you refer to acting arrangements, there are a significant number within TAFE New South Wales and in my experience other agencies, there are a significant number of acting arrangements that occur on a given, any given period, that volume could be quite significant. My immediate thought would be the need to consider some parameters around that such as for what duration the acting was going to be for.

20 And then with respect to the criminal records checks how does that work as a matter of procedure if, if a criminal record check shows in effect a hit what happens then?---We're notified by the Probity Unit, it's the shortened version of their name from the Department of Education of that hit and an assessment is undertaken as to the nature of the offence, the severity of the offence, when the offence occurred and the context of that offence in relation to the job that the person is being considered for.

And I assume that's obviously assessed with respect to the particular job they're about to be appointed to, not some general check with respect to jobs that they might later be promoted to or might later find themselves acting, is that, is that right?---Correct, yes.

30 And I think I understood you before to say that there's no then further check in the event that someone is either promoted or acting in a particular position, correct?---Right.

Then once a decision's made to employ a particular person I assume a letter of offer gets sent out?---Yes.

And does TAFE or the Department have a Code of Conduct?---Yes, there is a Code of Conduct.

40 And how is that made known to the prospective employee?---There is certainly reference in the offer letter to the Code of Conduct. It would be available then electronically is my understanding at that time.

And do we take it from that that if you accept a position at the Institute then by that you're agreeing to comply with the Code of Conduct?---Correct.

And I assume that Code of Conduct deals with things like conflicts of interest for example?---It does.

And I take it from that that one of the things that one's not allowed to do under the Code of Conduct is act in one's personal interests rather than acting in the interests of TAFE, is that right?---Without having it in front of me to refer to the specifics I'd need to check that exact (not transcribable)

But there is a provision of the Code of Conduct that deals specifically with conflicts of interests?---There is, yes.

- 10 And does it also deal with or is there also a policy with respect to secondary employment?---There is and there is a policy and procedure from the Department relating to secondary, private and secondary employment.

And in general terms what does that policy require?---It does define private and secondary employment. Without having it to refer to, my general understanding is that private employment relates to additional employment outside of TAFE. Secondary employment would be an additional role within the Organisation. So - - -

- 20 And at least in respect of private employment is that something that one can just go out and do or does one need approval for that?---No, there's - it's quite clearly prescribed that an employee who does wish to engage in private employment needs to seek approval prior to commencing that private employment and the periods of time for which that private employment approval is valid are defined as well.

- And who does one seek approval from?---There's a - the first step is to go to their immediate supervisor, their line manager for endorsement. Depending on whether that person is also a delegated officer it may need to be referred on to someone who has the delegation to approve private employment.
- 30

Now, were you asked to prepare a chronology of Mr Cordoba's employment with TAFE?---Yes, I was.

And can I ask that the witness be shown volume 1 of Exhibit S1. I'm going to page 126. Do you now have a volume in front of you entitled Volume 1 Hearing Brief?---Yes, I do.

- 40 Can I ask you to turn to page 126 of that volume?---Yes.

Is that the summary you referred to earlier?---Yes, it is.

And so do we take it from that looking towards the top of page 126 Mr Cordoba was a casual teacher between about 2002 and 2004. Is that right?---Yes.

He was then employed on a full-time basis on 7 May, 2005. Is that right?

---Yes.

Then we see on 12 February, 2007 a reference to higher duties. Do you see that there?---Yes.

Now, does that mean he wasn't formally appointed to that position on a full-time basis but rather he performed the duties of that position for a confined period of time. Is that right?---That's correct.

- 10 And does it follow from that that at least during that period one gets paid the higher rate applicable to those higher duties but one doesn't have that position in effect on a full-time basis. Is that how that works?---Yes, correct, although it could be performed on a full-time basis but we would refer to it as not on a permanent basis or - - -

Yes?--- - - - substantive basis, yeah.

And then turning to page 127, the next page of that volume?---Ah hmm.

- 20 We see another number of further examples of higher duties. If you go to about the middle of the page can you see the date of 22 December, 2009? ---Yes.

And we see there a reference to substantive occupant?---Yes.

And do we take it from that that on or about 22 December Mr Cordoba was promoted and then became the substantive occupant of the teacher, teacher and learning ICT and Design faculty position?---Yes.

- 30 And that I take it carried with it a changed classification to the final column there SEO?---Yes.

And do we take it that SEO stands for senior education officer?---Yes.

Then further down that page we have 3 December, 2012. See that date there?---Yes.

And a reference there to temporary appointment?---Yes.

- 40 Is there any difference between a temporary appointment and higher duties?---Temporary appointments, without going to the policy definition, would generally be considered those which have been advertised for a fixed period, six months, twelve months for example, that they would have then been – had a merit-based selection process applied to them and the person had been successful in that process.

And do we take it from that part of the table then Mr Cordoba was in the temporary position of manager of ICT Services from about 3 December, 2012?---Yes.

And Mr Cordoba didn't end up acting in that position in that whole period did he because he was suspended?---Correct.

Is that right?---Yes.

10 And that occurred in about August of 2014?---That's right.

Is that consistent with your recollection?---Yes.

And he's still in that – he still has the status of being a suspended employee. Is that right?---He does.

And he is still being paid by TAFE, suspended with full pay. Is that right? ---Correct.

20 You were talking before about the private and secondary employment policy. Do you recall whether you ever recommended that Mr Cordoba be given approval for private or secondary employment?---Yes, I do recall.

Do you still have volume 1 in front of you?---I do.

Can I ask you to turn to page 129 of that volume?---129 did you say?

129 looking at the bottom right-hand corner of volume 1?---Yes.

30 And does that appear to be a private and secondary employment policy application form with a stamp on it of 5 April, 2013?---Yes, it is.

And can I just ask you to turn to page 130, the next page, and about three-tenths of the way down the page is that your signature there?---It is.

And so do we take it from that that whilst you were in the position of relieving associate institute director you made a recommendation that Mr Cordoba be approved for private and secondary employment?---Yes.

40 And then turning back to the preceding page, page 129 towards the bottom of the page do you see a heading there that says "additional information"? ---Yes.

And underneath it "no educational institutions – no conflict with TAFE"? ---Yes.

If that form didn't say that but instead said that Mr Cordoba proposed to be employment by Storm Solutions but including to provide services to

educational institutions including TAFE, would have you come to a different view as to whether or not that should be recommended or not recommended for approval?---Yeah, I expect I would have, yes.

And what view would have you taken?---I would have taken the view that there would have been a conflict with TAFE which would have been in breach of the code of conduct and the policy requirements and I would not have recommended it.

10 No further questions.

THE COMMISSIONER: Mr Brassil, can I just ask you when you said that the criminal record checks are in accordance with the policy of the Department of Education and that coincides with the working with children checks, do I take it that it's a general criminal history check not just one that's confined to offences against children?---Commissioner, my understanding is based on advice from the Department and there is a person there who heads that probity unit. I don't have access to the back end of the system to see it personally but my understanding is that, and the system
20 changed in around mid-2013.

Ah hmm?---Individuals now need to get their own working with children clearance through the RMS.

Yes?---When they bring that to the HR unit at our institute we enter that data, it goes to the Office of the Children's Guardian who verify the working with children check, put that individual's details on their system and should a child-related matter emerge later they can contact us as the employer but if there are any other probity-related matters they are sent
30 back to the Department and flagged for further review and it's then that the Department would send the further inquiry to CrimTrac for those details.

Right. Thank you?---Yeah.

MR ROBERTSON: Something arising, Commissioner.

THE COMMISSIONER: Yes.

MR ROBERTSON: You mentioned that the system changed in 2013,
40 remember that?---The policy - - -

Or the policy at least?--- - - - I believe or the system. Yeah.

Can you just summarise the main differences between in effect the pre-2013 system and the post-2013 system?---The main difference is the obligation on an individual now to at the time of commencement or prior to confirmation of employment to obtain a working with children check clearance that comes in the form of a number from the Roads and Maritime

Service. The back end system changes I'm not aware of. There were certainly previous checks done but that's my understanding of the current system.

10 And so is a fair summary of what you've just said that one of the most significant differences was to put in effect the onus on the employee to ensure that that check has been done whereas some of that kind of checking might have done in effect back of house within the Department before 2013?---That's correct. My understanding though is that because TAFE has deemed all of its positions to be child-related positions our verification process sends everything to the Office of the Children's Guardian regardless.

But to be clear the criminal checks that are done are ones that apply not just to in effect working with children type offences but their general criminal history check, is that right?---That's correct, yes.

Thank you, Commissioner.

20 THE COMMISSIONER: Thank you. Does anyone have any questions of Mr Brassil? No.

Thank you, Mr Brassil, you may step down?---Thank you.

THE WITNESS EXCUSED

[12.47pm]

30 MR ROBERTSON: I call Neil Francis Stralow.

THE COMMISSIONER: Just come forward, Mr Stralow if you wouldn't mind.

Mr Newton, I take it that Mr Stralow would also like the benefit of the section 38 order?

MR NEWTON: Yes, and that's true of all of the witnesses.

40 THE COMMISSIONER: All of the witnesses, thank you.

Mr Stralow, could I just confirm with you that you understand that the order protects you from the use of your answers against you in civil and criminal proceedings but it does not protect you if it should be found that you've given false or misleading evidence to the Commission, you understand that?

MR STRALOW: I do understand that, Commissioner.

THE COMMISSIONER: Thank you. Pursuant to section 38 of the Independent Commission Against Corruption Act, I declare that all answers given by this witness and all documents and things produced by this witness during the course of the witness's evidence at this public inquiry are to be regarded as having been given or produced on objection and there is no need for the witness to make objection in respect of any particular answer given or document or thing produced.

10 **PURSUANT TO SECTION 38 OF THE INDEPENDENT
COMMISSION AGAINST CORRUPTION ACT, I DECLARE THAT
ALL ANSWERS GIVEN BY THIS WITNESS AND ALL
DOCUMENTS AND THINGS PRODUCED BY THIS WITNESS
DURING THE COURSE OF THE WITNESS'S EVIDENCE AT THIS
PUBLIC INQUIRY ARE TO BE REGARDED AS HAVING BEEN
GIVEN OR PRODUCED ON OBJECTION AND THERE IS NO
NEED FOR THE WITNESS TO MAKE OBJECTION IN RESPECT
OF ANY PARTICULAR ANSWER GIVEN OR DOCUMENT OR
THING PRODUCED.**

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THE COMMISSIONER: Do you wish to be sworn or affirmed,
Mr Stralow?

MR STRALOW: Affirmed please, Commissioner.

THE COMMISSIONER: Yes.

THE COMMISSIONER: Thank you. Just take a seat. Yes.

MR ROBERTSON: State your full name please?---Neil Francis Stralow.

And are you the Financial Accountant of the South Western Sydney Institute of TAFE?---I am.

10

Are you the financial accountant or a financial accountant?---The financial accountant.

Can the witness please be shown volume 4 of Exhibit S1. You now have a bundle in front of you called volume 4. Can I ask you to turn to page 130. Is that a copy of a statement which you've given in connection with this investigation?---It is.

20

And do you confirm that that's true and correct to the best of your knowledge and belief?---I do.

Now as financial accountant I take it you're familiar with the financial procedures and policies of the Institute including those relating to procurement?---Yes.

And I take it that there's a procurement manual for example which deals with those kinds of matters?---There is a procurement manual, yes.

30

Now does one of the policies in relation to procurement relate to delegation levels?---Delegations are separate to the procurement manual but the procurement manual does refer to the delegations.

And is a delegation level in effect the amount of money that a particular employee can approve purchases for, is that right?---Yes.

And do you know off the top of your head what the delegation level of the ICT manager of the Institute is?---Delegation's \$150,000.

40

What about a senior education officer, do they have a delegation level at all?---They do but I couldn't, I'm not sure exactly what it is. It would be below that level.

Substantially below or a little bit below or you don't know?---I can't recall the exact amount.

Now focusing just on procurement of less than \$150,000 is there a policy that deals with matters such as how many quotes and that kind of thing need to be go before one approves the purchase of up to \$150,000?---There is.

The procurement manual refers to various thresholds for procurement so from up to \$30,000 is one written quote, 30,000 to 150,000 is three written quotes, over 150,000 goes to tender unless of course the item's available from the State Government or a DEC contract.

I'll come back to that in a moment. That \$30,000 threshold is that a strict rule or can one in effect ignore it if it's 31,000 or 35,000 depending on the circumstances of the particular case?---No, it's a strict rule.

- 10 And for amounts less than \$30,000 is it a strict rule that one only has one or is it within the discretion of the individual to ask for two or ask for three depending on what one's purchasing?---It's, it's within the, the discretion. You have to have one, however, the, the, the approving officer needs to be satisfied that the price is reasonable so you can get more.

And I think you mentioned before about the concept of an in-contract supplier?---Ah hmm.

- 20 What does that mean?---There's two types of contracts that we use, one is contracts is established by the Department of Education and the second suite of contracts is those established by NSW procurement, so if an item's available from a DEC contract we go there first and purchase from that particular supplier. If there's no specific DEC contract they're required to purchase from a State Government contract.

- 30 And what checking mechanisms are in place to make sure that people have, people who have a particular delegation level actually comply with that aspect of the policy?---It's up to the approving manager who approves it to make sure the policies are complied with. We don't have an oversight in the Finance unit.

So what, I take it from that that if a person with a financial delegation level of say \$150,000 only gets one quote rather than three quotes for something worth say \$100,000 is it correct to say that there's no procedure in place to try and in effect catch that and say to the manager you've got it wrong, you're breaching the policy?---No. Sorry, there's, there's nothing at the moment that we do to, to capture that.

- 40 And similarly with respect to in contract and Government suppliers, that is to say the rule that if there's an in contract supplier or a Government supplier you have to use them, is there a centralised checking mechanism with respect to any of that, anything of that sort?---No.

And so again it's left up to the individual managers or officers who have a financial delegation level?---Yeah, to make sure that policies are being complied with, yes.

Is there any obvious reason why there couldn't be some kind of checking mechanism at a more centralised level to make sure that these kinds of policies are being complied with?---So do you mean another step in the process?

Yes?---It could be done, I assume it would – as, as Mr Brassil said we operate using a system that's across the Department so at the moment our system doesn't have that review process in it. Whether it could be or not we'd need to go to the system architect people to see how that would work.

10

And that's likely to be a thing that would be applied all the way across the Department of Education rather than just in, just in TAFE or just in - - -?
---Yes.

- - - a particular institute. Now is it correct to say that in order to actually pay someone who supplies things to the Institute one needs to be in effect entered as a vendor in the Finance system of TAFE?---Yes, before you can raise a shopping cart as you referred to the vendor needs to be established.

20

And is that system called the SAP system?---SAP finance system.

And I take it the SAP is in effect the proprietary name of the software application?---It is.

And I think sometimes it's referred to as SAP Green or SAP Brown, that colour's just a reference to the version of the software, is that right?

---The version, when we introduced the SAP finance system in 2010 it was called SAP Brown. We introduced a new version in 2014 which is referred to as SAP Green.

30

So that colour's in effect the version like one might have Windows 7, Windows 8, Windows 10, something along those lines?---Yes, that's right.

And to actually cause for a vendor to be created what does one actually have to do as a mechanical matter?---All right. An employee needs to, to complete an online form in the SAP system and fill in the various fields with the vendor details and attach a supporting document from that particular vendor which shows their ABN and bank account details.

40

And as a mechanical matter who would ordinarily do that? Is it someone with the financial delegation level or is it more likely to be an assistant type level person or can it just be anyone depending on the circumstances?---It's more likely an assistant but anybody who has a procurement profile can complete a new vendor request in the system.

And who generally has a procurement profile, is that everyone or is that some class of people within the Institute?---It's generally everyone.

And then when a form of that sort is filled out are there any checks that are performed either at your level or at some other centralised level?---In the Institute my, my position is financial accountant, all new vendor requests workflow to my position. I do a check that, the check that I'm looking for is to see if there's an obvious sign that that vendor is an employee, for example, a sole trader and the name comes up so we look for the, the name.

10 And if you spot someone as being an employee what would you then do?
----We go back to the requester and say why are you, why do you want to use this particular employee as a vendor in our system.

And what's the particular concern that's raised by it being an employee?
---The, the main concern is that if we have an employee who for example is a contractor that we may not be complying with either our PAYG legislation or the super guarantee contribution legislation.

20 And you said one of the checks you do is to make sure they're not an employee. Are there any other checks that are done at your end?---The other checks at my end are to just check the ABN matches the, the business name and that's on the, the public ABN register.

30 And does anyone do any checks to see whether or not the proposed vendor is simply there to provide services that might otherwise be available through an in contract supplier or a Government supplier or is that something that's not checked?---That's not generally checked. However some vendors, for example if I got a new vendor request for somebody like Harvey Norman, we'd know that that's probably for whitegoods or electrical goods and we'd -- I'd reject that, that kind of one because those particular types of items, but as a general rule, no.

So is it fair to say there's no special checking system but sometimes a particular request will jump out at you because it says Harvey Norman or something and that might then lead you to raise some questions about it?--- There's no specific check. Sometimes the documentation that's attached, it may be a quote for example of what they want to buy which might raise, you know, a concern and might lead to that vendor being rejected.

40 And in terms of the documentation which needs to be attached, what specifically needs to be attached to in effect get the new vendor on the system?---It needs to be something from that vendor on that vendor's letterhead. For example, typically a quote or it could just be another piece of correspondence from that particular vendor.

And what are you looking for in that, in that attachment, obviously that it's coming from the proposed vendor but is - - -?---That it's coming from the proposed vendor. It's got, got an ABN which matches the name. It's got bank account details.

So then once a vendor is set up in the system what's the next step to actually order something from a particular vendor?---Okay. So a requesting officer then enters what we – or raises what we call a shopping cart in the system or an online requisition you might want to call it, then it depends on the goods. If they're available from a DEC catalogue for example, our system has catalogues for common-use items such as stationary, you can – from the shopping cart you can search the catalogues, select what you want and it will populate the, the shopping cart with the details of those items and the vendor. Otherwise the process is to check is the, the items that you want
10 available from a DEC or Government contract, in which case you'd get those details from the contract and then, sorry, you then create what's called a free text or a described requirement is I think the actual term we use to describe what you want rather than have the, the catalogue populate it. So that, that should – if it's available from a State Government contract or a DEC contract, if it's not in contract again it's a, a free text, described requirement order.

And when you're setting up your shopping cart is it permissible if you've got a delegation level of say only \$30,000 can you set up two or three
20 different shopping carts in order to cut it down and get it within your delegation level?---The person who has the delegation wouldn't be raising the shopping cart because it has to flow through the officer with the delegation so it's somebody else who, who does that.

So just to be clear about that. Is it always the case that there will two people involved in the shopping cart process, one who creates the shopping cart and in effect puts things in it and then someone else that approves it or is it possible for the same person to do both roles?---No, it's got to be two
30 people. That's the way the system is designed.

And why, do you know why it's designed with that structure in mind? ---Segregation of duties. That the same person both can't request and approve.

But I assume it's permissible to have in effect one of your staff member, being the people that set up the shopping cart and then you approving that as the person who has directed the staff member to do it? Is that right?---Yes.

But jumping back to the question before, is it, is it possible as the person
40 with the delegation to in effect say well – say to your employer well, I don't want one shopping cart I want two shopping carts of three shopping carts because I want to be able to approve those shopping carts within my delegation?---That would be possible, yes.

You're familiar with the term order splitting or invoice splitting?---Yes.

And is that he kind of thing that at least in theory could be achieved by splitting up the shopping carts in that fashion?---It could be, yeah.

What steps are in place, either at the Institute level or the TAFE level or the Department of Education level, to try and stop that kind of order splitting?
---In the, the process as it, as it normally progresses we don't have a step in there because the, the shopping carts could be over a number of days or weeks so it's difficult to, to try and monitor that. In the Institute Finance unit we don't have daily visibility of the shopping carts that are approved because it's all electronic. There are the – from time to time the audit office will look for, when they do an audit of our accounts will look for, you
10 know, sequential, you know, raising of shopping carts for amounts of money.

But is it correct to say that at least so far as you know there's not in effect a day-to-day or month-to-month type process for that, rather it's something that an auditor or someone else might stumble upon when doing some other aspect of auditing or checking or something along those lines?---That's right.

So we get our shopping cart. It's created by an individual. I assume usually
20 someone in the nature of an assistant or something like that?---Ah hmm.

It then goes to someone who has a financial delegation level. Is that right?
---That person's line manager.

How – it goes to that persons line manager as a matter of course or will the system in effect allocate the appropriate person depending on what delegation level is needed?---If the, the purchase value of the shopping cart is within that line manager's delegation it will go to the line manager. If it's above that line manager's delegation it will go to the next position above that
30 that has a delegation that's sufficient.

Then the person with the appropriate delegation needs to in effect approve the shopping cart. Is that right?---Yes.

And how does that happen as a matter of mechanics, do they log onto the system and press a button or how does that work as a matter of mechanics?
---The way the system works is when you open the SAP system you get to your task list. So you have a task list so the manager will get an – sorry, just going back a step. The manager will get an email saying there's new work
40 in their task list. They go to task list, open their task list and a list of tasks will be there. For a shopping cart they then open the shopping cart, look at the details, look at any attachments that might be there and approve it online.

And so once that exercise happened what happens next in the procurement train?---O.K.

Or chain?---The next step is automatic. Once it's approved the Shared Service Centre takes over - - -

Just pausing there. Is your reference to the Shared Service Centre a reference to the Shared Service Centre in Parramatta?---It is.

And is that in effect the back office centre which deals with your Institute, TAFE generally, department of Education Corporate and also some schools as well?---Yeah. 229 schools I believe are on that system, yes.

10

And does that purchase order system in effect happen automatically once the shopping cart has been raised and has been approved that in effect disappears out of the system automatically. Is that right?---It does, yes. The Shared Services are responsible for that part of the process and the purchase order is generated and sent to the, the vendor.

Is it correct to say that there's no additional checking or anything else like that that happens between it – between the shopping cart being approved and it in effect going to the Shared Service Centre for sending out the purchase orders?---Not that I'm aware of.

20

So we've got the purchase order being sent out now. That goes out to the vendor directly I assume?---Yes.

And then what, then what happens, what happens then, what's next in the process?---Well, the next step would be that the vendor supplies the goods or services and somebody at the, the section or location where the goods or services are received goes into the SAP system and enters what we now call the confirmation of goods receipt or services received.

30

Now, would that usually be done by a particular person, for example, a person that's got the delegation level, or can that be by, in effect by anyone? ---It can be done by anyone.

And is there any restrictions on it being able to be the same person who has either raised the shopping cart or approved the shopping cart or can it just be anyone in the - - -?---It can be anyone, yeah.

- - - anyone who has got the authority to do it? And so once that happens what happens next in the procurement process?---Okay. So we've got the purchase order. We've got the, the confirmation the goods or services have been received. The vendor then submits their invoice. The process is that the vendor should submit their invoice directly to the Shared Service Centre. The Shared Service Centre receives the invoice. It's entered into the system. As long as there's a what we call a three-way match between the, the purchase order, the confirmation and the invoice the vendor is paid according to their trading terms.

40

Are you familiar with a vendor that was set up in your system called ITD Pty Limited?---Yes.

And are you aware that that was set up as a vendor in about January of 2014?---I am.

And is it correct to say that that would have come to you for approval consistent with the, the procurement structure you referred to earlier?---It would have come to my position. I don't recall that one but it would have.

10

And so what – if you, if you adopted your usual process what checks would have you done on that particular application for a new vendor?---Okay. Looking at the, the vendor there was no names either in the name of the vendor or in the contacts that were listed on that particular form that mentioned the employee so there was no obvious name connection. Looking up the ABN on the ABN register again there was no personal sort of names on there. It referred to a, a company holding that, that certain number.

20 So do I take it from that that if you did a search of the ABN and you saw that that was an ABN held by an employee then you would have at least asked some more questions, is that right?---Oh, definitely, yes.

And if you saw the name of an employee on that form you also would have asked some more questions?---Yes.

What if you knew that the bank account number on that form was a bank account number of an employee, what would have you done?---I don't know how I would know that.

30

No, no, but if you did know that, it had a bank account number and it said a particular name who you knew to be an employee, would - - -?---But the, the, the bank account simply gives the BSB and account number, oh, and the name sorry.

Yes?---Yeah, we would have, I would have questioned that.

Yes. Now have you been asked to look at the system to see what payments were made to ITD Pty Limited?---Yes.

40

Do you still have volume 4 in front of you?---I do.

Can I ask you to turn to page 201 of that folder, volume 4 page 201, have you got there, page- - -?---I do.

- - - 72. I'm sorry, page 201 of volume 4?---Yes.

Is that a spreadsheet that looks partially yellow and partially white?---It is.

And is that the spreadsheet to which you referred earlier, namely the calculation of the payments made to ITD Pty Limited?---I don't think I referred to payments made to ITD Limited.

Well, were you - - -?---In my statement I did, yes.

Yes?---Sorry.

10 But is this a in effect printout that you've procured which identified the amount of money that's been paid to IDT Pty Limited from TAFE?---It is. The, the only thing I'd point out, these, these amounts are GST exclusive.

Yes, that was – you've anticipated my next question so going to the next page, in the bottom right-hand corner, can you see a figure in the bottom right-hand corner of about 1.55 million?---I can.

And is that a GST exclusive figure then is it?---It is.

20 And so the GST inclusive figure would be over \$1.7 million or thereabouts at 10 per cent?---It would be.

Can I just confirm something else that you said Mr Stralow, is it consistent with the procurement policy if I'm a person who has a delegation level of say \$150,000, am I allowed in accordance with that policy to instruct a member of my staff to raise a shopping cart and then me be the same person to approve it, is that consistent or inconsistent with the policy?---The policy doesn't really talk about instructing another person to raise a shopping cart.

30 So the electronic system is set up in such a way that the same person can't be the person who raises the shopping cart and approves it, is that right? ---That's correct.

But there's no specific policy or procedure which says that I can't instruct my staff member to set up the shopping cart and I then approve that shopping cart myself?---Not in the policy, no.

Thank you. No further questions.

40 THE COMMISSIONER: Any questions of Mr Stralow?

MR SINGH: No questions, Commissioner.

THE COMMISSIONER: We'll take the luncheon adjournment and resume at 5 past 2.00. Thank you. You're excused, Mr Stralow?---Thank you, Commissioner.

THE WITNESS EXCUSED [1.08pm]

LUNCHEON ADJOURNMENT [1.08pm]