

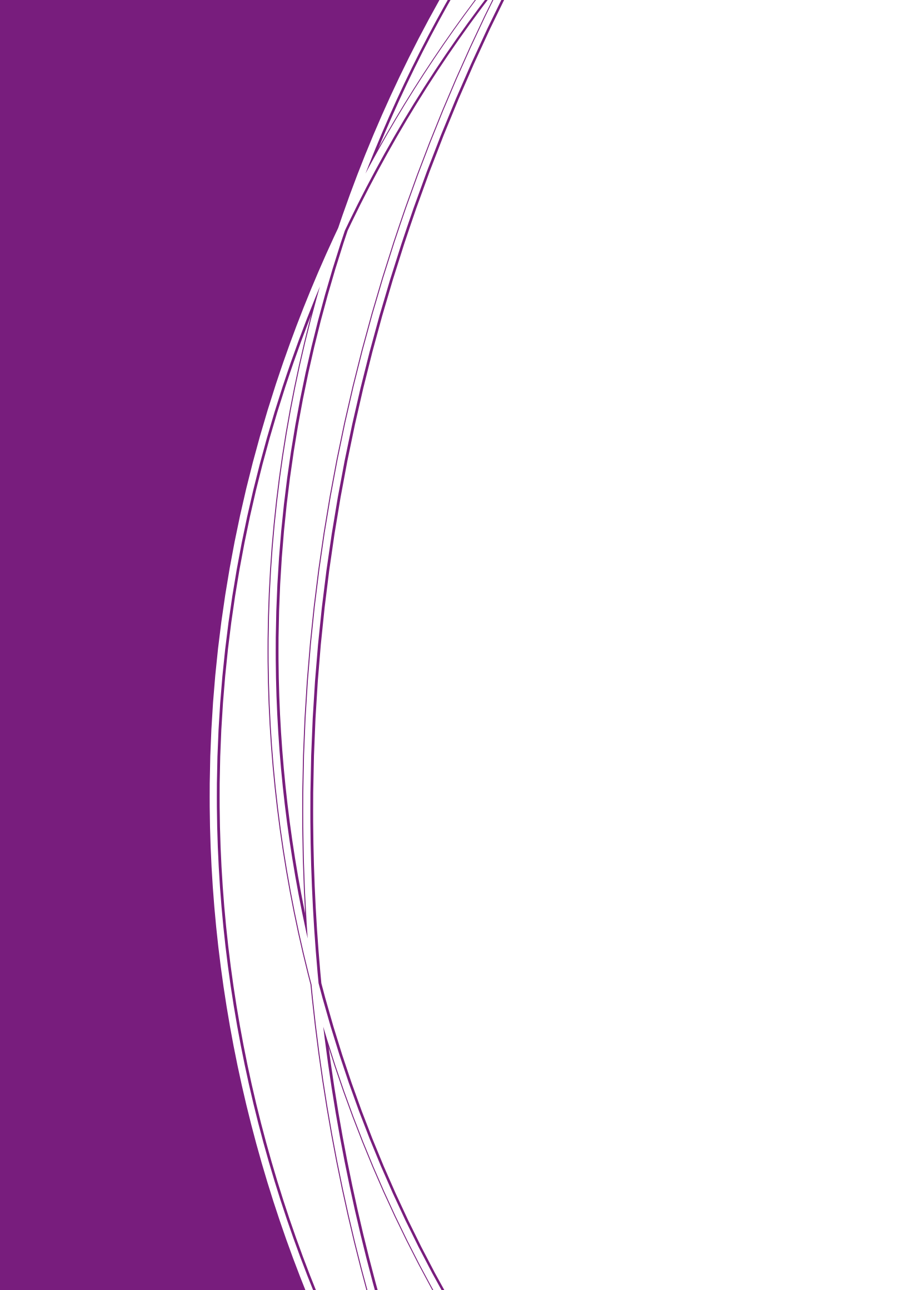
ICAC

INDEPENDENT COMMISSION
AGAINST CORRUPTION
NEW SOUTH WALES



**INVESTIGATION INTO THE
CONDUCT OF A TAFE NSW
ICT MANAGER**

**ICAC REPORT
MARCH 2016**



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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 TAFE NSW 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, in 2013 and 2014, Ronald Cordoba, acting manager of information and communications technology (ICT) services at the South Western Sydney Institute (SWSI), an institute of the NSW Technical and Further Education Commission (TAFE NSW), engaged in corrupt conduct by dishonestly exercising his public official functions to:

- secure a personal payment of \$55,000 from Jason Kinsella, a director of Cloud People Pty Ltd (“Cloud People”), while it was engaged as a SWSI contractor
- procure payments in excess of \$1.7 million from the SWSI to ITD Systems Pty Ltd (“ITD Systems”), a business that he owned and operated.

Results

Chapter 3 of this report contains a finding that, in about February 2014, Mr Cordoba engaged in serious corrupt conduct by improperly exercising his official functions to ensure that the SWSI engaged Cloud People as its contractor to provide “virtual labs” with the intention of obtaining for his business, ITD Systems, a benefit of \$55,000 from Cloud People; a benefit that was received.

Chapter 4 of this report contains a finding that, between January and July 2014, Mr Cordoba engaged in serious corrupt conduct by improperly exercising his official functions to obtain \$1,709,904.90 from the SWSI for his business, ITD Systems. The improper exercise of his functions included:

- providing false and misleading information in relation to the registration of a vendor on the NSW Department of Education and Communities’ (DEC’s) systems applications products (SAP) system

- ordering goods on behalf of the SWSI from a business that he owned and operated without declaring a conflict of interest
- supplying false and misleading documentation to the SWSI to conceal the fact that he was ordering goods from a business that he owned and operated
- falsely certifying that goods and services had been received by the SWSI knowing that this was untrue.

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 Cordoba for the criminal offences of:

- fraud, pursuant to s 192E of the *Crimes Act 1900* (“the Crimes Act”), in relation to \$55,000 paid by Cloud People to Mr Cordoba’s business, ITD Systems, in or after February 2014 (chapter 3)
- fraud, pursuant to s 192E of the Crimes Act, in relation to the \$1,709,904.90 paid by the SWSI to ITD Systems between February and July 2014 (chapter 4)
- wilfully making a false statement to mislead a Commission officer, pursuant to s 80 of the *Independent Commission Against Corruption Act 1988* (“the ICAC Act”), in relation to information provided by him to a Commission officer during a search of his (Mr Cordoba’s) home on 10 March 2015 (chapter 4)
- making a false or misleading statement during a compulsory examination, pursuant to s 87 of the ICAC Act, in relation to evidence given by him during two compulsory examinations by the Commission to the effect that he had used an incorrect Australian Business Number on SWSI documentation by accident (chapter 4).

Chapter 5 of this report sets out the Commission's review of the corruption risks present at the time the conduct occurred. After considering submissions from the NSW Department of Education (DoE), the Commission has made the following recommendations:

Recommendation 1

That the SWSI finance unit scrutinises expenditure involving out-of-contract suppliers on a periodic basis.

Recommendation 2

That the SWSI undertakes a regular analysis of vendor payments based on computer-aided audit reports to detect anomalies in the procure-to-pay system.

Recommendation 3

That the SWSI establishes formal project management and governance structures to oversee ICT projects and implement formal value-realisation analysis at the completion of projects.

These recommendations are made pursuant to s 13(3)(b) of the ICAC Act and, as required by s 111E of the ICAC Act, will be furnished to TAFE NSW and the responsible minister, being the minister for skills.

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

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

must be provided 12 months after the first report.

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

Recommendation that this report be made public

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

Chapter 1: Background

This chapter sets out some background information concerning the investigation by the NSW Independent Commission Against Corruption (“the Commission”). This chapter also sets out some background information on Ronald Cordoba and the South Western Sydney Institute (SWSI), an institute of the NSW Technical and Further Education Commission (TAFE NSW).

How the investigation came about

In September 2014, the Commission received a report from the SWSI that, between December 2012 and August 2014, Mr Cordoba used his position of acting manager of information and communications technology (ICT) services to improperly raise purchase orders and authorise payments, totalling over \$1.7 million, in favour of ITD Systems Pty Ltd (“ITD Systems”), a business that he owned and operated. It was alleged that Mr Cordoba deliberately concealed his ownership of ITD Systems by using the company name and Australian Business Number (ABN) of ITD Pty Ltd, a company that was registered with the Australian Securities and Investment Commission (ASIC), but with which he had no connection, and by corresponding with SWSI administrators using a false name and position title.

Why the Commission investigated

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

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

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

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

The allegations involved the possible manipulation of the NSW Department of Education and Communities (DEC) procurement process by a public official, so that large sums of money could be paid to a private business owned and operated by that public official.

When considering whether to investigate the allegations, the Commission took into account that Mr Cordoba was in a managerial position and was able to use that position to manipulate the procurement process and to use SWSI administrative staff to unknowingly facilitate a scheme by which he benefited financially.

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 SWSI employees and senior managers and one SWSI contractor
- obtained documents from various sources by issuing 49 notices under s 22 of the ICAC Act
- conducted two compulsory examinations
- executed three search warrants.

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:

- procurement by public authorities is a high risk area; a public inquiry would serve to expose the types of corrupt conduct that may occur and would raise public awareness of the risks
- the alleged corrupt conduct was said to have taken place over an extended period of time and involved substantial financial gain
- the conduct was alleged to have occurred notwithstanding the existence of policies, procedures and processes that might have been expected to minimise corrupt conduct of the type alleged; it was in the public interest to establish why existing anti-corruption measures did not detect the alleged corrupt conduct
- although there was a risk to the reputation of Mr Cordoba and other witnesses called before the public inquiry, that prejudice was not undue in light of the seriousness of the allegations, the cogency of the evidence then available to the Commission, and the public interest in exposing conduct of the kind alleged
- public exposure of the matter might serve as a deterrent.

The public inquiry was conducted over three days on 17 August, 18 August and 7 September 2015. The Hon Megan Latham, Commissioner, presided over the public inquiry. Scott Robertson acted as Counsel Assisting the Commission. Mr Cordoba and five other witnesses were called to give evidence.

At the conclusion of the public inquiry, Counsel Assisting prepared submissions setting out the evidence and identifying the findings and recommendations that the Commission could make based on that evidence. These submissions were provided to all relevant parties, including Mr Cordoba. Submissions were received in response and have been taken into account during the preparation of this report and its findings.

TAFE NSW and the SWSI

TAFE NSW has over 130 campuses grouped into 10 institutes located across NSW and operates as a statutory authority within the NSW Department of Industry. At the time of the conduct examined by the Commission, TAFE NSW was part of the DEC, which later became the Department of Education (DoE).

Located in Sydney's south west, the SWSI is an institute of TAFE NSW that provides courses to over 49,000 students across nine campuses and two satellite campuses. For the purposes of s 3 of the ICAC Act, the SWSI is a public authority and its employees are public officials.

Mr Cordoba's employment with TAFE NSW

Mr Cordoba commenced employment with the SWSI as a part-time casual teacher in 2002, a position he held until 2004. Between 2004 and December 2012, Mr Cordoba held a number of positions within the SWSI, including senior education officer, manager e-learning and ICT faculty director. In December 2012, Mr Cordoba was appointed as the acting manager ICT services, a position he held until 5 August 2014, when he was suspended from duty on full pay.

On 7 September 2015, Mr Cordoba resigned from his position at the SWSI.

Chapter 2: TAFE NSW policies and procedures

The procurement process

The SWSI uses the DoE's electronic procurement system known as systems applications products (SAP) to order and authorise payment for goods and services. The SWSI continued to use the SAP system following its transfer from that department to the NSW Department of Industry. Suppliers cannot be paid unless they are registered as a vendor on the SAP system. The procurement process used by all TAFE NSW institutes is regulated by policies and procedures issued by the DoE.

Before goods or services can be ordered from a supplier, the supplier must first be registered as a vendor on the SAP system. All SWSI permanent members of staff are authorised to submit a request for a supplier to be registered as a vendor on the SAP system. Registration is requested via a "request for vendor maintenance" form ("the vendor request form"), which is submitted electronically to the SWSI finance unit. The vendor request form must be filled out with the full name of the supplier, its ABN and bank account details, its address, and details of two contact people. The SWSI member of staff is also required to set out the reason for the vendor registration and to supply a document, such as a quote or company letter, confirming the vendor's name, address, ABN and bank account details.

Before authorising the creation of a new vendor on the SAP system, the SWSI finance unit conducts a number of checks to ensure that the vendor is not an employee of the SWSI. The names supplied on the vendor registration form are searched against the SWSI global email address book and a search of the Australian Securities and Investment Commission (ASIC) register is conducted to ensure that there is no link to a SWSI employee. The DoE's Shared Service Centre (SSC), which centrally coordinates all purchasing and payments made using the SAP system, also conducts a search of the ASIC register to ensure that the supplied ABN and business name

match and that the supplier is a registered business.

It is NSW government policy that government agencies, wherever possible, source goods and services from a supplier who has an existing government contract to supply goods or services (that is, "in-contract" suppliers).

When a SWSI staff member wishes to order an item or items from a supplier they are required to create an entry on the SAP system known as a "shopping cart". Items are selected from a catalogue attached to the SAP system that lists commonly used items provided by in-contract suppliers. If items are not displayed in the catalogue, the staff member is able to list the items in a free-text format, based on a quote obtained from the supplier. The staff member raising a shopping cart is required to nominate to which of the SWSI's 11 locations the goods are to be delivered. All permanent SWSI staff members are authorised to raise and populate a shopping cart within the SAP system.

Orders can be placed with other suppliers if the required goods or services are not available through an in-contract supplier or if a business case can be made that demonstrates that another supplier can provide the goods or services more economically or that the goods are of a higher quality with no appreciable cost difference.

Once a shopping cart is raised and populated, it is submitted to a SWSI line manager with the appropriate financial delegation to review and authorise the order. It is the line manager's responsibility to ensure that an appropriate in-contract supplier has been used, that the purchase represents value for money, and that the correct tender or procurement process has been followed.

At the relevant time, it was DEC policy that a minimum of one written quote was required for orders of up to \$30,000. For purchases between \$30,000 and \$150,000, a minimum of three quotes would be sought before a supplier was selected. For purchases over \$150,000, the procurement process was to be referred to the

Procurement Solutions Directorate of the DEC.

Once authorised by the appropriate line manager, a shopping cart is passed electronically to the SSC who generates a purchase order that is sent to the selected supplier.

Invoicing and payment

Upon receipt of a purchase order, suppliers are required to supply goods to the designated delivery address, after which they are required to send an invoice to the SSC. When goods are delivered to any of the SWSI campuses, any SWSI staff member is able to provide a “goods receipt advice” to the SSC confirming that the goods have been received in good order or that services have been satisfactorily provided.

In order to comply with the provisions of s 13 of the *Public Finance and Audit Act 1983*, the SSC conducts a three-way check before paying suppliers. The three-way check ensures that the purchase order, supplier invoice and goods receipt advice match. The SSC will make a payment only after goods or services have been supplied and the three-way check has been conducted. In limited circumstances, a supplier can be paid for goods or services in advance of delivery, however, prior written authority is required before this can occur.

As acting manager of ICT services, Mr Cordoba had a financial delegation of \$150,000, allowing him to authorise the purchase of goods and services up to this value.

The relevant code of conduct

On 27 January 2010, the NSW Department of Education and Training (now part of the DoE) implemented a new code of conduct. That code of conduct applies to TAFE NSW employees. It is a condition of their employment that they apply the department’s policies and procedures when carrying out their duties and that they act ethically,

responsibly and in good faith.


Chapter 12 of the code of conduct identifies employee responsibilities with respect to the reporting and management of conflicts of interest. The code of conduct gives the following example of a conflict of interest: “an employee taking part in the selection or appointment of a supplier or contractor who is a relative or close friend, or owns a company in which they have a financial/business interest”. Employees are under an obligation to report any actual, potential or perceived conflict of interest to their manager.

Chapter 16 of this code outlines employee responsibilities in relation to private and secondary employment. Employees are required to seek approval from their manager prior to engaging in any private or secondary employment. Approval for private or secondary employment must be renewed annually. Employees are also under a duty to report any real or perceived conflicts of interest that may arise as a result of their private or secondary employment.

Mr Cordoba’s knowledge of the relevant policies and procedures

During his evidence to the Commission, Mr Cordoba accepted that, upon taking up full time employment with the SWSI in May 2005, he had signed an acknowledgement that he was bound by the code of conduct. Mr Cordoba said that, upon taking up the position of acting manager of ICT services in 2012, he was aware of the DEC’s procurement policies that applied to that position, including the requirement to use in-contract suppliers whenever possible.

Mr Cordoba acknowledged that he understood that secondary employment would not be authorised by SWSI management if it created a conflict of interest with his position at TAFE NSW.



In a written statement, Neil Stralow, financial accountant at the SWSI, told the Commission that SWSI staff are able to access the DEC's procurement manual on the intranet and that staff receive training on how to apply the policy. Mr Cordoba accepted that he had received training in the department's procurement policy and that he was aware of his obligations under the procurement policy and the code of conduct.

In a written statement, Sharon Ambrose, information technology (IT) coordinator at the SWSI, told the Commission that SWSI staff are required to conduct an annual e-learning training module on the code of conduct and that employees receive regular emails reminding them that they are required to abide by the code of conduct.

The Commission is satisfied that Mr Cordoba understood his obligations under the code of conduct and the DEC's procurement policy and that he understood his obligations in relation to the disclosure and avoidance of conflicts of interest.

Chapter 3: Cloud People Pty Ltd

Cloud People Pty Ltd (“Cloud People”) is a privately owned company that provides remote IT infrastructure services to business users. The company offers access to remote servers that allow users to operate IT systems without the need to purchase and install on-site servers. Jason Kinsella is the company’s founder and sole director.

Mr Cordoba told the Commission that he first met Mr Kinsella through his (Mr Cordoba’s) private business, Storm Solutions. Mr Kinsella confirmed that he had been introduced to Mr Cordoba in December 2011 by a customer of Cloud People and that he first became aware that Mr Cordoba was an employee of TAFE NSW in June 2012.

The Jukebox proof of concept and payments to Cloud People

Mr Cordoba gave evidence that, in early 2013, after discussions between himself and Mr Kinsella, Cloud People submitted a proposal to the SWSI entitled “Application Jukebox Proof of Concept”. The proof of concept document outlined a proposal for Cloud People to provide and test a system that would allow the SWSI to run some of its IT services on a remote server supplied and maintained by Cloud People.

During the course of the investigation, the Commission recovered a large number of emails from Mr Cordoba to Mr Kinsella, including emails sent from Mr Cordoba’s TAFE NSW email account. During the public inquiry, Mr Cordoba accepted that the emails sent from his TAFE NSW email account to Mr Kinsella had been drafted and sent by him. In an email dated 18 June 2013, Mr Cordoba wrote “...can you send me an invoice for the server that I have with you and add a couple of grand for your troubles and support?”.

Later the same day, Mr Kinsella submitted a Cloud People invoice to Mr Cordoba seeking a total payment of \$9,100.97 from the SWSI:

- \$2,000 was for work described in the invoice as “enterprise architecture, design and consultancy services”
- \$2,073.61 for “Cloud Server rental to date”
- \$4,200 for “additional 12 month term”
- GST was added to the total of \$8,273.61.

During the public inquiry, Mr Kinsella and Mr Cordoba accepted that \$2,000 had been added to the invoice as a result of Mr Cordoba’s email of 18 June 2013.

On 21 June 2013, at Mr Cordoba’s request, Ms Ambrose submitted a vendor request form using details supplied by Mr Cordoba, resulting in Cloud People being set up as a vendor on the SAP system. Following this, and at Mr Cordoba’s request, Ms Ambrose raised a shopping cart based on the 18 June 2013 invoice. Mr Cordoba authorised the shopping cart and a purchase order was raised in favour of Cloud People.

On 24 June 2013, Mr Cordoba signed a copy of the 18 June 2013 invoice certifying that the services listed on the invoice had been properly supplied. Having been certified, the invoice was then forwarded to the SSC by Ms Ambrose and subsequently paid.

During the public inquiry, Mr Cordoba accepted that the SWSI was not obliged to pay Cloud People the additional \$2,000. Mr Cordoba agreed that he arranged the additional \$2,000 payment because he thought he might be able to benefit in the future from developing a relationship with Mr Kinsella.

Mr Kinsella confirmed that there was no contract or purchase order between Cloud People and the SWSI at the time that he submitted the invoice that would have entitled his company to the additional \$2,000 payment. Mr Kinsella said that he believed Mr Cordoba had told him to add \$2,000 to the invoice in order to compensate him for work that he had done prior to the implementation of

the Jukebox project and that he had no reason to believe that Mr Cordoba was not authorised to make such a payment on behalf of the SWSI.

The Commission is satisfied that Mr Cordoba told Mr Kinsella to claim an additional \$2,000, knowing that the SWSI was not obliged to make such a payment and that he certified that Mr Kinsella had provided consultancy services in relation to the Jukebox proof of concept, knowing that these services had not been provided as at that time. The Commission is satisfied that Mr Cordoba's actions were motivated by a desire to further his own interests. Counsel Assisting submitted that the Commission should not make any adverse findings against Mr Kinsella in relation to this matter because there is no reason to reject Mr Kinsella's evidence that he understood the additional \$2,000 was compensation for work he had done. The Commission accepts this submission.

The selection of Cloud People to provide virtual labs to the SWSI

Mr Cordoba told the Commission that, in late 2013 and early 2014, he was working on a project to set up "virtual labs" that would allow SWSI students on the diploma of networking course to access learning materials and online learning resources remotely: that is, without having to attend SWSI premises.

Sylvia Arthur, faculty director of the Electro Technology, Information and Communications Technology and Design Facility at the SWSI, told the Commission that, in January 2014, Mr Cordoba informed her that he had found a solution for the virtual labs and that the set up and development costs for the project would be approximately \$120,000, with additional annual operating costs of \$50,000. Ms Arthur recounted a conversation she had with Mr Cordoba during which she emphasised the need to obtain a number of quotes before deciding on a final supplier. Ms Arthur told the Commission that she

later became aware that Cloud People had been selected to provide and maintain the virtual labs on behalf of the SWSI.

On 11 February 2014, following his conversation with Ms Arthur, Mr Cordoba sent Ms Ambrose an email informing her that he had selected Cloud People to provide the virtual labs and that they were to be paid \$90,000 in advance and a further \$50,000 when the virtual labs were operational.

In a return email, Ms Ambrose asked "since the costing is high, do we have quotes from another two businesses for this solution". This was clearly in accordance with relevant procurement policies; that a minimum of three quotes be obtained for purchases between \$30,000 and \$150,000.

On 15 February 2014, Mr Cordoba sent Ms Ambrose a further email in which he informed her that he had obtained quotes from two other businesses, which he named as PAC Consulting and JW Computers, as well as Cloud People, and that he had selected Cloud People due to its price and expertise. Mr Cordoba admitted to the Commission that it was wrong for him to claim that Cloud People had been chosen because it was price competitive in circumstances where he had no idea what prices might have been offered by PAC Consulting or JW Computers.

In her evidence to the Commission, Ms Ambrose said that she was aware that Mr Cordoba had the authority to authorise a purchase order up to the value of \$150,000 but that she would not have processed the order if she had not been satisfied that three quotes had been obtained.

Mr Cordoba accepted during his public inquiry evidence that the emails of 11 and 15 February 2014 had been sent to Ms Ambrose by him. He admitted that he had not obtained three quotes and that he had knowingly lied to Ms Ambrose in the email of 15 February 2014 because he knew that he was breaching DEC policy by selecting

Cloud People as the virtual labs provider without getting quotes from other companies.

The Commission is satisfied that Mr Cordoba intentionally manipulated the procurement process by lying to Ms Ambrose about having obtained three quotes, and that Cloud People had the best price, to conceal the fact that he had selected Cloud People to provide services to the SWSI in breach of the DEC's procurement policy. The Commission is also satisfied that Ms Ambrose processed the vendor request form as a result of Mr Cordoba's deception.

Mr Cordoba's motives for selecting Cloud People

Mr Kinsella told the Commission that, on 29 January 2014, he gave a presentation to Mr Cordoba and two other SWSI staff members on the virtual labs project. Mr Kinsella told the Commission that his initial estimate was that the virtual labs would cost \$85,000 to set up, plus an additional cost for running an IT support helpline. Mr Kinsella said that, following the presentation, Mr Cordoba informed him by email that Cloud People's proposal satisfied the needs of the SWSI and that he wanted to discuss costings with him. Mr Kinsella said that, at 5.45 pm on the same day, he received a text message from Mr Cordoba informing him that the project had been given the go ahead and that "my company will provide the afterhours support and we need to work out dollars above the 85K not affecting your overheads and costs...". Mr Kinsella provided the Commission with a copy of this text message.

Mr Kinsella said that, on 30 January 2014, Mr Cordoba telephoned him and said that he had spoken to the faculty director who was happy to proceed with the project but that the SWSI wanted Mr Cordoba's private business (ITD Systems) to provide the first- and second-line student IT support. It was not disputed by Mr Cordoba that no such direction was ever issued by anyone at the SWSI.

On 14 February 2014, Cloud People submitted two invoices to Mr Cordoba. Invoice number 1111 requested a payment of \$55,000 from the SWSI, and invoice number 1112 requested a payment of \$44,000. Both invoices related to the virtual labs project.

On 15 February 2014, Mr Cordoba forwarded the invoices to Ms Ambrose with an instruction that she was to raise a shopping cart on the SAP system, which Mr Cordoba subsequently authorised. As a result of Mr Cordoba's instruction, two purchase orders were then raised in favour of Cloud People. On 18 February 2014, Mr Cordoba signed invoices 1111 and 1112 to certify

that the services had been properly supplied. Following payment of invoices 1111 and 1112, Cloud People paid \$55,000 into an ITD Systems bank account.

The Commission is satisfied that the admissions made by Mr Cordoba, which were supported by documentary evidence and the evidence of Ms Ambrose, support a finding that Mr Cordoba knew that receiving a payment of \$55,000 from Cloud People through the ITD Systems bank account created a serious conflict of interest that he intentionally failed to declare in order to conceal his relationship with Cloud People.

During the course of the investigation, the Commission recovered a document entitled "Support Service Agreement, TAFE SWSI Support" ("the support agreement"). Mr Kinsella confirmed that this was an agreement between Cloud People and Mr Cordoba (on behalf of ITD Systems) for ITD Systems to act as a subcontractor to Cloud People on the virtual labs project. The support agreement was signed by Mr Cordoba on 21 February 2014. Mr Kinsella said that the support agreement was entered into because he believed, as a result of the representations made by Mr Cordoba on 29 and 30 January 2014, that the SWSI wished Mr Cordoba, via ITD Systems, to provide first- and second-line student IT support on the virtual labs project.

Mr Cordoba said that, prior to the agreement being formalised, there was an understanding between himself and Mr Kinsella that ITD Systems would be used as a subcontractor on the virtual labs project if Cloud People obtained the contract and that ITD Systems would be paid \$55,000 as a result. Mr Cordoba claimed, however, that at no point did he tell Mr Kinsella that the SWSI wanted his business to perform the student IT support role. Mr Cordoba told the Commission that Mr Kinsella knew that he was acting in breach of DEC policy and that he (Mr Cordoba) would not be permitted to act as a subcontractor on the virtual labs project if the SWSI became aware of the agreement between them.

Mr Kinsella told the Commission that he would not have engaged ITD Systems if he had known that Mr Cordoba had lied about the SWSI wanting ITD Systems to act as a sub-contractor and that the SWSI had not given Mr Cordoba permission for ITD Systems to work as a subcontractor on the project. Mr Cordoba's evidence, that he did not tell Mr Kinsella that the SWSI wanted ITD Systems to act as a subcontractor and that Mr Kinsella knew that he did not have SWSI consent for ITD Systems to be engaged as a sub-contractor, is unconvincing. Mr Cordoba's evidence on these points was not supported by other evidence. It is also inconsistent with a text message Mr Cordoba sent to Mr Kinsella on 29 January 2014:

It looks like it's a go ahead ... I have the faculty director support we need to talk business and there is more to it ... My company will provide after hours support and we need to work out \$ above the \$85k not affecting your overheads and costs ... explain tomorrow?

This text is consistent with Mr Kinsella's evidence to the effect that it was Mr Cordoba who proposed that he should provide support services in relation to the virtual labs project and tends against the suggestion that Mr Kinsella was aware that Mr Cordoba did not have permission to act as a subcontractor.

Mr Kinsella was a convincing and credible witness whose evidence was supported by the contents of the text message sent by Mr Cordoba. The Commission accepts Mr Kinsella's evidence on these matters over Mr Cordoba's.

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

Pursuant to s 74BA of the ICAC Act, the Commission then considers if the conduct is serious corrupt conduct.

Ronald Cordoba

The Commission is satisfied that, in about February 2014, Mr Cordoba improperly exercised his official functions to ensure that the SWSI engaged Cloud People as its contractor to provide virtual labs with the intention of obtaining for his business, ITD Systems, a benefit of \$55,000 from Cloud People; a benefit that was received.

This conduct on the part of Mr Cordoba is corrupt conduct for the purposes of s 8(1)(b) of the ICAC Act as it is conduct of a public official that involves the dishonest exercise of his official functions.

For the purposes of s 9(1)(a) of the ICAC Act, it is relevant to consider s 192E of the *Crimes Act 1900*

("the Crimes Act"), which provides:

- (1) A person who, by any deception, dishonestly:
- (a) obtains property belonging to another, or
 - (b) obtains any financial advantage or causes any financial disadvantage,
- is guilty of the offence of fraud.

For the purpose of s 9(1)(a) of the ICAC Act, the Commission is satisfied that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Cordoba committed an offence of fraud under s 192E of the Crimes Act, of dishonestly and by deception obtaining a financial advantage of \$55,000 from Mr Kinsella as a result of the lies he told to Ms Ambrose and Mr Kinsella and his deliberate concealment from the SWSI of his conflict of interest.

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

For the purposes of s 74BA of the ICAC Act, the Commission is satisfied that Mr Cordoba used his position and financial delegation to gain for his business a significant financial benefit that it would not otherwise have received. His actions were entirely motivated by self-interest and amounted to a serious and deliberate breach of the trust placed in him by the SWSI. He went to considerable lengths to conceal his activities by deliberately lying to his colleagues and by failing to declare a significant conflict of interest that he knew existed. The conduct could also involve an offence under s 192E of the Crimes Act, which has a maximum penalty of 10 years imprisonment, and is therefore a serious indictable offence. For these reasons, the Commission is satisfied that Mr Cordoba's conduct is serious corrupt conduct.

Jason Kinsella

The Commission is not satisfied that there is evidence that Mr Kinsella engaged in corrupt conduct.

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:

- a. obtaining the advice of the Director of Public Prosecutions (DPP) with respect to the prosecution of a person for a specific offence
- b. the taking of action against the person for a specific disciplinary offence
- c. 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 Cordoba is an “affected” person.

The evidence that Mr Cordoba gave was the subject of a declaration under s 38 of the ICAC Act. The effect of the declaration is that his evidence cannot be used against him in any subsequent criminal proceedings, except a prosecution for an offence under the ICAC Act.

There are, however, admissible financial records, bank statements, emails, invoices and other business records to show that Mr Cordoba received \$55,000 from Cloud People and that he failed to declare this payment or his relationship with Cloud People to his employer as he was required to do. The evidence of Ms Ambrose and Mr Kinsella is also available.

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 Cordoba for the offence of fraud pursuant to s 192E of the Crimes Act in relation to the receipt of \$55,000 from Cloud People.

On 7 September 2015, Mr Cordoba resigned from the SWSI. As Mr Cordoba is no longer an employee of the SWSI, the Commission makes no recommendations in relation to the consideration of disciplinary action or action to terminate his employment.

Chapter 4: SWSI orders placed with ITD Systems

In June 2006, while an employee of the SWSI, Mr Cordoba registered the business name, Storm Solutions, with ASIC. In November 2013, Mr Cordoba registered the business name, ITD Systems, with ASIC. ITD Systems was allocated the ABN 81 290 246 533.

On 5 February 2009, Mr Cordoba submitted a “private and secondary employment policy application” form to the SWSI seeking permission to undertake secondary employment with MediTech Networks for a period of 12 months. Mr Cordoba stated in the application that his duties would include IT infrastructure, security and design consultancy, and consultation and management advice. The application was approved by a SWSI faculty director on 10 February 2009.

On 2 April 2013, Mr Cordoba submitted another secondary employment form seeking permission to undertake secondary employment with Storm Solutions for the period from 1 January to 31 December 2013. Mr Cordoba stated in the application that he would be undertaking consultancy work in relation to network architecture design, complex network solutions and complex system design. Mr Cordoba included the following statement on the application form: “no educational institutions – no conflict with TAFE”. The application was approved by the institute’s director on 4 April 2013.

On both of the secondary employment application forms that Mr Cordoba submitted, he signed a declaration to acknowledge that he had read the private and secondary employment policy, including the associated guidelines, and that the proposed secondary employment did not breach SWSI policy. Mr Cordoba submitted no other applications for permission to undertake secondary employment while an employee of the SWSI.

The initial vendor maintenance request

Ms Ambrose told the Commission that, on or shortly before 16 January 2014, Mr Cordoba instructed her to submit a request for a new IT supplier to be created as a vendor on the SAP system. On 16 January 2014, Ms Ambrose sent Mr Cordoba an email with a blank vendor request form attached. In the email, Ms Ambrose asks Mr Cordoba to provide the relevant vendor details and a quote or other document confirming the new vendor’s banking details.

Shortly after sending this email, Ms Ambrose received a completed vendor request form from Mr Cordoba. The form named the new vendor as ITD Pty Ltd, and it listed details including a company address, telephone number, email address, an ABN of 80 106 766 214 and contact details for two people, Oscar Centos and Isaac David. A bank account number and BSB were provided. As will be seen below, the bank account details were those of Mr Cordoba’s business, ITD Systems, although this was not disclosed on the vendor request form.

Also attached to Mr Cordoba’s email was a quote for computer hardware valued at \$380. The quote displayed the same business name, ABN, BSB and bank account number as the vendor request form.

Ms Ambrose told the Commission that at no time did Mr Cordoba disclose to her that he had any connection with ITD Systems or ITD Pty Ltd. Ms Ambrose stated that she believed the details on the vendor request form were legitimate and that they had been provided to Mr Cordoba by the proposed new vendor. Ms Ambrose said that she entered the details provided by Mr Cordoba into the SAP system and forwarded the completed vendor request form to the SWSI finance unit, where it was checked and authorised. ITD Pty Ltd was then added as a vendor into the SAP system.

On 21 January 2014, Ms Ambrose was copied into an email exchange between Mr Cordoba, using his SWSI email account, and a person purporting to be Alicia Rodriguez, using an email address of “accounts@itdsystems.com.au”. Ms Rodriguez’s signature block described her as the accounts officer of ITD Systems.

In the email exchange, Mr Cordoba and Ms Rodriguez appear to discuss the arrangements for creating ITD Systems as a vendor on the SAP system. Mr Cordoba tells Ms Rodriguez to contact Ms Ambrose if she requires any assistance. Ms Ambrose told the Commission that, on 21 January 2014, she sent an email to a person she believed to be Ms Rodriguez stating “ITD has been set up on our finance system as a vendor. I have raised an order for 1 item on the attached quote. Once approved by Ron [Cordoba], you should receive the order via email”. Following this email, Ms Ambrose created a shopping cart for the goods described in the \$380 quote, which was then authorised by Mr Cordoba. A purchase order was subsequently raised in favour of ITD Pty Ltd.

Mr Cordoba accepted that he asked Ms Ambrose to raise the vendor request form on the SAP system and that he provided her with all of the necessary details and the quote for \$380. Mr Cordoba admitted that the address, telephone number, email address, BSB and bank account number that he provided all related to a business called ITD Systems, a business that Mr Cordoba owned and operated. Mr Cordoba told the Commission that one of the nominated contacts on the vendor request form was his brother, but that he had no association with ITD Systems and that he had made up the name of the second nominated contact person. Mr Cordoba admitted that the correct account name for the bank account number he provided to Ms Ambrose was Ronald Cordoba, trading as ITD Systems, but that he had submitted the account name ITD Pty Ltd to conceal the fact that the account was his.

When asked about the name ITD Pty Ltd, Mr Cordoba told the Commission that he had used the name and ABN of a company with a similar name to his own business to conceal the fact that he was the owner and operator of ITD Systems.

Mr Cordoba told the Commission that ITD Systems did not have an employee named Alicia Rodriguez and that he had created the email exchange of 21 January 2014, using his SWSI email account and an ITD Systems email account. Mr Cordoba accepted that he created and forwarded the false email exchange to Ms Ambrose specifically to make her believe that she was dealing with a legitimate supplier and to conceal the fact that the new vendor was a business that he owned and operated.

Mr Cordoba’s admissions are supported by documentary

evidence obtained from the National Australia Bank, confirming that the account number provided on the vendor request form related to an account maintained by Mr Cordoba. Documents obtained from Servcorp Ltd, a provider of serviced and virtual offices, showed that the address and telephone number supplied in the vendor request form related to a virtual office maintained by Mr Cordoba for his business Storm Solutions.

Mr Cordoba told the Commission that, when he submitted the false vendor details and supporting documentation to Ms Ambrose, he did so knowing that he intended to place orders for his own business with the SWSI. Mr Cordoba acknowledged that, had the SWSI finance unit become aware that he had provided false information, he would have been reported and ITD Pty Ltd would not have been registered as a vendor on the SAP system. Mr Cordoba accepted that his actions were contrary to both the codes of conduct and the DEC’s procurement policy and that he deliberately and dishonestly provided false information in order to deceive Ms Ambrose and other SWSI staff.

The Commission is satisfied that Mr Cordoba supplied false and misleading information and documentation to Ms Ambrose in order to conceal the fact that he intended to place orders, on behalf of the SWSI, with a business that he owned and operated.

Ordering of goods from ITD Pty Ltd

Mr Cordoba was asked by the Commission about a large number of invoices submitted in the name of ITD Pty Ltd, following its listing as a vendor on the SAP system. Mr Cordoba said that he had submitted a number of quotes to the SWSI purportedly from ITD Pty Ltd, using the name Alicia Rodriguez and that he subsequently instructed Ms Ambrose to create shopping carts based on those quotes. Mr Cordoba said that he then authorised the shopping carts so that purchase orders could be issued and that, when he did so, he knew that he was being dishonest by not disclosing that his business would be the beneficiary of the purchase orders.

Mr Cordoba accepted that, between 21 January and 26 May 2014, he submitted 50 invoices to the SWSI requesting payment for goods and services said to have been supplied by ITD Pty Ltd. Mr Cordoba admitted that on each of the invoices he used the name and ABN of ITD Pty Ltd to conceal the fact that he had ordered goods from his own business.

The Commission recovered records and received other evidence that 28 purchase orders, dated between 21 January and 14 March 2014, were raised by the SWSI

in favour of ITD Pty Ltd as a result of shopping carts authorised by Mr Cordoba.

Mr Stralow, the SWSI financial accountant, told the Commission that, between 19 February and 15 July 2014, the SWSI made payments totalling \$1,709,904.90, into a bank account they believed to be maintained by ITD Pty Ltd. It was not disputed by Mr Cordoba that these payments were in fact credited to the bank account of his business and that the payments would not have been made if SWSI staff were aware that he was the beneficiary of the payments.

The Commission is satisfied that Mr Cordoba intentionally and dishonestly submitted quotes and 50 false and misleading invoices to the SWSI to conceal the fact that he was ordering goods and services from a business that he owned and operated.

The false acquittal of goods

On 5 August 2014, Mr Cordoba was suspended by the SWSI following an internal audit that raised suspicions about transactions involving the probity of ITD Pty Ltd and the fact that it may not have provided goods for which it had been paid. Phillip Martin, acting finance director at the SWSI, provided a written statement to the Commission in which he stated that, on 29 August 2014, he sent a letter to a business he believed to be ITD Pty Ltd seeking confirmation that all goods or services ordered from the company had been properly supplied. Mr Cordoba accepted that he had received this letter as an email attachment.

Mr Cordoba admitted that, prior to his suspension on 5 August 2014, he had only supplied goods relating to one of the 28 purchase orders that had been raised in favour of ITD Pty Ltd. The value of this purchase order was \$10,000. Mr Cordoba said that in relation to each of the remaining 27 purchase orders he had falsely certified that the goods or services had been properly supplied knowing that this was not the case. Mr Cordoba accepted that, as a result of his false certification, the SWSI had made full payment in relation to the 27 purchase orders.

The Commission is satisfied that, in relation to 27 purchase orders, Mr Cordoba certified that goods or services had been received, knowing that this was untrue, in order to induce the SWSI to make payments to his business totalling \$1,699,904.90. The Commission is satisfied that these payments would not have been made if SWSI staff had known that Mr Cordoba was the ultimate beneficiary and that the goods or services had not been supplied.

Mr Cordoba provides some goods and services

Mr Cordoba told the Commission that, following his suspension, and after receiving the letter from Mr Martin, he began to purchase and supply the goods in the 27 outstanding purchase orders. When asked why he had done this, Mr Cordoba said, “[I] knew [I] had been found out and [I] wanted to in effect minimise the damage by getting as many of the [invoiced products] to TAFE as possible”. Mr Cordoba admitted that, even after receiving Mr Martin’s letter, he did not provide all of the items that the SWSI had ordered from ITD Pty Ltd.

Mr Cordoba acknowledged that acquitting goods before they were supplied was in breach of the DEC’s procurement policy. He claimed, however, that the practice was widespread across the SWSI and that Ms Ambrose was aware that he was certifying receipt of goods that had not been received. Mr Cordoba said that such conduct was especially common at the end of the financial year because departments wanted to ensure that their annual budget was fully expended to prevent the loss of funds.

The Commission heard evidence from a number of other SWSI employees who denied that acquitting goods prior to receipt was common practice. Ms Ambrose told the Commission that goods were only acquitted following receipt and that written permission was required to pay suppliers in advance.

Mr Cordoba’s claim that the false acquittal of goods and services was common practice within the SWSI was unsupported by evidence from any other source and was directly contradicted by written and oral evidence from other SWSI staff members. The Commission was presented with no evidence, other than the allegation made by Mr Cordoba, to suggest that Ms Ambrose or any other SWSI employee had acted improperly. The Commission is not satisfied that Ms Ambrose or any other SWSI employee falsely acquitted goods or services, or that Ms Ambrose was aware that Mr Cordoba was doing so.

It was put to Mr Cordoba that he had never intended to supply any of the outstanding items, that he only began purchasing and supplying goods after his activities were discovered, as a damage limitation exercise. Mr Cordoba told the Commission that he had intended to supply some of the goods that had been ordered, but that in relation to computer software he believed that a failure to provide these items would go undetected so he concentrated on supplying items that were easier to account for. It was put to Mr Cordoba that an examination of his businesses’ financial records revealed that some of the items listed on purchase orders raised in favour of ITD Pty Ltd were

never sourced by his business. Mr Cordoba accepted that some of the items ordered were never supplied and that, in relation to others, he provided goods that did not match the exact specifications of the items listed on the purchase orders.

The Commission is satisfied that, prior to August 2014, Mr Cordoba had not supplied any of the goods and services contained in the 27 of the 28 purchases orders raised in favour of ITD Pty Ltd and that he falsely certified that goods or services had been received knowing that this was untrue. The Commission is also satisfied that in relation to at least some of the goods ordered by the SWSI that Mr Cordoba never intended to supply them. After considering the evidence of Mr Stralow, Ms Ambrose and Mr Cordoba, the Commission is also satisfied that the SWSI would not have paid any of the invoices submitted under the company name ITD Pty Ltd if it had been known that the invoices were false and that Mr Cordoba was the ultimate beneficiary of the payments.

Mr Cordoba accepted that, when he did start to supply some of the outstanding goods following the receipt of Mr Martin's letter in August 2014, the costs to his business of those goods was significantly less than the costs charged to, and paid by, the SWSI.

Mr Cordoba admitted that he supplied 29 mobile repeater units to the SWSI for which he had charged \$145,000, but that he had purchased the units for only \$8,708.50. Mr Cordoba also admitted that he supplied the SWSI with Dropbox cloud storage licences with associated project management fees for \$306,784.50, when the cost to him of supplying these items was only \$70,246.83.

Mr Cordoba gave the following replies when asked about the orders he had placed with his own business on behalf of the SWSI:

[Counsel Assisting]: And you don't suggest it was in TAFE's interest to purchase goods and licences through ITD Pty Ltd with respect to any of these items that were bought through ITD, correct?

[Mr Cordoba]: No.

[Q]: You did it because it was in your personal interests?

[A]: Correct.

[Q]: And you deliberately concealed your tracks from TAFE with a view to making a buck?

[A]: Correct.

[Q]: And you knew it was dishonest at the time.

[A]: Correct.

[Q]: And that answer applies to every one of the purchases made by or every one of the amounts paid by TAFE to ITD Pty Ltd which ended up in your bank account?

[A]: Correct.

The Commission is satisfied that, having heard Mr Cordoba's admissions, which are supported by financial records of ITD Systems and the SWSI, Mr Cordoba obtained a significant financial benefit by either not providing goods and services for which his company received payments from the SWSI or by inflating the price of goods that were eventually provided by his business.

Corrupt conduct

The Commission is satisfied that, between January and July 2014, Mr Cordoba engaged in corrupt conduct by improperly exercising his official functions to obtain \$1,709,904.90 from the SWSI for his business, ITD Systems. The improper exercise of his functions included:

- providing false and misleading information in relation to the registration of a vendor on the DEC's SAP system
- ordering goods on behalf of the SWSI from a business that he owned and operated without declaring a conflict of interest
- supplying false and misleading documentation to the SWSI to conceal the fact that he was ordering goods from a company that he owned and operated
- falsely certifying that goods and services had been received by the SWSI knowing that this was untrue.

This conduct on the part of Mr Cordoba is corrupt conduct for the purposes of s 8(1)(b) and s 8(1)(c) of the ICAC Act as it is conduct of a public official that involves the dishonest exercise of his official functions and is conduct that involves a breach of public trust.

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

fraud under s 192E of the Crimes Act, by dishonestly and by deception obtaining a financial advantage of \$1,709,904.90.

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

For the purposes of s 74BA of the ICAC Act, the Commission is satisfied that Mr Cordoba used his position and financial delegation to gain for himself a financial advantage of over \$1.7 million. Mr Cordoba's actions amounted to a serious and deliberate breach of the trust placed in him by the SWSI. His conduct was systematic and sophisticated in that it involved the implementation of a multifaceted scheme that had the intended effect of subverting a number of procurement processes and policies. Mr Cordoba was motivated by greed and a desire for personal profit at the expense of a publicly-funded organisation tasked with delivering important educational functions on behalf of the state. Mr Cordoba abused his managerial position to manipulate a procurement process and used another SWSI staff member to unknowingly further his corrupt scheme. The corrupt conduct also involved an offence under s 192E of the Crimes Act, which has a maximum penalty of 10 years imprisonment and is, therefore, a serious indictable offence. For these reasons, the Commission is satisfied that Mr Cordoba's conduct is serious corrupt conduct.

Section 74A(2) statement

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

The evidence that Mr Cordoba gave was the subject of a declaration under s 38 of the ICAC Act. The effect of the declaration is that his evidence cannot be used against him in any subsequent criminal proceedings, except a prosecution for an offence under the ICAC Act.

There are, however, admissible financial records, bank statements, emails, invoices and other business records to show that Mr Cordoba was responsible for having ITD Pty Ltd listed as a SWSI vendor on the basis of false information, and that he caused orders to be placed and payments to be made to a business that he owned and operated, knowing that this was in breach of the DEC's procurement policy. The evidence of a number of SWSI staff members is also available to the DPP to prove that Mr Cordoba acted dishonestly.

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 Cordoba for the offence of fraud pursuant to s 192E of the Crimes Act in relation to the receipt of \$1,709,904.90 from the SWSI.

Prior to giving evidence at the public inquiry, Mr Cordoba gave evidence at two compulsory examinations on 9 June and 29 July 2015.

During Mr Cordoba's compulsory examination on 9 June 2015, he was asked to explain his use of the ABN relating to ITD Pty Ltd. Mr Cordoba told the Commission that he had conducted a search on the ASIC website and located a business name that he thought was his. He had then copied the ABN for that business and used it in later documentation by mistake.

At his compulsory examination on 29 July 2015, Mr Cordoba was again asked to explain why he used the ABN relating to ITD Pty Ltd rather than the ABN relating to his own business. Mr Cordoba maintained that he had originally copied the wrong ABN from the ASIC website, which he mistakenly applied to later documentation.

During the public inquiry, Mr Cordoba told the Commission that he had deliberately used the business name ITD Pty Ltd and the ABN relating to that company to conceal the fact that he was ordering goods on behalf of the SWSI from his own business. Mr Cordoba accepted that he had lied during his compulsory examinations when he claimed to have mistakenly used the ABN of ITD Pty Ltd.

The Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to prosecuting Mr Cordoba for the offence of giving false or misleading evidence at a compulsory examination pursuant to s 87 of the ICAC Act. The evidence given by Mr Cordoba would be available to the DPP in respect of a prosecution for this offence.

During the course of the Commission's investigation, Commission officers executed a search warrant at Mr Cordoba's home. During the search, a Commission officer said to Mr Cordoba: "well, obviously, obviously from TAFE's view what they're telling us is that they weren't aware it was your company which is why ICAC's got involved".

Mr Cordoba replied: "No, I understand. I understand from my point of view is that they were aware". Later in the search, when asked about disclosures he made to the SWSI, the following exchange took place:

[Commission officer]: So obviously we'd like to speak to you, outline the allegations and you say everyone was aware of what you were doing

...

[Mr Cordoba]: Well, everyone's my line managers.

[Q]: Your line managers knew?

[A]: Yeah, yeah.

[Q]: And it was your company?

[A]: Yeah. It's actually listed in – listed there as, um, ah, you had to declare your company so it was actually listed in there [sic] paperwork.

During the public inquiry, it was put to Mr Cordoba that during the search warrant he had attempted to mislead a Commission officer by telling him that the SWSI was aware that he was ordering goods from a business that he owned and operated. Mr Cordoba accepted that he had lied to a Commission officer during the search of his home and that this had been done in an attempt to mislead a Commission officer.

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 Cordoba for the offence of wilfully making a false statement to a Commission officer in the execution of their duty, pursuant to s 80 of the ICAC Act. The evidence given by Mr Cordoba would be available to the DPP in respect of a prosecution for this offence.

Mr Cordoba is no longer an employee of the SWSI. As such, the Commission makes no recommendations in relation to the consideration of disciplinary action or action to terminate his employment.

Chapter 5: Corruption prevention

The emerging role of ICT in education underscores the importance of competency in project management and governance for growing institutions like the SWSI. As higher education institutions compete for a limited pool of prospective students, institutions increasingly find themselves in the position of continuous ICT upgrades; from improving classroom tools and learning environments to advancing administrative efficiencies. In this emerging market environment for higher education, ICT projects are an integral part of an institution's value proposition. Those who can achieve ICT project goals efficiently and effectively will not only achieve a competitive advantage over rival institutions, but also better outcomes for students.

Therefore, administration and governance of SWSI ICT projects pose important considerations for the organisation as a whole, and must be reformed in several areas to reduce corruption risks.

Mr Cordoba's conduct exposed several weaknesses and opportunities for corruption in the procure-to-pay system, the use of out-of-contract suppliers, in employment screening, in asset management and project governance at the SWSI.

In most cases, the systems and policies governing the SWSI emanate from the NSW government department that administers TAFE NSW. At the time of Mr Cordoba's conduct, this was the Department of Education and Communities (DEC). On 1 July 2015, however, a number of NSW government departments were restructured; the DEC was reformed into the new Department of Education (DoE), and TAFE NSW was simultaneously transferred to the NSW Department of Industry, Skills and Regional Development (known as the NSW Department of Industry).

Since the restructure, the finance system used by TAFE NSW has not changed; it still utilises DoE SAP processes and infrastructure. The operational arrangements,

including procurement, invoice payment and asset-tracking practices, which SWSI utilised at the time TAFE NSW was part of DEC, still operate today. These arrangements will continue for the foreseeable future; however, purchases over \$150,000 now use Department of Industry processes.

The Commission's public inquiry highlighted several limitations in the SWSI's management of ICT projects, including the initial-needs identification and development of proposed budgets. The governance arrangements around ICT projects were also raised during the inquiry.

The absence of controls embedded in the governance of SWSI ICT projects effectively reduced scrutiny of expenditure to the transaction level. Weaknesses in the procure-to-pay system further exposed the SWSI to the risk of corrupt conduct for these purchases. Furthermore, without any requirement to undertake a criminal record check when Mr Cordoba relieved in the position of manager of ICT services, the risk of providing Mr Cordoba with a financial delegation of \$150,000 was not assessed at the time.

Three corruption prevention recommendations address procure-to-pay issues, the use of out-of-contract suppliers, and project control and governance.

The procure-to-pay system

The entire accounts payable process at the SWSI is conducted via the electronic finance system, SAP, which has eliminated the need for manual forms and records. The SAP system was implemented across the DEC in 2010. Notwithstanding the recent structural reforms that moved TAFE NSW to the Department of Industry, the SWSI continues to operate under the DoE SAP provisions.

Creation of new vendors

The process of creating new vendors in the SAP system is a key point of control, especially when new vendors have not passed through a formal approval process. Such cases present corruption risks that require additional measures that are not always easy to implement given certain limitations of the SAP system.

In most cases, a supplier cannot be paid without first being created as a vendor in the SAP system. An exception exists for certain types of payees that are used only once. These types of one-off payments are typically reserved for student prize giving or refunds, and are never used for payments relating to goods or services.

If SWSI staff wish to use a supplier that is not a registered vendor, they can request the creation of a new vendor by completing an online vendor request form. Supporting documentation, such as a document displaying the vendor's name, address, ABN and bank account details, must be attached to the online form. The online form and attached document must be submitted via SAP to the financial accountant.

Generally, SWSI staff members are required to use in-contract suppliers (those appointed through a formal approval process) where available. The SWSI has selected a number of local suppliers in this way, and NSW government suppliers that have been selected through a formal process are also considered in-contract suppliers.

The requirement to use in-contract suppliers is not applicable when an alternate supplier request is approved. At the time of Mr Cordoba's conduct, alternate supplier requests were approved by the Procurement Solutions Directorate of the DEC. If an out-of-contract vendor was requested to be used in such circumstances, a note could be attached to a purchase order request, providing a rationale for their use.

Since the restructure, TAFE NSW is no longer supported by the Procurement Solutions Directorate of the DEC, and a new process has not yet been formalised by the Department of Industry regarding alternate supplier requests.

The SWSI finance unit approves all new vendors. A financial accountant checks new vendor details to determine whether a vendor is a SWSI employee by searching for the name of the vendor or their nominated contact in the SWSI email global address book. The financial accountant also checks whether the ABN matches the name on the vendor request form, and whether the ABN links to any information on the ASIC website, which would identify a SWSI employee. If no information is revealed from these checks to link the vendor to a SWSI employee, the financial accountant

approves the vendor request.

Once approved by the financial accountant, vendor requests are then sent via SAP to the SSC at the DoE, which continues to provide accounts payable services to TAFE NSW and the SWSI (even after the July 2015 restructure, which moved TAFE NSW and the SWSI to the Department of Industry). Prior to establishing a vendor in SAP, the SSC checks the vendor name matches the name on the ABN registration and that the ABN is current. If the vendor passes these checks, it is created on the system with an associated unique identifier number.

New vendor verifications added

The SWSI recently introduced additional verification of new vendors. These checks occur at the stage when the financial accountant reviews requests for new vendors. The extra steps require the finance unit to refer all new vendor requests to the originating faculty or unit for review and confirmation that the proposed new vendor is acceptable. In addition, the finance unit now independently verifies the contact details and telephone numbers of new vendors and contacts the proposed vendor to verify their account details.

The finance unit has also subscribed to Corporate Scorecard, a service that provides corporate information that allows the finance unit to search the corporate details of vendors, including shareholders, associated entities and adverse findings. As it would be cost prohibitive to undertake this search for every new vendor, the SWSI finance unit has developed protocols to flag certain transactions for this in-depth research.

Purchasing system

The purchasing system has not changed substantially since the restructure. In order to acquire goods or services a purchase order must be raised in SAP. Most full-time SWSI staff members can request a purchase order. When doing so, they are required to check whether the goods or services are already in-contract, which can be done by reviewing catalogues linked to the SAP system. A "shopping cart" or a purchase order request can be created in the SAP system, similar to an online requisition. Once submitted, the purchase order request is automatically sent by SAP to the line manager with the lowest required delegation level.

If the line manager approves the purchase order request, it is submitted via the SAP system to the SSC, where a purchase order is created and sent to the requested supplier. The staff member who placed the original order can track the progress of their purchase order request through the SAP system. The SSC often receives a tax invoice directly from the vendor or supplier. It is not

uncommon, however, for the SSC to receive invoices instead from the relevant SWSI business unit. Any SAP user within the SWSI can process a confirmation of receipt of the item.

Generally, a three-way match between the invoice, purchase order and confirmation of delivery in SAP must occur for payment to the vendor to be processed. If the SSC is unable to locate the purchase order, one must be raised by completing the approval process.

If suppliers require a pre-payment (as is the case with software products, for example), it is possible for payments to be processed prior to delivery. In such cases a "request for advanced payment" form must be completed and provided to the SSC along with the invoice.

Within a certain tolerance level, SAP will allow the value on the invoice to exceed that of the purchase order, which is the lesser of either 20% or \$50 per item on the order. If the value on an invoice exceeds the tolerance level, the original purchase order must be edited and it must go through the whole process again.

The opportunity to exploit the vendor creation system

Using the SAP system, many SWSI staff face confusion because SAP does not conveniently differentiate in-contract vendors from out-of-contract vendors. Furthermore, some vendors are only partly in-contract because they only provide some products and services on an in-contract basis.

In order to identify in-contract vendors in SAP, SWSI staff must take an additional step and follow a link provided at the purchase order request stage to view a list of appropriate in-contract vendors. The finance unit does periodically remind staff that, just because a vendor is established in SAP, does not necessarily mean they are an in-contract vendor.

As there are no automatic safeguards in SAP to prevent a request to use an out-of-contract vendor, it is the responsibility of the managers in the business unit requesting a purchase to ensure that out-of-contract vendors are used in accordance with policy requirements.

Evidence given during the public inquiry by the SWSI financial accountant, Mr Stralow, underscores the responsibility of line managers in enforcing purchasing policies:

[Counsel Assisting]: 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?

[Mr Stralow]: No.

[Q]: And so again it's left up to the individual managers or officers who have a financial delegation level?

[A]: Yeah, to make sure that policies are being complied with, yes.

This weakness was demonstrated when a SWSI finance unit staff member identified a possible breach by Mr Cordoba of procurement requirements. While searching for other information, the staff member noticed that ITD Pty Ltd was being used to an extent that was unusual for an out-of-contract vendor and decided to investigate further. While examining purchase orders for ITD Pty Ltd, the staff member discovered a number of items he believed could have been sourced through an in-contract supplier.

At the time of Mr Cordoba's conduct, the only inbuilt safeguard against staff contravening in-contract policy requirements relied on the vigilance of line management to refuse approval of a purchase order request. This safeguard places an unrealistic burden on line managers to investigate and review all purchases to ensure compliance with policies.

Limitations in the SAP system's ability to recognise out-of-contract suppliers prevented the SWSI finance department from easily identifying the use of out-of-contract suppliers. The finance unit does not have the capacity to automatically highlight or identify expenditure involving out-of-contract suppliers, since the SAP system is unable to differentiate these expenditures from in-contract expenditure. Instead, the reporting mechanism records all expenditure against each cost centre and does not identify where a supplier is in-contract or out-of-contract.

Enhancing control over the use of out-of-contract suppliers

While the inappropriate use of out-of-contract suppliers does present corruption risks, the Commission understands the implementation of additional workflows in the SAP system to be an impractical solution. Such modifications would impact on the efficiency of the SWSI procure-to-pay system, and would add significant costs to compliance efforts. It is also possible that a requirement for additional workflows would have cluster-wide implications for other agencies sharing the current SAP configuration.

The Commission supports the requirement to refer new vendors back to the originating facility for confirmation, a reform which is likely to improve vigilance over the use of out-of-contract suppliers in cases where new vendors are created. The adoption of spend analysis and vendor analysis functions using computer-aided audit techniques may also help to reduce opportunities to use out-of-contract vendors outside of policy requirements.

Also, the finance unit has now commenced weekly reports from SAP which will enable the finance team to examine suppliers against various types of goods and whether they are in-contract or out-of-contract. This is a worthwhile step to prevent unauthorised use of out-of-contract suppliers.

The risk still remains that SWSI employees may engage out-of-contract suppliers in situations where they have undisclosed private interests in transactions. The Commission supports the periodic review of the use of out-of-contract suppliers, since the critical examination of purchase orders by a member of the finance unit was instrumental in the initial discovery of Mr Cordoba's conduct.

Recommendation 1

That the SWSI finance unit devises a system to audit expenditure involving out-of-contract suppliers on a periodic basis.

The opportunity to exceed purchasing thresholds and financial delegations

Any SWSI staff member who requests the provision of goods or services can scan the relevant quotations and attach them to the shopping cart request in SAP. Attached quotations, however, are not required by SAP. It is the responsibility of the approving line manager to check quotations that are not seen by the finance unit.

At the time of Mr Cordoba's conduct, the DEC required thresholds for purchases from out-of-contract suppliers as follows:

- up to \$30,000 – one written quote
- between \$30,000 and \$150,000 – three written quotes
- over \$150,000 – a tender process.

In violation of the applicable DEC policy, Mr Cordoba split purchase orders that exceeded thresholds and his own financial delegation, thereby avoiding the scrutiny of line managers.

The volume of purchase orders raised by SWSI staff suggests a real possibility that split purchase orders may

be being processed without detection. Although it is possible that an audit may later detect such order-splitting, neither the SWSI finance unit nor SAP software have mechanisms in place to automatically detect order-splitting, and the finance unit is unaware of any efforts by SSC to compile reports that could potentially identify order-splitting.

Several new mechanisms are being considered to enhance detection. The SWSI and the SSC have recently discussed the possibility of communicating regular and ad hoc reports to detect instances of order-splitting. The SWSI is also exploring opportunities regarding the analysis of high-volume vendors by spend and order volume to help address order-splitting risks and attempts to exceed financial delegations. Furthermore, the SWSI is exploring the possibility of detecting instances of duplicate bank accounts between vendors and employees. The Commission supports the implementation of these measures to help detect order-splitting and instances where purchase order thresholds and financial delegations have been breached.

Recommendation 2

That the SWSI undertakes a regular analysis of vendor payments based on computer-aided audit reports to detect anomalies in the procure-to-pay system.

Asset management

For higher education institutions like the SWSI, the loss or theft of valuable ICT equipment presents a particularly challenging risk. Electronic tracking of assets helps to control these risks but, if items are not first registered, they cannot be tracked. However, it would be prohibitive to record all items on asset registers because this would then require regular stocktake reports for large volumes of items – a time consuming and difficult task for items with relatively lower values. Without a balanced design, these measures can burden the organisation with excessive reporting rules and mandates that will reduce organisational efficiency and effectiveness.

At the time of Mr Cordoba's conduct, DEC policies required mandatory registration of all items valued between \$3,000 and \$10,000 as "custodial" items on a local SWSI equipment register (also known as an asset register) for stocktaking purposes. Any items valued under the \$3,000 threshold that were audio visual, ICT-related or "at risk items" also needed to be recorded on the local asset register. Items valued over \$10,000 were required to be registered as "financial" on the DEC financial assets register, capitalised and depreciated. After the restructure, the SWSI continues to follow these policies.

Asset registration process

After a SWSI employee has receipted a relevant item in SAP, they are required to complete an “asset and equipment request” form in SAP, and submit it to their line manager for approval. It is not necessary to gain approval from line managers in order for an asset to be included in the relevant asset register, but the SAP workflow is used for convenience. It is considered the responsibility of the business unit receiving the item to ensure it is included on the appropriate asset register.

Following a line manager’s approval, the form is sent via SAP to the finance unit. If the item is a custodial item, it is identified as an asset in SAP following the finance unit’s approval. If the item is a financial item, it is presented to the SSC following the finance unit’s approval. The SSC then approves the request.

Once an asset has been created in SAP, the system automatically assigns it a barcode. A member of the finance unit prints the barcode and sends it to the original employee who requested that the item be listed as an asset to physically place on the item.

Stocktaking occurs on an annual basis at the SWSI. The information from the asset register is downloaded on to scanners. Facilities officers scan the barcodes on equipment at each of the college locations, prior to returning the scanners to the finance unit. The information from the scanners is uploaded onto Assettake (a third-party application) and then into SAP.

The SSC undertakes periodic analyses of large-value expenses to check whether assets have been properly expensed, but this activity is limited to items above \$10,000 in value, leaving lower-value items without such verification.

Minimising asset risks

A key weakness in asset management is at the point of acquittal. If an item is recorded in SWSI systems as received before it has physically entered SWSI possession, the organisation could be exposed to corrupt under-delivery. A separate process is required to add the goods on to asset registers in SAP, making their loss undetectable to asset management systems.

In his evidence at the public inquiry, Mr Cordoba acknowledged that, in contravention of SWSI policy, he would acquit some goods prior to delivery. Therefore, the SAP asset management process cannot provide a safeguard against such losses of items that are acquitted but never physically delivered. These items would be a loss to the organisation.

The SAP purchasing module and the asset register module are not automatically linked because most of the items received by the SWSI are consumables and, consequently, do not need to be registered as assets. Business units are each responsible for initiating requests to create assets in the SAP database.

Additional workflows would be inevitable if an equipment record and asset registration were processed at the time when goods are acquitted in SAP. While the finance unit has the ability to check all orders processed by staff before submitting a purchase order to a supplier, it has no ability to restrict this workflow to certain purchases. As a result, it is expected that the implementation of such a requirement would impose a significant impact on SWSI resources.

When a purchase order request is created, however, there is an “equipment account assignment category” that can be selected and will prompt the user to record an item on the relevant asset register upon receipt of the goods. Asset reports can be run using this function, but it is not widely used by staff. The Commission supports SWSI efforts to devise a system that ensures that assets are registered in SAP at the time of acquittal.

The Commission is of the view that the significant addition of workflows to ensure purchased items are included in asset registers would create an unjustified administrative burden on the SWSI. The implementation of other Commission recommendations will, however, help to reduce the risk that SWSI staff members will purchase ICT items for unauthorised private purposes. Accordingly, the Commission does not make any specific corruption prevention recommendations concerning asset management processes.

ICT project governance

Achieving value for money in ICT projects, especially for higher education institutions like the SWSI, requires robust formal governance structures to oversee ICT projects and ensure value realisation objectives are achieved. Business cases must lay a solid foundation for project control and oversight. The SWSI board of directors holds an important role in ensuring this governance.

The board comprises of the institute’s faculty and directors of business units. It is more akin to a management executive committee than an independent governing board. The ICT services unit is represented at board meetings by the associate institute director of People, Planning and Performance. Budgetary submissions for operational or capital expenditure for a faculty or business unit are typically prepared by the faculty director or relevant manager of the business unit.

Governance of the SWSI ICT infrastructure project

Purchases involving ITD Pty Ltd were approved by the board, prompting questions about board governance of ICT projects. In February 2014, John Humphrey, while relieving in the position of associate institute director of People, Planning and Performance, prepared a submission to the board advocating for a funding allocation of \$6,868,964 for SWSI Capacity Building Projects (CBP). The purpose of CBP was to build the SWSI's ability to operate effectively in a competitive market for vocational education and training.

Mr Humphrey's submission was composed of five projects, including a laptop renewal strategy, ICT infrastructure projects and other facilities improvement projects. The projects were presented as "beneficial to the organisation" and it was asserted that they "represent a sound return on investment in the context of a competitive VET market". Further details of the projects, within each of the five categories, were available to board members upon request.

Mr Cordoba was the primary source of ICT advice for the CBP submission. Although it was not the position that the board would "rubber stamp" any ICT submission involving Mr Cordoba's input, it was acknowledged that the board relied on him to provide accurate, honest and reliable advice in relation to ICT matters, including project submissions, considered during meetings.

The board agreed in principle to the allocation of \$6,868,964 for the CBP, with funding available in its entirety upfront. The ICT infrastructure projects alone were budgeted at \$1,884,812, and incorporated seven individual sub-projects. It was against these projects that Mr Cordoba's purchases involving ITD Pty Ltd were budgeted.

Within the SWSI financial reporting system, the CBP were allocated cost centres separate from the ICT services unit's operating budget. Each of the projects had a unique internal audit number. The finance unit prepared quarterly budget performance reports for the board that included the CBP. As expenditure from the CBP appeared to be on track, no concerns were raised regarding individual purchases. It was possible, however, to reallocate money from a project that was under-spent to offset another project that was over-spent. The final report to the board regarding the projects noted that the total funding expended against the initiative was \$6,998,489; approximately \$130,000 over the initial budget allocation.

Although no project documentation with predetermined expenditure and progress milestones was required, the

board did request a list of sub-projects. Each project was required to have a detailed plan regarding expenditure and progressive reporting to the board.

Once the CBP submission to the board was approved, the board expected that procurement requirements would be followed and that this would not involve any input from them. Consequently, the board was not in a position to oversee or have knowledge of whether an out-of-contract supplier was being utilised extensively or whether value for money was being obtained.

The governance mechanisms that the board applied to the CBP focused on financial reporting and, in particular, whether the projects remained within budget. Mr Humphrey provided monthly reports to the board detailing the list of the various expenditure items and a summary of the progress made in relation to acquiring these items. Although the progress of all projects was reviewed, the board did not request any further documentation.

SWSI ICT project governance

ICT projects represent a heightened corruption risk for most agencies, as the highly specialised nature of the subject matter provides opportunities for staff to mask the practice of acting in their own interests as opposed to those of their organisation.

Ultimately, the lack of formal project management experience on the SWSI board reduced the board's ability to scrutinise purchases, including whether in-contract suppliers were being used, whether purchased items were being received, and whether value for money was being obtained. The perception that the CBP expenditure presented business-as-usual operating expenditure – as opposed to significant capital expenditure – also meant that alternative delivery options were probably not closely considered, thereby reducing the likelihood that value for money would ultimately be achieved. Mr Cordoba's corrupt conduct played a role in undermining value for money in the SWSI's ICT infrastructure projects, and stronger project scrutiny and oversight would help to detect such conduct and achieve better outcomes.

Sylvia Arthur, who succeeded Mr Humphrey in the relieving role as associate institute director of People, Planning and Performance and was a member of the board of directors, believes that at the time of Mr Cordoba's conduct, no SWSI board members (or their representative attendees) held specific technical knowledge in relation to ICT issues or knowledge of the market value of ICT equipment and services. Ms Arthur acknowledged that, in general, she did not understand ICT business cases or issues in detail and is of the belief that those attending board meetings were in a similar situation. The board

“would rely upon a representative or the Manager within the ICT Services Unit or Faculty to provide that technical knowledge, if required or requested”. Neither Ms Arthur nor the relieving management accountant were aware of an independent auditor or consultant ever being engaged to assess business cases presented to the board.

The SWSI viewed the role of the board as being to provide overall approval of the CBP scope and funding allocation. It was not possible, however, for the board to provide in-depth consideration of the roles and responsibilities of project participants and the precise governance arrangements surrounding the projects.

The CBP submission to the board was a high-level request for approval to commit funds. Regardless of the board’s lack of technical expertise, the submission provided a general overview of projects and an opportunity to address the governance and management of projects. Limited information, however, was provided about the specific project inputs that were required and how the expenditure amounts were established.

A main line of defence against corruption is an understanding of the costs involved in what is being proposed. Tight control over expenditure reduces corruption opportunities by limiting the supply of money for such purposes. In his evidence, Mr Cordoba acknowledged that he received a profit of \$1.14 million through the purchase of just \$445,000 in ICT project items (for which he charged the SWSI approximately \$1.7 million). These inflated prices suggest that the funds allocated to the ICT infrastructure projects were grossly inflated submissions to the board, but these inflated costs did not receive significant scrutiny.

Aside from the monitoring of project expenditure against the approved budget, the finance unit could only oversee the ITD Pty Ltd purchases at the individual transaction level. This was problematic given that Mr Cordoba exercised end-to-end control over the purchasing process, directing Ms Ambrose to raise the purchase orders that he approved. As original budget estimates were inflated, Mr Cordoba was able to raise invoices for overblown prices without attracting suspicion. Mr Cordoba gave evidence that, indeed, acknowledged the lack of scrutiny over his conduct:

[Counsel Assisting]: Well you prepare the quote, you prepare the invoices, you acquit them as being received and no one seems to notice until, until this letter has been sent out to you?

[Mr Cordoba]: Correct.

In his evidence, Mr Cordoba also acknowledged that he

overcharged the SWSI for many items, including Dropbox licences and services, which cost him approximately \$70,000, but for which he invoiced the SWSI approximately \$300,000.

In some cases, Mr Cordoba did not purchase items for the ICT infrastructure projects until after he became aware of the Commission’s investigation; something that he also acknowledged in his evidence. At other times, items were not purchased at all. This was the case for licences for the virtual desktop, Jukebox.

The final CBP report incorporated feedback from individual project owners, including Mr Cordoba. Feedback from the board was inconsistent in the level of detail provided and it appears the board did not ask for feedback beyond individual project owners, limiting the board’s ability to analyse and review its own decisions.

As demonstrated by this investigation, ICT projects can create opportunities for staff to engage in corrupt manipulation of purchasing decisions for improper purposes. For example, Mr Cordoba’s evidence highlighted the non-delivery of purchased software – an intangible asset that is difficult to identify – as a specific corruption risk for the SWSI:

[Counsel Assisting]: Yes, and so does it follow from that that you thought it less likely to be able to get away with your scheme with respect to hardware and more likely than in respect to software?

[Mr Cordoba]: Correct.

Q]: And that really explains what you’ve purchased and what you haven’t?

[A]: Correct.

[Q]: And so hardware is easier to work out whether you’ve provided it or not so you provide that?

[A]: Correct.

[Q]: And software is more difficult?

[A]: Correct.

[Q]: So it’s nothing to do with TAFE’s interest or anything like that?

[A]: Correct.

[Q]: It’s all got to do with what you can get away with and what you can’t get away with?

[A]: Correct.

The inflated budget for the ICT infrastructure projects and the lack of scrutiny applied to Mr Cordoba's individual purchasing decisions reveal significant shortcomings in the governance of ICT projects at the SWSI.

Given the growing role for ICT systems to support the SWSI's changing business needs (an environment that is increasingly focused on efficiency and control), an improved ICT governance capacity is essential for the SWSI.

Improving project governance

It is considered best practice for an ICT project business case to provide management with some degree of control over a project. Using a detailed business case, management can better structure its methodology towards ICT projects and steer projects using a suite of project controls concerning project costing and needs analyses.

In 2008, Ms Arthur established an ICT reference group to check all documentation from the ICT services unit, including business cases, prior to progression to other leadership groups. Due to a realignment of portfolios, however, the group was disbanded in March 2013.

It is likely that Mr Cordoba's conduct could have been prevented had the SWSI adopted a more structured project governance methodology at the time the ICT infrastructure projects were undertaken. At the time of Mr Cordoba's conduct, the ICT services unit was managed within the capital asset strategy reference group, which did not have a specific focus on ICT matters.

In May 2015, Enosys Solutions Pty Ltd ("Enosys") finalised a review of the ICT services unit. The Enosys report made a number of recommendations to improve ICT services and assist the SWSI in transitioning to a more commercialised setting. As a result of the review, the SWSI is changing its ICT project management and governance frameworks to improve project management structure and control.

A key change is the implementation of an ICT Project Portfolio Management Committee to manage programs of work and individual projects. As part of this change, ICT investment will be aligned with the SWSI business strategy, allowing ICT acquisitions to be planned and prioritised. It is the SWSI's intent that all ICT procurement will be tied to a known, stated objective and will include the identification of benefits, costs and risks associated with purchases.

Changes to ICT governance arrangements at the SWSI also include the establishment of an ICT governance framework and an ICT Steering Group with the responsibility to provide governance over project

submissions, including review of business cases, feasibility, proposed budgets, and monitoring of the achievement of outcomes. An improved ICT governance capacity should also help to ensure that ICT-specific project expenditure decisions are scrutinised at a higher level in addition to the project management level, and that reporting around project milestones extends beyond monitoring overall budgets.

In addition to the submission to the board template in place at the SWSI, there are also plans for the implementation of a business case template to be used by the ICT services unit specifically for the purchase of equipment and requests for funding.

These changes will improve the likelihood that purchases are not made for private purposes, that value for money is achieved and that in-contract vendors are selected when required.

Opportunities to hide under-delivery on project outcomes would be further reduced by formal value-realisation processes that include feedback from project end-users. At the time of Mr Cordoba's conduct, a benefits realisation analysis of projects was dependent on project value. This analysis was usually only conducted for major capital investment projects that were funded and approved by NSW Treasury within the TAFE NSW budget allocation. All projects of over \$10 million, however, do require formal benefits realisation analysis.

The implementation of a more comprehensive form of end-user sign off will help to prompt discussion and ensure that concerns about purchase decisions are voiced. Formal post-project reports to the board detailing the project benefits and value for money achieved would also help to ensure project outcomes for the SWSI.

Recommendation 3

That the SWSI establishes formal project management and governance structures to oversee ICT projects and implement formal value-realisation analysis at the completion of projects.

These recommendations are made pursuant to s 13(3)(b) of the ICAC Act and, as required by s 111E of the ICAC Act, will be furnished to TAFE NSW and the responsible minister, being the minister for skills.

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

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

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

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 requirements of section 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:

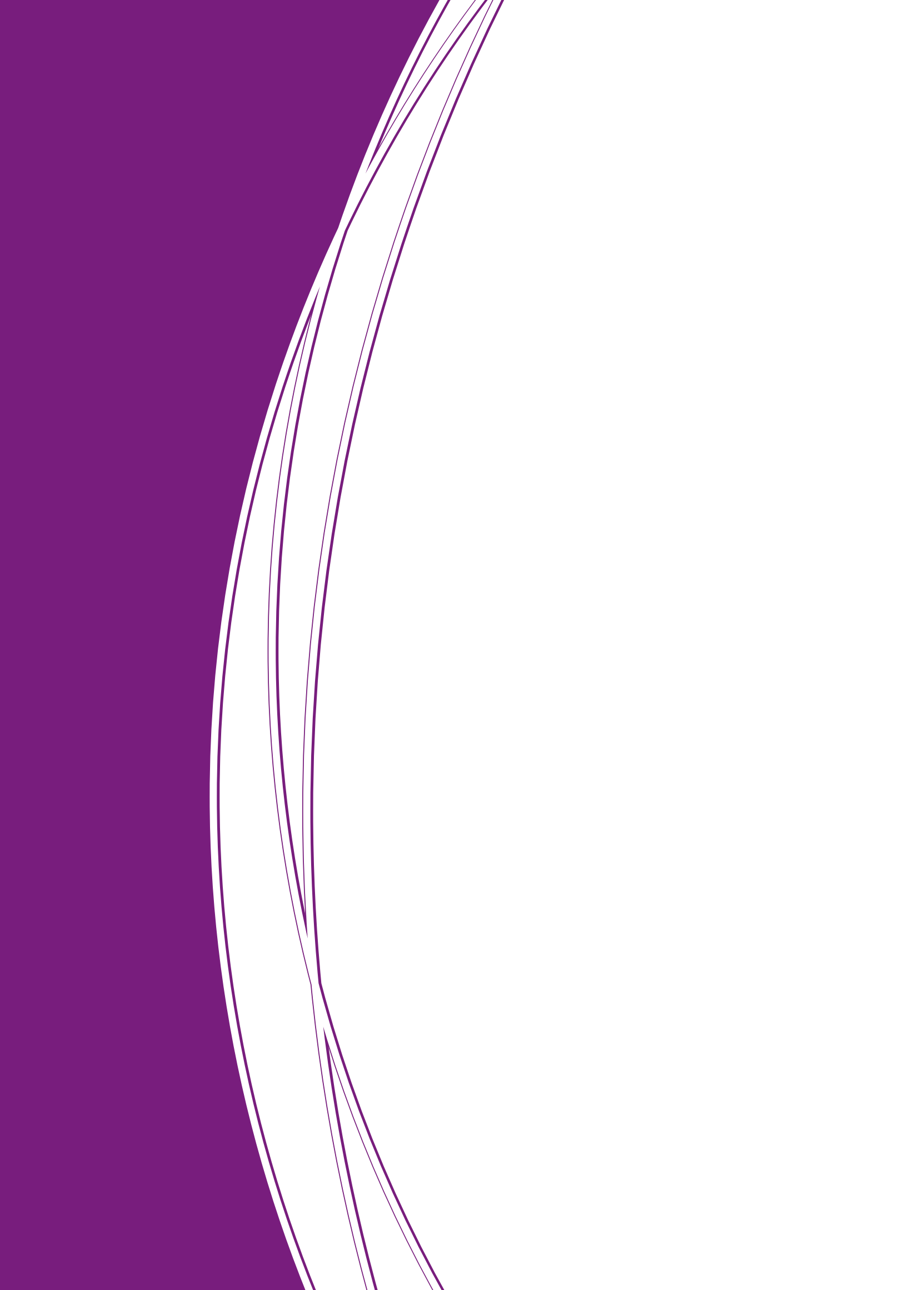
...reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the fact or fact to be proved. The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences 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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