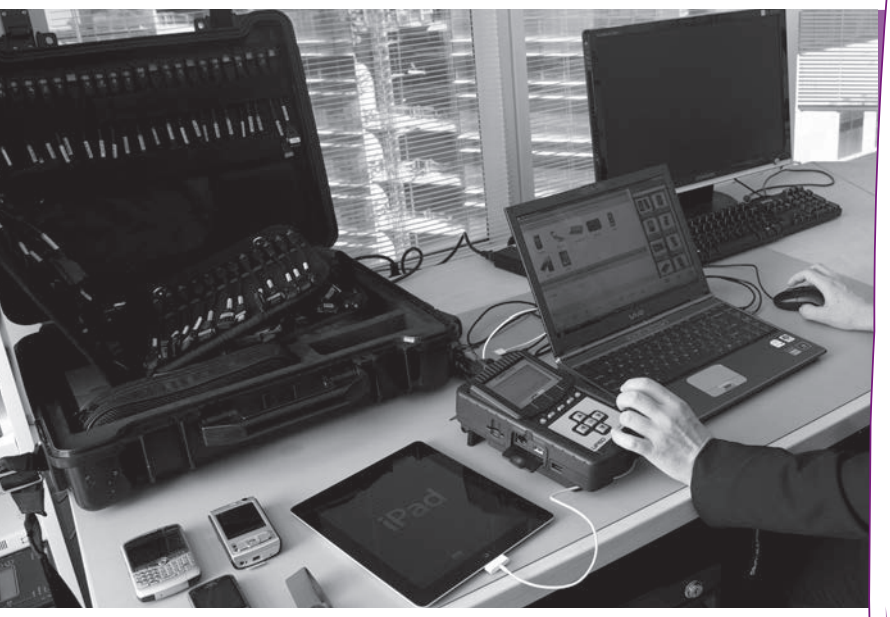

INVESTIGATION INTO THE RECRUITMENT OF CONTRACTORS AND OTHER STAFF BY A UNIVERSITY OF SYDNEY IT MANAGER

ICAC
INDEPENDENT COMMISSION AGAINST CORRUPTION

ICAC REPORT
OCTOBER 2012

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Mr President
Madam Speaker

In accordance with section 74 of the *Independent Commission Against Corruption Act 1988* I am pleased to present the Commission's report on its investigation into the recruitment of contractors and other staff by a University of Sydney IT manager.

Assistant Commissioner Theresa Hamilton presided at the public inquiry held in aid of this investigation.

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

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

Yours sincerely

The Hon David Ipp AO QC
Commissioner

Contents

Summary of investigation and results

Results

This investigation by the Independent Commission Against Corruption ("the Commission") examined allegations relating to the use of a private recruitment business, Succuro and then Succuro Recruitment Pty Ltd, to recruit information technology (IT) contractors and staff for the University of Sydney ("the university") between late 2006 and June 2010.

It was alleged that between January 2007 and August 2008, Atilla ("Todd") Demiralay, the manager of an IT unit at the university, used Succuro because his wife, Virginia Kantarzis, was an employee of that business. It was also alleged that from August 2008 to June 2010, Mr Demiralay continued to use that business because he and Ms Kantarzis had an interest in the company (Succuro Recruitment Pty Ltd) that was formed to take control of the business. Between 2006 and 2010, Succuro and Succuro Recruitment Pty Ltd received payments totalling $1,578,625 from the university.

Chapter 2 of the report examines when Ms Kantarzis first came to be employed by Succuro, the circumstances in which Ms Kantarzis and Mr Demiralay obtained an interest in Succuro Recruitment Pty Ltd and the appointment of Ms Kantarzis as a director and secretary of that company. This chapter includes findings that Ms Kantarzis was directly involved in recruiting Succuro contractors for the university from at least October 2007 while she was an employee of the business, and later when she and Mr Demiralay had an interest in the company.

Chapter 3 of the report examines Mr Demiralay's conduct in using Succuro and Succuro Recruitment Pty Ltd for university recruitment. Findings are made that:

- it was a conflict of interest for Mr Demiralay to use Succuro once his wife became an employee of the business, and even more so once he and his wife obtained an interest in Succuro Recruitment Pty Ltd
- Mr Demiralay was aware that there was a conflict of interest in his use of Succuro and Succuro Recruitment Pty Ltd, and that he was obliged to avoid that conflict or report it to the university
- Mr Demiralay decided not to tell the university about his conflict of interest because he knew that his authority to continue using Succuro would have been subject to greater control and scrutiny, or taken out of his hands altogether, if he had done so.

Chapter 4 of the report examines allegations that Mr Demiralay manipulated the university recruitment and procurement policies to engage the services of personal friends or contractors connected with Succuro.

Chapter 5 of the report contains findings that Mr Demiralay engaged in corrupt conduct by:

- using Succuro and Succuro Recruitment Pty Ltd to recruit contractors and staff for the university despite the conflict of interest caused by his wife's employment with Succuro and, from August 2008, by his and his wife's financial interest in Succuro Recruitment Pty Ltd
- engaging George Tsipidis, his brother-in-law, to work at the university despite the conflict of interest caused by their family relationship
- falsely recording that he had considered other candidates when engaging a close friend, Adrian Buxton, to work at the university
- recommending that the university employ a candidate, Gerard Hunt, provided by Succuro Recruitment Pty Ltd (which resulted in the

payment of a fee to the company), despite the conflict of interest caused by Mr Demiralay having a financial interest in that company.

Chapter 5 also contains statements pursuant to section 74A(2) of the *Independent Commission Against Corruption Act 1988* ("the ICAC Act") that the Commission is of the opinion that consideration should be given to obtaining the advice of the Director of Public Prosecutions (DPP) with respect to the prosecution of Mr Demiralay and Ms Kantarzis for offences of giving false or misleading evidence to the Commission pursuant to section 87 of the ICAC Act.

Chapter 6 of the report sets out the Commission's corruption prevention response to the conduct and issues disclosed during the investigation.

In his capacity as a university officer and manager, Mr Demiralay was able to direct significant business to Succuro and Succuro Recruitment Pty Ltd to the extent that, within a relatively short period, the majority of contractors within his unit were sourced from that business, despite the fact that the amount of money involved would have required an open tender. Mr Demiralay was able to do so without his and his wife's personal interest in the business being found out, even after the point where those interests would have been relatively easy to detect.

The university was particularly vulnerable to corrupt behaviour in the information communications and technology (ICT) area. The IT industry is characterised by highly-specialised contract workers. Contractors, recruitment firms and managers within organisations often know each other and have pre-existing relationships from previous work. Small recruitment firms, such as Succuro, often struggle in such a fragmented and competitive industry. Despite this, access to employment in ICT at the university was not well controlled.

Mr Demiralay was also able to manipulate the selection committee process. The university's selection processes for general staff did not meet the basic protections that exist across most of the public service.

Chapter 6 contains the following recommendations:

Recommendation 1

That, where possible, the University of Sydney should establish a single point of access for employment of IT contractors, using multiple C100 recruitment firms in competition.

Recommendation 2

That, where access to IT contract employment is not feasibly managed through C100 firms in competition, the University of Sydney should establish the probity and competence of alternative recruitment firms independently of the views of operational university staff. Such a process should include the conducting of background checks.

Recommendation 3

That the University of Sydney implements its proposed financial analysis framework.

Recommendation 4

That the University of Sydney's management of contract labour through recruitment suppliers be the responsibility of SydneyRecruitment or a specialist unit.

Recommendation 5

That the relevant University of Sydney policy for non-exempt general staff selection committees requires:

- the presence of an independent member on selection committees

- members of selection committees to be more senior than the position for which they are recruiting.

Recommendation 6

That the University of Sydney ensures the authority and responsibility of SydneyRecruitment is such that it is able to influence policy compliance at critical points in the recruitment process, and that it is held accountable for the exercise of that influence.

Recommendation 7

That the University of Sydney adopts an electronic approval system as part of any major enhancement of its human resources systems.

These recommendations are made pursuant to section 13(3)(b) of the ICAC Act and, as required by section 111E of the ICAC Act, will be furnished to the university and the Minister for Education.

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

In the event a plan of action is prepared, the university 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 section 78(2) of the ICAC Act, the Commission recommends that this report be made public forthwith. This recommendation allows either Presiding Officer of the Houses of Parliament to make the report public, whether or not Parliament is in session.

Chapter 1: Background

This chapter sets out some background information on how the investigation originated, how it was conducted, the public official whose conduct was investigated, and the University of Sydney and its relevant policies.

How the investigation came about

In October 2010, the Commission commenced an investigation after receiving a report from the University of Sydney ("the university") setting out allegations made against Attila ("Todd") Demiralay. Mr Demiralay was then the manager of Field Services at the university. Field Services provided computer desktop support services to staff and students of the university. The report was made under section 11 of the *Independent Commission Against Corruption Act 1988* ("the ICAC Act"), which requires the principal officer of a public authority to report matters that the principal officer suspects involve or may involve corrupt conduct.

It was alleged that Mr Demiralay was employing staff for the university that were sourced from a recruitment business, Succuro, which was owned by Mr Demiralay and his wife, Virginia Kantarzis. It was also alleged that Mr Demiralay hired his friends for team leader positions in Field Services.

Why the Commission investigated

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

i. corrupt conduct, or

ii. conduct liable to allow, encourage or cause the occurrence of corrupt conduct, or

iii. conduct connected with corrupt conduct,

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

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

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

If Mr Demiralay employed contractors and staff for the university through Succuro in the period from January 2006 to August 2008 without disclosing that his wife worked in the business, this could amount to corrupt conduct as it could involve conduct that constitutes or involves the dishonest or partial exercise of his official functions under section 8(1)(b) of the ICAC Act. If he employed contractors and staff through Succuro Recruitment Pty Ltd in the period from August 2008 to June 2010 without disclosing his and his wife's financial interest in that company, that could amount to corrupt conduct, as it could involve conduct that constitutes or involves the dishonest or partial exercise of his official functions under section 8(1)(b) of the ICAC Act. If Mr Demiralay employed personal friends to work as team leaders at the university without disclosing a conflict of interest, that could amount to corrupt conduct as it could involve conduct that constitutes or involves the dishonest or partial exercise of his official functions under section 8(1)(b) of the ICAC Act.

For the purposes of section 9(1)(b) and section 9(1)(c) of the ICAC Act, Mr Demiralay's conduct could constitute or involve breaches of the provisions in the university's Code of Conduct and its recruitment policy relating to disclosure of conflicts of interest. Such conduct could constitute or involve a disciplinary offence or reasonable grounds for dismissal, dispensing with the services of, or otherwise terminating the services of, Mr Demiralay.

The Commission also took into account the senior position held by Mr Demiralay and the fact that the alleged conduct

involved procurement, one of the main areas where corruption occurs in the NSW public sector.

In these 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:

- obtained documents from various sources by issuing 34 notices under section 22 of the ICAC Act (requiring the production of documents)
- interviewed and/or obtained statements from a number of persons, including university employees and contractors to the university
- conducted two compulsory examinations.

The public inquiry

The Commission reviewed the information that had been gathered in the investigation and the evidence given at the compulsory examinations. After taking into account each of the matters set out in section 31(2) of the ICAC Act, the Commission determined that it was in the public interest to hold a public inquiry. In making that determination, the Commission had regard to the following considerations:

- there was significant probative evidence capable of substantiating the allegations
- the partial exercise of public functions by a public official is a significant risk for public sector organisations, more so when it occurs at a management level. The allegations in this case involved a manager at the university, the expenditure of significant public funds and a sustained pattern of alleged misconduct over a number of years, notwithstanding the existence of policies, procedures and processes that might have been expected to minimise conduct of the alleged type
- public exposure of the matter may educate the public and serve as an important deterrent
- while there was a risk of prejudice to the reputations of the persons (including the company) concerned, that risk was not "undue"
- the public interest in exposing the matter outweighed the public interest in preserving the privacy of the persons concerned in the matter.

Assistant Commissioner Theresa Hamilton presided at the public inquiry and Jeremy Morris acted as Counsel Assisting the Commission. The public inquiry was initially conducted over seven days, from 20 to 26 March 2012, and from 10 to 11 April 2012. Mr Demiralay, Ms Kantarzis, and 18 other witnesses gave evidence at the inquiry. Further evidence was given by Mr Demiralay, Ms Kantarzis and two other witnesses on 3 May 2012.

Mr Demiralay and Ms Kantarzis did not impress the Commission as credible witnesses. Their evidence, particularly with respect to the extent to which Ms Kantarzis was involved in finding and placing contractors with the university, and their knowledge of their financial interest in Succuro Recruitment Pty Ltd, was contradicted by credible documentary evidence. In respect of these documents, Mr Demiralay and Ms Kantarzis claimed that they misunderstood them or that they bore a meaning at odds with their plain words or simply denied reading or recalling them.

Continuation of the public inquiry

After 11 April 2012, a number of documents came to the Commission's attention that appeared to contradict significant evidence given by Mr Demiralay, Ms Kantarzis and two other witnesses. The Commission determined to reopen and continue the public inquiry on 3 May 2012 for the purpose of taking further evidence.

Submissions were made that the public inquiry should not have been reopened once closed. It was submitted that reopening the public inquiry was a breach of the principles of procedural fairness because there was no prior disclosure of the further areas of examination and the evidence to be led at the hearing. It was also submitted that there was a reasonable expectation that the witnesses would not be recalled to respond to evidence that may have been in the possession of Commission investigators earlier, and so it would be inappropriate to reopen the inquiry if that was the case. The Commission rejected these submissions.

The principles of procedural fairness do not prevent the Commission from reopening a public inquiry. The Commission is not obliged to disclose areas of examination or evidence to be led at the public inquiry prior to calling witnesses.

The Commission conducts public inquiries for the purposes of its investigations. In doing so, it is not bound by the rules or practice of evidence and may inform itself on any matter in such manner as it considers appropriate. Given the apparent significance of the evidence in question, the Commission considered that it was appropriate to reopen the public inquiry to take further evidence.

Submissions

Following the conclusion of the public inquiry, Counsel Assisting the Commission prepared submissions setting out the evidence, and identifying the findings and recommendations the Commission could make based on that evidence. These submissions were provided to the relevant persons, and submissions were invited in response. Further submissions were also later invited from Mr Demiralay. In preparing this report, submissions received by, or made to, the Commission were taken into account.

The University of Sydney

The University of Sydney was established under the *University of Sydney Act 1989*. It is a public authority within the meaning of the ICAC Act by reason of the Auditor General having power to inspect, examine or audit its accounts pursuant to section 35 of the *Public Finance and Audit Act 1983*.

Atilla ("Todd") Demiralay

Mr Demiralay has had significant experience in the information technology (IT) field at a managerial level.

In September 2006, the university offered Mr Demiralay the position of manager, desktop services in its information and communications technology (ICT) area for a term of three years. His responsibilities included the management of 17 staff. Shortly before taking up the position in October 2006, he married Ms Kantarzis.

On 9 January 2010, he became the manager of Field Services within ICT. This was a permanent position.

On 10 June 2011, Mr Demiralay resigned from his position at the university. By that time, his responsibilities had grown to include managing 57 staff.

As an employee of the university, which is a public authority for the purposes of the ICAC Act, Mr Demiralay was a public official within the meaning of the ICAC Act.

University of Sydney policies

The policies of the university applied to Mr Demiralay in two respects. He was required to be aware of, and comply with, the policies that related to him as an employee of the university, such as the Code of Conduct and the Conflicts of Interests Policy. As a manager, he was also responsible for ensuring that the staff he supervised were aware of, and complied with, those same policies.

There were also other university policies that governed the managerial functions of his position, such as the recruitment and procurement policies. The university's recruitment policy was of particular relevance to Mr Demiralay, as a key responsibility of his position was dealing with the staffing of his unit, including recruitment.

The following sections set out the various university policies with which Mr Demiralay was required to comply.

Code of Conduct

On 19 June 2003, the university published a Code of Conduct, applicable to all staff ("the 2003 Code"). The relevant provisions of the 2003 Code are set out below.

Section 5 of the 2003 Code provided:

> *Staff members must ensure that there is no actual or perceived conflict between their personal interests and their University duties and responsibilities. Conflicts of interest are assessed in terms of the likelihood that staff members possessing a particular interest could be improperly influenced, or might appear to be improperly influenced, in the performance of their duties. Examples where conflicts of interest could arise include:*
>
> - *contracts or transactions between the University and yourself, or your family. This extends to any partnership or business undertaking in which you and your family have a material interest as major shareholders, directors or principals*
>
> ...
>
> - *Staff members must inform the person to whom they normally report (e.g. pro-vice-chancellor, dean, department head, unit manager) if a conflict or potential conflict of interest arises.*

From 15 April 2008, the 2003 Code was replaced with a new Code of Conduct ("the 2008 Code") and an accompanying Conflicts of Interest Policy ("the Conflicts Policy"). The 2008 Code and the Conflicts Policy applied to all staff.

Section 5 of the 2008 Code provides:

> *All staff and affiliates must:*
>
> - *comply with the University's Conflicts of Interest Policy and ensure that there is no actual, potential or perceived conflict between their personal interests or their duties to other parties and their duties and responsibilities as staff or affiliates of the University;*
> - *promptly make full disclosure to the University of all relevant facts and circumstances giving rise to an actual, potential or perceived conflict of interest and cooperate with the University to ensure that all appropriate steps are taken to eliminate or manage such conflicts in accordance with the University's Conflicts of Interest Policy; and*
> - *comply with the University's Guidelines Concerning Commercial Activities.*

Conflicts of Interests Policy

Section 3 of the Conflicts Policy provides, relevantly:

> *3.1 You owe an obligation of good faith, confidentiality and loyalty of service to the University. Subject to the provisions of this policy, you cannot:*
>
> *(a) let your personal, financial or external interests come into actual or potential conflict with your duties to the University; or*
>
> *(b) let your duty to an external entity come into actual or potential conflict with your duties to the University.*
>
> *3.2 A personal interest means a personal relationship with your spouse, de facto partner, close relative, business partners, or person financially dependent on you.*
>
> *3.3 An external interest means:*
>
> *(a) holding a remunerated or honorary position in, or having a financial interest in, an external entity* [emphasis added]*; or*
>
> *(b) ...*
>
> *3.4 The obligation to avoid conflicts of interest applies across all University activities.*

Section 4.1 of the Conflicts Policy provides that a personal, financial or external interest creates a conflict of interest only if it is material – that is, if it is real or substantial and has (or appears to have) the capacity to influence the conduct of a particular individual. For the avoidance of doubt, section 4.2 states:

> *A material interest will arise where you suffer a detriment or a benefit accrues to you.*

Section 5.1 of the Conflicts Policy requires staff to make a prompt, full disclosure of any conflict of interest in writing.

Sections 7.1 and 7.2 of the Conflicts Policy provide:

> *7.1 Failure to fully disclose information about a conflict of interest may constitute misconduct and result in disciplinary action being taken by the University against you.*
>
> *7.2 Failure to fully disclose and manage a conflict of interest could also be regarded as corrupt conduct under the* Independent Commission Against Corruption Act (ICAC) 1988.

Schedule 1 to the Conflicts Policy provides, relevantly:

> *1. If you have a material financial or external interest in an external entity, you must not place yourself in a position to direct University resources to that external entity, in a manner that could influence the external entity's circumstances. The University, where necessary, may direct you to desist from simultaneously maintaining your financial or external interest and your position with the University.*
>
> *2. Except with the express written permission of your supervisor, if you have budgetary responsibility and a material financial or external interest in an external entity, you must not* [emphasis added]*:*
>
> *(a) authorise an activity to be funded if the external entity is engaged to conduct the proposed activity; or*
>
> *(b) make a financial decision on behalf of the University, including but not limited to investments, loans, purchases (including by tender) or sales of goods, services, equity (shares) and financial accounting decisions, in circumstances where the external entity is affected by the financial decision.*

Recruitment and selection policies

On 25 June 2006, the university published its Recruitment and Selection Policy ("the 2006 Recruitment Policy") following a review in 2005. It was expressed to cover the recruitment of all positions within the university, including

contractors and temporary and casual positions. It also stated that all recruitment, including the use of external recruitment suppliers, was to be managed through SydneyRecruitment, which was part of the university's central human resources business unit.

The policy stated that general selection committees (which select non-academic staff) should comprise from three to five members, and normally include a representative of SydneyRecruitment. It also required that:

- the committee membership excludes a person whose decision was likely to be biased because of a conflict of interest, or personal interest, in the selection process or procedure. This included persons who had a close personal relationship (including a business relationship) with any applicant, selection committee member or other person involved in the selection process
- the committee includes members of both genders, where possible and reasonable, normally at least 30% of each gender.

On 15 January 2009, a new Recruitment and Selection Policy came into effect. It was revised on 6 March 2009, 2 November 2009 and 15 April 2010. There was no significant change to the recruitment process as result of these revisions, although the November 2009 revision provided that "internal candidates" did not include persons engaged at the university through employment agencies.

Unlike the 2006 Recruitment Policy, the January 2009 policy and later revisions were expressed to apply to continuing and fixed-termed positions, and did not refer to contractors.

The January 2009 policy and later revisions directed attention to the university's Code of Conduct and Conflicts of Interests Policy (known as the External Interests Policy in the 2009 policy), and referred to the necessity to exclude persons from selection committees whose decision was likely to be biased due to a conflict of interest, or a potential or perceived conflict of interest. A potential or perceived conflict of interest that would require exclusion was explained as "a real or substantial possibility of the potential or perceived conflict of interest actually arising" and, like the 2006 policy, gave examples of persons who had a close personal or business relationship with any applicants.

It was also stated that positions must be advertised in publicly-available media. There was no further explanation of what that required.

Purchasing and procurement policies

The university had a Purchasing Policy that came into effect on 1 June 2005. That policy was revised on 1 February 2007 and 14 February 2011 (when it was renamed the Procurement Policy). These policies applied to all goods and services acquired by the university, including the engagement of contractors and consultants.

The policies set out a number of minimum quotation and tender requirements:

- a tender process must be used for acquisitions of goods or services to the value of $200,000 or more
- three written quotations must be obtained for goods or services to the value of between $50,000 and $199,999
- two written quotations must be obtained for goods or services under the value of $49,999.

There was a minimum level under which quotations were optional. The 2005 policy set this value at $5,000. The later policies set this value at $10,000.

For the purposes of applying these requirements, transactions were to be valued as a total transaction and not split across instalments. Regular or periodic orders for the same goods or services were assessed at the annual transaction value. This meant that transactions with the same supplier over the course of a year for the same goods or services, where the total value reached the thresholds set out above, would be subject to the corresponding tender and quotation requirements set out in the policy.

Chapter 2: The Succuro recruitment business

One issue for the Commission to determine was whether Mr Demiralay or his wife, Ms Kantarzis, had any interest in the Succuro recruitment business that would give rise to a conflict of interest on the part of Mr Demiralay. The purpose of this chapter is to examine what interests Mr Demiralay and his wife had in the recruitment business.

Between May 2001 and August 2008, the Succuro recruitment business operated under the business name Succuro. From 19 August 2008, it operated as a registered company under the name Succuro Recruitment Pty Ltd, with Ms Kantarzis and Mr Demiralay as shareholders.

Mr Kostogiannis and Succuro

In May 2001, Peter Kostogiannis registered Succuro as a recruiting and consulting business. He ran the business by himself until January 2007, and then with Ms Kantarzis as his employee until about August 2008, when he left and transferred the business to William Mylonas.

The way in which Mr Kostogiannis operated the business was similar to the way in which many recruitment agencies operated. It involved looking for people with suitable skills that might be placed with an organisation, usually on a temporary basis. He dealt with people with skills in different areas, including IT. Mr Kostogiannis maintained a "book" of available people who could be hired to fill a position, or he advertised for suitable people when a position came up. Otherwise, he operated through a combination of these two methods.

Mr Kostogiannis directly employed the people who were placed with various organisations by Succuro. He contracted with an organisation to provide the services of a particular contractor, invoiced the organisation for those services and then paid the contractor and kept a percentage of the invoice amount as his fee for the placement.

Ms Kantarzis' employment at Succuro

Prior to 2006, Mr Kostogiannis had placed people at a number of organisations, including Transfield Services and First Data. Mr Kostogiannis first met Ms Kantarzis when she worked at Transfield Services as its national support centre manager. She used his services to secure IT recruits for Transfield Services. She later worked for First Data in a managerial position for a short period.

Mr Kostogiannis had promoted his business with a number of companies and public authorities, but found it difficult to place IT recruits. He had made some approaches to the university, but had not been able to place anyone there.

In late 2006, Mr Kostogiannis spoke with Mr Demiralay. This came about because Ms Kantarzis had either told Mr Kostogiannis to contact her husband at the university (on the evidence of Mr Kostogiannis and Ms Kantarzis), or told her husband about Succuro (on Mr Demiralay's evidence). Ms Kantarzis was still working for First Data at this time.

Mr Kostogiannis then met with Mr Demiralay to promote the services that Succuro could offer the university. He knew that Mr Demiralay was Ms Kantarzis' husband.

In about October or November 2006, Mr Demiralay suggested to his then supervisor, Nicholas Kovari, that Succuro could be used by the university. In early 2007, Mr Demiralay also suggested to others within the university that Succuro be contacted to provide casual and short-term contractors for relocation work being undertaken by the ICT.

In November 2006, Ms Kantarzis resigned her position at First Data. She contacted Mr Kostogiannis to seek work as a short-term contractor. Shortly after that, he asked if she would consider working for him. Ms Kantarzis agreed.

In January 2007, Ms Kantarzis started working at Succuro. She was paid $500 per week. It was around this time that the first Succuro contractors began to work at the university.

Succuro's arrangement with the university

In line with his usual business practice, Mr Kostogiannis (through Succuro) directly employed the contractors he supplied to the university. The university paid Succuro directly according to an agreed hourly rate and the number of hours worked by a contractor. A part of that hourly rate was the service fee charged by Succuro. The remainder represented what the contractor was actually paid per hour by Succuro. The service fee for Succuro was calculated as either a flat fee on top of every hour worked by a contractor, or a percentage of the contractor's hourly rate.

Mr Demiralay said that he did not know what portion of the hourly rate went to Succuro. His negotiations were about the overall hourly rate charged, which was the cost to the university. It appears that the end cost to the university of using the Succuro contractors did not compare unfavourably with what was charged by other recruitment agencies used by the university.

Ms Kantarzis' work for Mr Kostogiannis and Succuro

Mr Kostogiannis, Ms Kantarzis and Mr Demiralay each claimed that Ms Kantarzis did not do any recruitment work for the university. Mr Kostogiannis and Ms Kantarzis told the Commission that, when she started work with Succuro, they had agreed that she was to have no direct involvement with the university work.

Mr Kostogiannis told the Commission that he considered the university to be his client and part of his portfolio (although technically it was Succuro's client). He wanted a "clear cut" between the university work and the work of Ms Kantarzis. He accepted that he may also have thought it could give rise to a conflict of interest if Ms Kantarzis was involved in university work.

For her part, Ms Kantarzis said that she did not want to have any dealings with the university directly as it might be seen as a conflict of interest capable of compromising her husband's position. She had spoken with her husband when she started at Succuro. He was unhappy about her working there, but she assured him that she would not be working with the university directly.

Ms Kantarzis said that she did not do any recruiting for the university during the year-and-a-half she worked for Mr Kostogiannis. She did not try to find people to be placed at the university or interview people for university positions. She told the Commission that, "I spent all my time working for Succuro making sure I had nothing to do with Sydney Uni so it wouldn't compromise my husband's position".

A significant part of Ms Kantarzis' work during that time was vetting and interviewing people who might be potential contractors for Succuro. Some of the people she interviewed were later placed at the university. This was not surprising. Succuro was a small business and the university quickly became its main, if not only, client. It was inevitable that any general recruitment-related tasks that Ms Kantarzis undertook would lead to, or be a part of, the process of placing contractors at the university. She denied knowing that this would be the case, despite knowing that Succuro had no other business besides the university from about 2008 onwards.

Mr Demiralay said that he agreed to his wife working at Succuro as she would have "nothing to do with the University of Sydney". He said he accepted her assurances in that respect, and did not pursue it further as he was satisfied there would be no conflict of interest problem for him. Mr Demiralay told the Commission that he and his wife "might have [had] a chat" every now and then that related to Succuro contractors but they had had no formal business dealings.

The emails

Despite their evidence that they were careful to avoid any situation that might give rise to a conflict of interest, there was evidence by way of five emails from Ms Kantarzis to Mr Demiralay that shows she was directly involved in placing Succuro contractors at the university when working for Mr Kostogiannis, and that Mr Demiralay was aware of this. The details of the emails are as follows:

- An email dated 11 October 2007 attached four resumes for Mr Demiralay to consider for positions within his unit. Notes produced by Ms Kantarzis showed that she interviewed two of those persons, and had intended to interview a third.
- Another email dated 11 October 2007 requested an update from Mr Demiralay on outstanding Succuro invoices.
- An email dated 1 April 2008 attached the resume of a candidate whom Ms Kantarzis said she would be interviewing to "better ascertain her qualities, skill set, professionalism and suitability for you and your team".
- An email dated 1 May 2008 showed Ms Kantarzis making arrangements for an interview between Mr Demiralay and a potential contractor.

- An email dated 13 May 2008 attached a resume for Mr Demiralay's consideration, and invited him to let her know if he had any questions regarding the contractor's experience.

Ms Kantarzis said that she had not remembered these emails at first due to the passage of time and because the emails were so infrequent. She thought she may have sent them because Mr Kostogiannis was unavailable or at his request. Mr Kostogiannis denied asking Ms Kantarzis to do so. He said he would have been concerned if he had known that she was sending the emails. He was not challenged on that evidence.

Ms Kantarzis explained that, if she came across an applicant for a position that she knew her husband was trying to fill, she might forward relevant details to him. She accepted that this was entirely inconsistent with her having an agreement with her husband that she would not have anything to do with the university.

Mr Demiralay said he had not told the Commission about the emails because he had not been asked whether there had been emails between them. In any event, he said the emails did not show that Ms Kantarzis had anything to do with recruitment for the university. He said they only showed her carrying out the simple administrative function of forwarding resumes or documents. In relation to the emails showing Ms Kantarzis was doing more than that, Mr Demiralay said that most of the people referred to were not interviewed or considered for a position.

The Commission is satisfied that the emails demonstrate that Ms Kantarzis was directly involved in recruiting contractors for the university.

The emails are striking in another respect.

Ms Kantarzis and Mr Demiralay had told the Commission that they wanted to ensure her employment at Succuro did not compromise Mr Demiralay's position. They claimed to have resolved the issue, at least in their minds, by agreeing that she would not be directly involved in the university work.

On any reasonable view, a person being careful to avoid a conflict of interest, as both Ms Kantarzis and Mr Demiralay claimed to be doing, would not have been involved in the email traffic or the activities the emails disclosed. Yet, nowhere is there the least concern expressed that they were discussing or dealing directly with university recruitment matters that might give rise to a conflict of interest. Nor is there any indication that it was out of the ordinary for them to do so.

Ms Kantarzis told the Commission that it did not occur to her that her involvement as revealed by the emails might involve a conflict of interest for her husband. She said she would have been concerned only if she was "supplying candidates constantly to her husband". That was materially different from her earlier evidence about agreeing to take no part in university recruitment work.

Mr Demiralay said that it did not even occur to him that these emails might give rise to concerns.

The Commission is satisfied that, at the time these emails were sent, Ms Kantarzis and Mr Demiralay were not concerned about avoiding a conflict of interest for Mr Demiralay as a result of Ms Kantarzis' involvement with recruitment work for the university. These emails show that, if any agreement regarding Ms Kantarzis' involvement in such work had been reached, it was put aside relatively quickly.

The Commission is satisfied that, from at least October 2007, Ms Kantarzis was directly involved in placing Succuro contractors at the university, and that Mr Demiralay was aware of her involvement.

Mr Mylonas and Ms Kantarzis take over

In May 2008, Mr Kostogiannis approached Mr Mylonas to take over the business.

Mr Mylonas, who had no experience in IT recruiting, was open to the idea of going into business and approached Ms Kantarzis to become his business partner. On 15 July 2008, they met with Mr Mylonas' accountant, Nicholas Moustacas. Mr Demiralay was not in attendance and does not appear to have ever spoken with Mr Moustacas.

Mr Mylonas said the meeting was for the purpose of incorporating a company to conduct the Succuro business.

Mr Moustacas said that he was instructed to form a company called "Succuro Recruitment Pty Ltd". He was also to set up a family trust. Ms Kantarzis and Mr Demiralay would hold half the shares in the company as trustees for their family trust. Ms Kantarzis and Mr Demiralay were also among the potential beneficiaries of that trust. The other half was to be held on behalf of Mr Mylonas' family trust.

In accordance with his usual practice, Mr Moustacas said he would have taken Mr Mylonas and Ms Kantarzis through the potential liabilities and ramifications of being a company director. Ms Kantarzis would have been the particular subject of his attention, as only she was to be appointed as a director. Mr Mylonas did not wish to be a director of the company at that time.

Ms Kantarzis did not dispute the evidence of Mr Mylonas and Mr Moustacas on this issue.

The following day, Mr Moustacas received an email from Ms Kantarzis providing details that he required to establish

her family trust. Her email stated that the company to be incorporated was to be named "Succuro".

On 13 August 2008, Ms Kantarzis replied to an email from Mr Moustacas' office seeking her approval to proceed with registering the company. Her email in reply, bearing the subject line "Re: Succuro Recruitment Pty Limited", said "[Y]es, please go ahead with the company name – Succuro Recruitment Pty Limited".

Mr Moustacas drew the necessary papers and sent them to Mr Mylonas, Ms Kantarzis and Mr Demiralay. These were signed by Ms Kantarzis and Mr Demiralay and returned to Mr Moustacas on or around 19 August 2008. Ms Kantarzis signed consents to act as director and secretary of the company. Ms Kantarzis and Mr Demiralay signed a document specifying the number and class of shares they were taking up in the company.

On 19 August 2008, Succuro Recruitment Pty Ltd was registered. Ms Kantarzis and Mr Demiralay were recorded as owning half of the company's shares as trustees on behalf of their family trust, with the other half being held on behalf of Mr Mylonas' family trust. Ms Kantarzis was the sole director and secretary of the company. All this was in accordance with the instructions that Mr Moustacas had received.

On 29 August 2008, Mr Moustacas emailed Ms Kantarzis. He was responding to questions from Ms Kantarzis about removing her husband from Succuro Recruitment Pty Ltd. On 4 September 2008, she replied saying they would make no changes.

Mr Mylonas became a co-director of Succuro Recruitment Pty Ltd in September 2008.

Whether Ms Kantarzis misunderstood her involvement with the company

Ms Kantarzis told the Commission that she met with Mr Moustacas to establish a new company named "I-Secure". That company was to deal with training and development, and have no involvement in the recruitment of contractors. Ms Kantarzis claimed that she did not know that she and her husband were involved with Succuro Recruitment Pty Ltd until Mr Moustacas' email of 29 August 2008.

Ms Kantarzis did not dispute the evidence of Mr Moustacas or Mr Mylonas that the purpose of the meeting of 15 July 2008 was to establish Succuro Recruitment Pty Ltd. She said that she had misunderstood that the meeting was about the company and her directorship of and shareholding in that company because of her pregnancy. She explained that "a pregnant woman is usually absent minded and forgetful and not in [a] right state of mind anyway". She told the Commission that she gave birth only four days after the meeting.

The Commission is satisfied that Ms Kantarzis and Mr Mylonas intended to form a company to take over Mr Kostogiannis' recruitment business. It is also satisfied that she met with Mr Moustacas for the purpose of instructing him to establish that company. For the reasons set out below, the Commission rejects Ms Kantarzis' evidence that she did not understand what was happening.

Ms Kantarzis' understanding of what was to occur during the meeting of 15 July 2008 was not based only on what happened in the meeting. There had been discussions between her and Mr Mylonas in the weeks before the meeting about what they intended to do. As a result, she knew what she and Mr Mylonas were intending to instruct Mr Moustacas to do well before the meeting.

Further, there was simply no need to establish a new and separate company to offer training activities at that time. Ms Kantarzis would not be able to undertake such activities for some months at least: she was about to give birth to her child, a training program had yet to be prepared, and the selling of such a program was some way off. There was, however, a need to establish a new entity to take on the recruitment business. Mr Kostogiannis had insisted on that.

Ms Kantarzis' evidence that she did not know of her involvement with the company until around 29 August 2008 is also contradicted by the following evidence:

- An email from her to Mr Moustacas dated 16 July 2008 specified "Succuro" as the company to be registered in relation to her family trust.
- An email from her to Mr Moustacas' office dated 13 August 2008 instructed the office to proceed with the company name "Succuro Recruitment Pty Ltd". Ms Kantarzis accepted that this email was completely at odds with her evidence that she did not intend to establish a company of that name at that time.
- The consents to act as director and secretary signed by Ms Kantarzis dated 19 August 2008 referred to Succuro Recruitment Pty Ltd.
- The agreement to take up shares in the company and the related share certificate, both of which are signed by Ms Kantarzis and dated 19 August 2008, also referred to Succuro Recruitment Pty Ltd.
- In the emails between Mr Moustacas and Ms Kantarzis on 29 August 2008 and 4 September 2008 referred to above, there was no suggestion that she and her husband had been wrongly registered as being involved with Succuro

Recruitment Pty Ltd. The "only concern" was to remove Mr Demiralay from the public register.

- None of the documents prepared by Mr Moustacas referred to "I-Secure". In fact, the I-Secure name was not registered until March 2009.

The four documents Ms Kantarzis signed on 19 August 2008 were one-page documents. She said that, as she had a newborn child, she did not want to "read a whole bunch of documents that really didn't mean too much to me because I never set up a company and I probably wouldn't have understood a lot of it anyway".

These documents were neither complex nor lengthy. The name of the company to which the documents related, Succuro Recruitment Pty Ltd, was readily apparent on even a cursory inspection.

Ms Kantarzis was an obviously intelligent professional woman, with years of experience at a senior managerial level in the private sector. The opportunity to go into business for herself was undoubtedly one of the more significant decisions of her career. It involved, as Mr Moustacas had explained, significant responsibilities and potential liabilities. In the circumstances, her evidence that she did not read, let alone look over, the company documents she signed and therefore did not realise that they related to Succuro Recruitment Pty Ltd is not plausible and is rejected by the Commission.

The Commission is satisfied that Ms Kantarzis knew that the documents signed by her and prepared by Mr Moustacas related to Succuro Recruitment Pty Ltd and that she signed these documents knowing she was consenting to be the director and secretary of that company, and to take up shares in that company.

Mr Demiralay's knowledge of his interest in the company

Mr Demiralay told the Commission that he thought his wife's business venture was a company named I-Secure that was to be completely separate from the recruitment agency he dealt with at the university.

He said that he did not know that he and his wife owned shares in Succuro Recruitment Pty Ltd until around late 2010, when his activities at the university became the subject of investigation. Mr Demiralay said that he would not have knowingly become involved in Succuro Recruitment Pty Ltd, as any such involvement would be a matter of public record and easily detectable.

On 19 August 2008, Mr Demiralay signed the same agreement to take shares and share certificate that his wife signed. Like his wife, he said he did not read the two documents he signed, or see that the top of the documents said "Succuro Recruitment Pty Ltd". He said he accepted his wife's assurances that the documents had nothing to do with the Succuro business.

The Commission rejects his evidence on this issue.

As with the documents signed by his wife, the share agreement he signed was neither complex nor lengthy. The name of the company to which it related, Succuro Recruitment Pty Ltd, was readily apparent on even a cursory inspection.

The documents contained a name, Succuro, with which he would have been very familiar, as he had dealt with that business over the past year. It had also been the subject of discussion with his wife when she started working with Mr Kostogiannis. Yet, despite saying that he asked his wife whether what he was signing had anything to do with the Succuro business, Mr Demiralay said he did not take the simple step of even looking over the documents he signed. That evidence was implausible and is rejected by the Commission.

The Commission is satisfied that Mr Demiralay knew that the agreement to take up shares and the share certificate signed by him related to Succuro Recruitment Pty Ltd, and that he signed those documents knowing that he was taking up shares in that company. As of 19 August 2008, Mr Demiralay had a direct conflict of interest in that he would potentially benefit through the family trust if Succuro Recruitment Pty Ltd was successful in obtaining work from the university. He therefore had an interest in ensuring it got such work.

The change of company name

On 6 March 2009, the name of Succuro Recruitment Pty Ltd was changed to I-Secure Recruitment Pty Ltd. The business continued to operate in the same way, but under a different name.

The reasons for the change of name are telling in relation to Ms Kantarzis' motivations, and dated back to the previous year. In the email exchange on 29 August between her and Mr Moustacas, Ms Kantarzis had asked about removing Mr Demiralay from the company. In the email, she said that her "only concern" was that she "didn't want [her] husband's name publicly listed with the company".

After discussing it with Mr Mylonas, Ms Kantarzis thought that a change of name would "fix" the problem, by "distancing" her husband from proprietorship of the company, and herself from the directorship of the company.

A change of name would mean that the public record showed that she and her husband were connected with I-Secure Recruitment Pty Ltd. As it was intended that

the company's dealings with the university would continue to be carried out under the Succuro Recruitment name, Ms Kantarzis thought that there would be no obvious connection between the company and the supply of contractors to the university.

After the change of name, the company continued to trade as Succuro Recruitment using the same Australian Company Number and Australian Business Number. It operated the same bank account that continued to be in the name of Succuro Recruitment Pty Limited. Correspondence, including emails sent by Mr Mylonas and Ms Kantarzis, retained the Succuro branding. Succuro Recruitment continued to be used on pay slips to contractors and invoices to the university.

It is significant that Ms Kantarzis thought to resolve the problem by a bare change of name and not a share transfer, as had been advised by Mr Moustacas. The approach she chose involved no substantive change in the nature of the business, its dealings with the university, her role in the company, or the interest that she and her husband had in the company.

The Commission is satisfied that this was because her primary concern was to deal with what the public record showed, and not the real problem of her husband's interest in a company with which he dealt as a university employee. The Commission is satisfied that the change of name was intended by Ms Kantarzis to conceal her and her husband's connection with the company.

Ms Kantarzis' role in the company

The Commission also examined Ms Kantarzis' involvement in placing contractors at the university after becoming a director and shareholder of Succuro Recruitment Pty Ltd.

Following the takeover of the business by Ms Kantarzis and Mr Mylonas and the birth of Ms Kantarzis' child in mid-2008, much more of her work was done at home, on the telephone or by email so she could care for the child. Her primary task became vetting all the resumes the business received. She conducted far fewer interviews with prospective contractors.

Like Mr Kostogiannis, Mr Mylonas said that Ms Kantarzis had made it clear to him that she would have no direct dealings with the university in relation to the placement of Succuro contractors.

Mr Mylonas had his own reasons for agreeing to this. He told the Commission that he considered the university to be his account. He also thought that there might be a conflict of interest if Ms Kantarzis dealt with the university as her husband was responsible for IT recruitment within his department. He saw no problem with her vetting or interviewing potential contractors for the university. But it was to be Mr Mylonas who dealt directly and, as far as he knew, exclusively with the university.

There was evidence that this was not the case. There were three emails sent by Ms Kantarzis to Mr Demiralay while she was working with Mr Mylonas as follows:

- An email dated 12 February 2009, enclosing the resume of a potential contractor "as requested". Ms Kantarzis had spoken to the contractor. Mr Demiralay was considering the contractor for a position within his unit.
- An email dated 16 February 2009, also enclosing the resume of a potential contractor, also "as requested".
- An email dated 9 March 2009, also enclosing the resume of a contractor. This was for a position that was not in Mr Demiralay's unit.

Ms Kantarzis and Mr Demiralay both gave evidence similar to their evidence about the emails sent to Mr Demiralay by Ms Kantarzis while she was working for Mr Kostogiannis. Ms Kantarzis thought that Mr Mylonas might have asked her to send them. Mr Mylonas denied doing so. He said that he did not know about the emails between Ms Kantarzis and Mr Demiralay and was not challenged on that evidence.

The Commission is satisfied that the emails referred to above demonstrate that Ms Kantarzis was directly involved in the recruitment of contractors from Succuro Recruitment Pty Ltd for the university and Mr Demiralay was aware of her involvement.

Ms Kantarzis bows out

On 25 June 2010, Ms Kantarzis resigned as a director and secretary of what was by then I-Secure Recruitment Pty Ltd. The same day, Ms Kantarzis and Mr Demiralay transferred their shares to Mr Mylonas. She remained employed by the company.

Her resignation and the transfer of shares occurred within days of the Commission commencing a public inquiry into the conduct of another manager at the university, Deborah Yandell. That inquiry examined whether Ms Yandell had corruptly awarded cleaning contracts to a company owned by her and her husband. It was reported in the media on 21 June 2010. Mr Demiralay also received an email from a colleague providing a link to the opening submissions by counsel assisting the Commission in that inquiry. Another colleague mentioned the inquiry to him.

Mr Demiralay accepted that he might have thought there could be a serious problem for him in light of that investigation. He said, however, that its significance in terms of his own conduct did not dawn upon him as he

did not then know that he and his wife had any interest in Succuro Recruitment Pty Ltd. He said that he had not read the opening address in the public inquiry and did not discuss that investigation with his wife.

Mr Demiralay said that his wife told him the share transfer was to rectify a problem with the way the company was set up. Like the two earlier company documents he signed in August 2008, the transfer was a simple and brief one-page document and its effect was clear. As with the earlier documents, he claimed not to have read the document he signed.

Ms Kantarzis also denied the share transfer was due to fears of a possible investigation by the Commission into her husband's conduct. She claimed the timing of the transfer was a "coincidence". She said that the reason for the transfer was because her training activities were not going anywhere, and she thought that Mr Mylonas did not want her in the company any more. Despite that, it appears she continued working for the company for some time after that.

Mr Mylonas told the Commission that the transfer came about following a telephone call with Ms Kantarzis. She told him that Mr Demiralay was showing up "as an owner or a director or some kind of visibility on our company" and that they needed to remove him.

Mr Mylonas knew that the family trust of Ms Kantarzis and Mr Demiralay had a financial interest in the company, but had not thought that Mr Demiralay himself had any ownership in, or rights to, the company. Mr Mylonas knew that it would be wrong for the company to be dealing with Mr Demiralay otherwise. He spoke to Mr Moustacas and confirmed that Mr Demiralay's name appeared on the company's share register. He wanted the situation resolved by removing Mr Demiralay from the company.

The Commission accepts the evidence of Mr Mylonas about the reason for the share transfer. It is also satisfied that the share transfer occurring so soon after the airing of similar allegations concerning another manager at the university was no coincidence.

The Commission is satisfied that Mr Demiralay and Ms Kantarzis agreed to transfer their shares to Mr Mylonas due to concerns about a possible investigation into Mr Demiralay's relationship with the recruitment business. It was an attempt to save Mr Demiralay's position at the university by removing any association with the company.

Mr Demiralay told the university nothing of the share transfer or his earlier involvement in the company, and continued to allocate work to the company. Ms Kantarzis continued to work for the company. It was business as usual until the Commission commenced its investigation.

Chapter 3: The use of Succuro

This chapter examines whether Mr Demiralay's conduct in using Succuro and Succuro Recruitment Pty Ltd for university recruitment work breached his obligations under the university's Code of Conduct to declare and avoid conflicts of interest.

Use of Succuro contractors at the university

The business that Succuro did with the university increased markedly after Ms Kantarzis started working for the business in January 2007. It increased again after Ms Kantarzis and Mr Mylonas took over the business and established Succuro Recruitment Pty Ltd in August 2008.

The invoices issued by Succuro and Succuro Recruitment Pty Ltd to the university show the steady and significant growth in the use of the business within ICT:

- year ending December 2006 – $3,080
- year ending December 2007 – $258,890.50
- year ending December 2008 – $428,173
- year ending December 2009 – $555,049
- year ending December 2010 – $333,468

In total, the payments received by Succuro and Succuro Pty Ltd from the university amounted to $1,578,625. There was no dispute that these payments were largely a result of Mr Demiralay using Succuro and Succuro Recruitment Pty Ltd to fill the majority of contractor positions within his unit.

Conflicts of interest

Succuro was always a relatively small business. The more business that it secured from the university, the better its financial position would be. In turn, Succuro's financial stability helped to ensure Ms Kantarzis' continuing employment. That was a benefit for Ms Kantarzis. It was also a benefit for Mr Demiralay, as his wife's employment meant that there was more money coming into their household. This gave rise to a conflict of interest between Mr Demiralay's personal financial interests and the interests of the university in ensuring that contractors were selected on a fair and impartial basis.

The emails between Mr Demiralay and Ms Kantarzis examined in the previous chapter clearly show that Mr Demiralay had business dealings with his wife to find contractors for the university at the time she was employed by Succuro.

Once Mr Demiralay and Ms Kantarzis became shareholders in Succuro Recruitment Pty Ltd in mid-2008, they had a direct financial stake in the success of the business. That created a clear conflict of interest for Mr Demiralay in appointing contractors from the company, whether or not Ms Kantarzis had any direct involvement or contact with the university in relation to those appointments. It was all the more serious as the Succuro business was by then largely dependent on the university as most, if not all, of its business came from the university.

It was also a conflict of interest for Mr Demiralay to have played a part in the selection of agencies for an informal preferred suppliers list that included Succuro Recruitment Pty Ltd and was compiled by his manager, Mark Pigot, in November 2009. Mr Demiralay was one of the managers Mr Pigot included in the process of deciding the recruitment agencies to be placed on the list. Being placed on that list assured the use of Succuro Recruitment Pty Ltd by other managers in ICT besides Mr Demiralay.

Mr Demiralay took no steps to deal appropriately with the conflicts of interest outlined above nor to declare them to his manager. On the contrary, steps were taken that had (or that he thought would have) the effect of concealing his conflicts of interest.

Mr Demiralay's knowledge

The university had taken steps to ensure Mr Demiralay was aware of the Code of Conduct and the corruption prevention strategy on a number of occasions. These steps are set out below. It was expected that Mr Demiralay, as a manager, would be more familiar with these policies because of his position and staff responsibilities.

When Mr Demiralay commenced work at the university in October 2006, he was provided with the code along with his letter of appointment. He told the Commission that he did not read the code. He told the Commission that it did not occur to him to take an interest in the university's protocols, policies and procedures that applied to his employment. The Commission rejects his evidence on this issue.

Mr Demiralay was then newly hired and his responsibilities included ensuring policies were followed by his staff. The Commission is satisfied that Mr Demiralay had a real interest in familiarising himself with relevant university policies, both to ascertain his rights and obligations as an employee and to ensure that those staff reporting to him complied with relevant policies.

On 31 August 2009, all university managers, including Mr Demiralay, were told that an updated code was to be introduced in September. They were told that they should ensure that they and their staff read and acknowledged the new code and should be prepared to answer questions about the code. Mr Demiralay told the Commission that he did not read the new code.

On 9 September 2009, the updated code was introduced. The staff of the university were notified by an email from Michael Spence, the vice-chancellor and principal of the university. Of particular note, Mr Spence said:

> *Regardless of your position, or how long you've been at the University, you should be familiar with the Code and what it means for you. For the first time, I am asking everyone who works for the University to confirm they have read it.*

All staff were requested to confirm electronically via the university intranet that they had read the code. Mr Demiralay did so. Nonetheless, he told the Commission that he did not read the updated code.

On 14 January 2010, Mr Demiralay accepted the permanent position of manager of Field Services within ICT. At that time, he signed an acknowledgment stating he had read and understood the university's policies, including the code and the corruption prevention strategy. Mr Demiralay told the Commission, however, that he did not read either of those documents.

Whether or not Mr Demiralay is to be believed when he claims he did not read relevant university policies or procedures, for the reasons outlined below, the Commission is satisfied that he was sufficiently aware of what the code required to know that he was in breach of his obligations.

In his evidence to the Commission, Mr Demiralay acknowledged that he knew generally from his experience in other organisations that he was obliged to avoid and report conflicts of interest. He admitted that he knew that having a financial interest in a company he dealt with as an employee of the university would be wrong. It is also evident that he knew that his wife's employment at Succuro could be a problem, in light of their conversation in about January 2007 (discussed in chapter 2) when she first told him she would be working for Succuro.

The Commission is satisfied that Mr Demiralay had a conflict of interest in using, or recommending the use of, Succuro and Succuro Recruitment Pty Ltd after January 2007, when his wife began working for the business. The conflict was that he had a financial interest in his wife's continuing employment at Succuro and, as a manager at

the university, he was in a position to direct the university's business to Succuro to help to ensure her continued employment. As a potential beneficiary of the shares in Succuro Recruitment Pty Ltd after August 2008, there was an even plainer conflict for Mr Demiralay. The more business the company did, the more valuable it would become, and so the more valuable his and his wife's interests in the company would be.

The Commission is also satisfied that Mr Demiralay was aware that there was a conflict of interest in his use of Succuro and Succuro Recruitment Pty Ltd to recruit staff for the university, and that he was obliged to avoid that conflict or report it to the university.

The Commission is satisfied that Mr Demiralay decided not to tell the university about his conflict of interest. He knew that his authority to continue using Succuro would have been subject to greater control and scrutiny, or taken out of his hands altogether, if he had disclosed his and his wife's interests in Succuro. He did not want that to occur.

Chapter 4: Recruiting at the university

This chapter examines allegations that Mr Demiralay manipulated the university recruitment and procurement policies to engage the services of personal friends or contractors connected with Succuro.

Mr Demiralay's role in recruiting

When Mr Demiralay commenced at the university in October 2006, he was directly involved in the selection of all permanent and temporary staff for his ICT Field Services unit. He recommended to his supervisor who should be appointed or approved appointments himself where it was within his financial delegation. After about March 2009, George Tsipidis, one of his team leaders, assisted him in the selection of lower-level positions.

ICT was then undergoing significant structural change as IT services across the university were being centralised. That led to an increased need for IT staff, especially within Mr Demiralay's area of responsibility. He met that demand largely through the use of contractors provided by Succuro and then Succuro Recruitment Pty Ltd. He estimated that more than 60% of the contractor positions within his unit were filled by such contractors.

Mr Demiralay also began to engage contractors for longer periods and to fill the senior positions within his team. Such longer placements, especially of the senior positions, were more valuable to Succuro Recruitment Pty Ltd, as they generated ongoing income.

There was evidence before the Commission of a number of occasions where Mr Demiralay did not follow university policies or the directives he had been given in relation to recruitment processes.

George Tsipidis

Mr Tsipidis is Mr Demiralay's brother-in-law, being married to Ms Kantarzis' sister. In about May 2008, Mr Demiralay engaged Mr Tsipidis through Succuro to fill a newly-created team leader position within his unit. There were few records setting out how this came about or who, apart from Mr Tsipidis, was considered for the position. Mr Demiralay could not recall who else he might have considered for the position. It is clear, however, that Mr Demiralay did not disclose his relationship with Mr Tsipidis at the time of the appointment.

Mr Tsipidis continued in a contract position until September 2009 when Mr Demiralay took steps to fill the position permanently. Mr Tsipidis applied for the position. Mr Demiralay was in charge of the selection process. Again, Mr Demiralay did not disclose his family relationship. He accepted at the public inquiry that he should have done so.

Mr Demiralay ensured that the field of possible applicants was limited. He directed that the position be open to current university staff and advertised within the university for the minimum period only.

On 24 September 2009, Mr Tsipidis was recommended for the position. He was the only person deemed to be eligible for appointment and was appointed without interview.

Mr Demiralay's involvement in the recruitment of Mr Tsipidis, firstly by engaging him as a contractor and later in acting as the convenor of the selection panel that recommended Mr Tsipidis' permanent employment, was a serious and obvious breach of his obligation to avoid conflicts of interest under university policies. He knew that was the case but nonetheless chose to proceed, and took steps that had the effect of assisting Mr Tsipidis by limiting the number of possible competitors.

Adrian Buxton

Adrian Buxton was a close friend of Mr Demiralay and had previously worked with him for some years.

In April 2009, Mr Buxton mentioned to Mr Demiralay that he was looking for contract work. Mr Demiralay had

a position as a team leader available. Mr Buxton said that Mr Demiralay told him that he thought that Mr Buxton could fill the role as they had worked together in the past and had a very good working relationship. Mr Demiralay told the Commission that he wanted to hire Mr Buxton as he was well aware of Mr Buxton's abilities. He knew that because of their personal relationship and from their having worked together before for some years.

In June 2009, Mr Buxton began working as a team leader under Mr Demiralay as a contractor through Mr Buxton's private company. There was no disclosure to the university of their personal relationship. Mr Buxton believed that Mr Demiralay had simply nominated him to fill the position and that there was no selection process involved.

Mr Demiralay told the Commission he had "looked at" a couple of resumes for Mr Buxton's position. The supporting documentation signed by Mr Demiralay stated that resumes for two other candidates were considered for the position, one from Succuro Recruitment Pty Ltd and one from another agency, Peoplebank.

That could not have been the case.

The Succuro Recruitment Pty Ltd candidate did not exist. The details provided about that candidate were taken more or less from another person with a similar name who had submitted a resume on an earlier occasion. In relation to the other candidate, Peoplebank was contacted by Mr Demiralay on 28 May and provided a candidate on 29 May. Mr Buxton, however, had already been offered and accepted the position on 28 May.

The reason Mr Demiralay recorded the Succuro Recruitment Pty Ltd and Peoplebank candidates was to make it appear that he had met the minimum quotation requirements of the Purchasing Policy when he had not. The Commission is satisfied that he did so because he had already made up his mind to engage Mr Buxton because of their personal friendship, without considering anyone else, and knew that the university's Purchasing Policy required him to show that he had considered a minimum of two other quotes before he could do so.

Gerard Hunt

Gerard Hunt was employed as a team leader on 15 December 2009. This was a permanent and continuing position to which the recruitment policy applied.

Mr Hunt was sourced through Succuro Recruitment Pty Ltd after Mr Demiralay had attempted to fill the position using the university's standard recruiting process. Mr Demiralay had obtained approval from his supervisor, Mr Pigot, to "contact recruitment agencies for the next round of potential candidates". Mr Pigot subsequently approved the payment of a fee to Succuro Recruitment Pty Ltd for providing Mr Hunt. That fee was $15,938.18 (excluding GST).

Mr Demiralay nonetheless had difficulty in getting the fee paid. The university's finance section declined to pay in the absence of supporting documentation and because of the apparent failure to comply with the Purchasing Policy's requirements in light of the amount involved. The finance section required Mr Demiralay to provide a quotation waiver. He did so, stating that four recruitment agencies (including Succuro Recruitment Pty Ltd) had been contacted. On the evidence before the Commission, however, Succuro Recruitment Pty Ltd was the only agency contacted. Apart from Mr Demiralay's statement, there was no evidence that Mr Demiralay was provided with, or considered, candidates from any agency other than Succuro Recruitment Pty Ltd.

There was no contract between Succuro Recruitment Pty Ltd and the university that required the payment of a fee for finding Mr Hunt, or that set out how any such fee would be calculated. The payment of such a fee and the amount of the fee ($15,938.18) were not, however, inconsistent with industry practice.

In the end, Mr Demiralay recommended a candidate from a company in which he had an undeclared interest. That resulted in the payment (to his indirect financial benefit) of a substantial fee to that company.

Aleksandar Jankovic

Aleksandar Jankovic started as a team leader under Mr Demiralay, as a contractor through Succuro Recruitment Pty Ltd. In about November 2009, the process to permanently fill his position commenced. Mr Demiralay wanted to appoint Mr Jankovic and wanted it done with a minimum of fuss, having had Mr Jankovic in the position for 18 months.

Mr Tsipidis was involved in the process. The university recruitment policy required the position to be advertised. Mr Demiralay's attitude is instructive. In an email to Mr Tsipidis on 26 November 2009, Mr Demiralay said:

> *The whole recruitment process is getting out of hand. We are spending all our time on recruitment. I have had enough…*

He went on to direct that the advertising be restricted to the university intranet, even though the position was open to all, including external, applicants. The intranet was not accessible to the public generally. He also said in his email that:

> *Once the advertising is closed I will take responsibility and cull the applicants to Aleks and one other applicant. You and I will perform the interviews (very quickly) and we will appoint Aleks as the most suitable candidate.*

Mr Jankovic was appointed to the position. Mr Demiralay accepted he had manipulated the staff recruiting policy on this occasion.

Mr Tsipidis said that Mr Jankovic was nonetheless recommended for the position after an impartial interview conducted by him and two other team leaders. Mr Jankovic confirmed he was interviewed by Andy Apin and Mr Hunt, two team leaders, and Mr Tsipidis. There was no evidence that Mr Apin or Mr Hunt acted improperly when recommending Mr Jankovic. This is dealt with below.

The role of Mr Tsipidis

Mr Tsipidis' role in ICT included assisting Mr Demiralay with recruiting lower-level positions and preparing the documents involved in the recruitment process generally. He told the Commission that he had not read the recruitment policy and took his directions from Mr Demiralay. His evidence indicated that he did so even where that might involve evading university procedures. It caused him no concern to do so.

That was apparent in his response to Mr Demiralay in the recruitment of Mr Jankovic, as discussed above.

This attitude on the part of Mr Tsipidis was also evident in an email dated 17 March 2009, which he sent to Mr Demiralay. In that email, Mr Tsipidis suggested including a Sam Sekuloski as an unsuccessful applicant in their paperwork. No issue arises there, as Mr Sekuloski was actually an applicant for the position. Mr Tsipidis also noted in his email, however, that "he is not from another agency!! We could go for a typo or oversight??". Mr Demiralay responded that it was a "great idea". Mr Tsipidis could not recall why he made that suggestion. Plainly, Mr Tsipidis anticipated a problem, and his suggestion was to avoid it by falsely claiming some mistake or oversight in the process.

Mr Tsipidis accepted that the email evidence in relation to Mr Jankovic and Mr Sekuloski appeared to show an intention to act improperly. Mr Tsipidis said, however, that in the end, he and the panel acted properly in relation to the selection of Mr Jankovic. Mr Tsipidis also said that his suggestion in relation to Mr Sekuloski was not carried out. On both counts, there was no evidence to contradict Mr Tsipidis.

Policies and practices for recruiting ICT staff

The university's Recruitment and Selection Policy and the Purchasing Policy were central to the recruitment of staff for Mr Demiralay's unit. The Recruitment and Selection Policy applied to permanent and temporary university employees, and the Purchasing Policy applied to contractors.

The recruitment policy set out specific requirements in relation to the recruitment process, including the necessity to convene a selection panel and its composition. It highlighted that people who had a personal or financial interest in the recruitment process should not participate in the selection process. That mirrored obligations in the Code of Conduct requiring university employees to avoid conflicts of interest.

The recruitment policy was readily available to Mr Demiralay. On the occasion that he hired his brother-in-law, Mr Tsipidis, on a permanent basis, Mr Demiralay was also emailed a copy of the policy.

The Purchasing Policy, which also applied to the recruitment of contractors, sets out a number of minimum quotation and tender requirements. It also sets out principles to be observed in the purchasing process, such as the need for probity, equity and transparency and effective competition. It states that it is crucial that the purchasing process is free from corruption, fraud and conflict of interest. It stresses that comprehensive and well-documented records need to be maintained.

The Purchasing Policy was also brought to Mr Demiralay's attention on a number of occasions.

On 18 October 2006, Mr Kovari, then Mr Demiralay's supervisor, forwarded an email to Mr Demiralay stating the procedures to be followed in recruiting contractors. In particular, the email stated that the minimum quotation and tender requirements under the Purchasing Policy applied. A link to the Purchasing Policy was provided.

In April 2008, Mr Demiralay made some enquiries about the process to engage contractors. Mr Demiralay was again informed that the university's Purchasing Policy applied. He was told that, "if the contract is less than $50,000, you need to interview (or at least consider the resumes of) at least 2 people from 2 agencies. If it's greater than $50,000 interview at least 3 people". That statement was in line with the minimum quotation and tender requirements set out in the Purchasing Policy.

In November 2009, Mr Pigot, then Mr Demiralay's supervisor, introduced an informal preferred suppliers list. Succuro Recruitment Pty Ltd was one of five listed agencies, and so would be one of the first agencies

approached. The list was intended to impose a degree of consistency upon the use of recruitment agencies by ICT. Mr Pigot told his managers that, "the basic idea is that we will not go to another agency until at least a reasonable proportion (say 3) of the agencies have first been given the opportunity". He emphasised that the Purchasing Policy requirements relating to minimum quotation and tender requirements continued to apply.

Mr Demiralay said that he was familiar with what the Recruitment and Selection Policy required "to some degree" from talking to others but did not read the policy itself in any detail. It was the same in relation to the Purchasing Policy. Mr Demiralay said he believed that he carried out his work for the university with integrity and objectivity.

The Commission is satisfied that Mr Demiralay was aware of the requirements of both the Recruitment and Selection Policy and the Purchasing Policy and that, on the occasions set out above, he acted to advance his personal interests or those of people he knew over those of the university.

Chapter 5: Corrupt conduct and recommendations

Corrupt conduct

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

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

Mr Demiralay's relationship with Succuro

There was no dispute that the dealings between Succuro and Succuro Recruitment Pty Ltd and the university increased significantly over the period that Ms Kantarzis and Mr Demiralay had financial interests in those businesses. There was also no dispute that this was largely a result of Mr Demiralay's conduct in his capacity as a university employee.

Findings of fact have been made in chapter 2 of this report that Ms Kantarzis was directly involved in placing Succuro contractors at the university at a time when she was employed by Succuro and that Mr Demiralay was aware of her involvement. Findings were also made that Mr Demiralay knew in August 2008 that he and his wife had a financial interest in Succuro Recruitment Pty Ltd.

The Commission made findings in chapter 3 of this report that Mr Demiralay had a conflict of interest in using, or recommending the use by the university of, Succuro and Succuro Recruitment Pty Ltd and that Mr Demiralay was aware of that conflict and did not disclose it to the university because of his personal financial interests in those businesses.

Mr Demiralay's conduct in using Succuro and Succuro Recruitment Pty Ltd to recruit contractors and staff for the university despite the conflict of interest caused by his wife's employment with Succuro and, from August 2008, by his and his wife's financial interest in Succuro Recruitment Pty Ltd, is corrupt conduct for the purpose of section 8(1)(b) of the ICAC Act. It was conduct by a public official, Mr Demiralay, that constituted or involved the dishonest or partial exercise of his official functions.

It was also conduct that comes within subsection 9(1)(b) or subsection 9(1)(c) of the ICAC Act. The Commission is satisfied that, if the facts it has found were to be proved on admissible evidence to the appropriate civil standard and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Demiralay committed a disciplinary offence by breaching the provisions of the university's Code of Conduct, Recruitment and Selection Policy and Purchasing Policy that required him to avoid or report conflicts between his interests and those of the university, as well as the selection panel requirements of the Recruitment and Selection Policy and the quotation and tendering requirements of the Purchasing Policy. These breaches would also provide reasonable grounds for dismissing, dispensing with the services of, or otherwise terminating the services of, Mr Demiralay.

Mr Demiralay – engaging Mr Tsipidis

The Commission has made findings of fact in chapter 4 of this report that Mr Demiralay engaged Mr Tsipidis as a contractor, and later recommended his permanent employment, without declaring his family relationship with Mr Tsipidis.

Mr Demiralay's conduct in engaging Mr Tsipidis despite the conflict of interest caused by their family relationship is corrupt conduct for the purpose of section 8(1)(b) of the ICAC Act. It was conduct by a public official, Mr Demiralay, that constituted or involved the dishonest or partial exercise of his official functions.

It was also conduct that comes within subsection 9(1)(b) or subsection 9(1)(c) of the ICAC Act. The Commission is satisfied that, if the facts it has found were to be proved on admissible evidence to the appropriate civil standard and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Demiralay committed a disciplinary offence by breaching the provisions of the university's Code of Conduct, Recruitment and Selection Policy and Purchasing Policy that required him to avoid or report conflicts between his interests and those of the university or, in the alternative, that these facts amounted to reasonable grounds for dismissing, dispensing with the services of, or otherwise terminating the services of, Mr Demiralay.

Mr Demiralay – engaging Mr Buxton

The Commission has made findings of fact in chapter 3 of this report that Mr Demiralay, in engaging Mr Buxton, recorded that he had considered other applicants for the positions to make it appear, falsely, that he had met the minimum quotation requirements of the Purchasing Policy, when he had not. He did so because he wanted to engage Mr Buxton without considering anybody else as required by the policy. This was because of their personal friendship.

Mr Demiralay's conduct in falsely recording that he had considered other candidates when engaging Mr Buxton is corrupt conduct for the purpose of section 8(1)(b) of the ICAC Act. It was conduct by a public official, Mr Demiralay, that constituted or involved the dishonest or partial exercise of his official functions.

It was also conduct that comes within subsection 9(1)(b) or subsection 9(1)(c) of the ICAC Act. The Commission is satisfied that, if the facts it has found were to be proved on admissible evidence to the appropriate civil standard and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Demiralay committed a disciplinary offence by breaching the provisions of the university's Code of Conduct and Purchasing Policy that required him to avoid or report conflicts between his interests and those of the university or, in the alternative, that these facts amounted to reasonable grounds for dismissing, dispensing with the services of, or otherwise terminating the services of, Mr Demiralay.

Mr Demiralay – engaging Mr Hunt

Mr Demiralay used Succuro Recruitment Pty Ltd to secure Mr Hunt as a permanent employee for the university. In doing so, he recommended a candidate from a company in which he had an undeclared interest. That resulted in the payment (to his indirect financial benefit) of $15,938.18 to that company.

Mr Demiralay's conduct in recommending a candidate from a company in which he had a financial interest, and which conduct resulted in the payment of a fee of $15,938.18 to that company, was corrupt conduct for the purpose of section 8(1)(b) of the ICAC Act. It was conduct by a public official, Mr Demiralay, that constituted or involved the dishonest or partial exercise of his official functions.

Mr Demiralay's conduct also comes within subsection 9(1)(b) or subsection 9(1)(c) of the ICAC Act. The Commission is satisfied that, if the facts it has found were to be proved on admissible evidence to the appropriate civil standard and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Demiralay committed a disciplinary offence by breaching the provisions of the university's Code of Conduct and Purchasing Policy which required him to avoid or report conflicts between his interests and those of the university or, in the alternative, that these facts amounted to reasonable grounds for dismissing, dispensing with the services of, or otherwise terminating the services of, Mr Demiralay.

Section 74A(2) statements

In making a public report, the Commission is required by section 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 DPP with respect to the prosecution of the person for a specified criminal offence

b. the taking of action against the person for a specified disciplinary offence

c. the taking of action against the person as a public official on 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 section 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 Demiralay, Ms Kantarzis and Mr Tsipidis are "affected" persons.

Mr Demiralay

Submissions were made to the Commission that the common law offence of misconduct in public office did not apply to Mr Demiralay. There is some doubt as to whether an employee of a university such as Mr Demiralay is a public official (at common law) for the purposes of such an offence. In all the circumstances, the Commission is not of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Demiralay for that offence.

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 Demiralay for offences of giving false or misleading evidence pursuant to section 87 of the ICAC Act in the public inquiry and compulsory examinations about the following matters:

- Ms Kantarzis did not perform IT recruitment placement work at Succuro and Succuro Recruitment Pty Ltd for the university when Mr Demiralay was an employee of the university
- Ms Kantarzis did not perform IT recruitment placement work whilst at Succuro and Succuro Recruitment Pty Ltd for the university because she and Mr Demiralay had agreed in 2007 that she would have no dealings with the university
- Mr Demiralay did not know that he was a shareholder in Succuro Recruitment Pty Ltd until 2010
- Mr Demiralay did not know that his wife was a secretary or director of Succuro Recruitment Pty Ltd after August 2008.

Mr Demiralay is no longer employed by the university and the Commission is therefore not required to form an opinion as to whether a recommendation for disciplinary action to be considered should be made.

Ms Kantarzis

The Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Ms Kantarzis for offences of giving false or misleading evidence pursuant to section 87 of the ICAC Act in the public inquiry and compulsory examinations about the following matters:

- Ms Kantarzis did not perform IT recruitment work at Succuro and Succuro Recruitment Pty Ltd for the university when Mr Demiralay was an employee of the university
- Ms Kantarzis did not perform IT recruitment work whilst at Succuro and Succuro Recruitment Pty Ltd for the university because she and Mr Demiralay had agreed in 2007 that she would have no dealings with the university
- Ms Kantarzis did not know she was becoming director, secretary and shareholder in Succuro Recruitment Pty Ltd from August 2008
- Ms Kantarzis thought that, as at August 2008, she was involved as director, secretary and shareholder in a company known as I-Secure.

Mr Tsipidis

The allegations against Mr Tsipidis related to his apparent agreement to assist Mr Demiralay in manipulating university recruitment processes in relation to Mr Jankovic and Mr Sekuloski. The Commission makes no findings of corrupt conduct against Mr Tsipidis in respect of these allegations. This is because there was no evidence to show that he proceeded with the acts that he had discussed with Mr Demiralay.

Accordingly, the Commission is not of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Tsipidis.

Mr Tsipidis is no longer employed by the university and the Commission is therefore not required to form an opinion as to whether a recommendation for disciplinary action to be considered should be made.

Chapter 6: Corruption prevention

Since before the advent of the modern bureaucracy, government employment has been perceived as a valuable commodity. Problems of nepotism, favouritism and the buying and selling of positions have plagued public administration for hundreds of years.

Mechanisms for protecting organisations from such corrupt activity are embodied in the recruitment processes of most organisations. Rules concerning the composition of selection committees, methods of advertising vacancies, the questions that can be asked of candidates and the principles of merit-based selection are all designed to control corrupt granting of government employment. At the University of Sydney many such rules were minimal and only weakly enforced.

Access to employment through recruitment firms was even less well managed by the university. Key elements of the choice of firms to be used and the selection of candidates were uncontrolled. The process was poorly defined, poorly understood by the managers, accountabilities were unclear, and the responsible line manager had almost complete discretion.

Such weak control of access to employment within the university presents a particular risk in its ICT business units. The IT industry is characterised by highly-specialised contract workers. Contractors, recruitment firms and managers within organisations often know each other and have pre-existing relationships from previous work. Small recruitment firms, such as Succuro, often struggle in such a fragmented and competitive industry.

University control of employment processes – recruitment firms

The principles by which Mr Demiralay's managers, Mr Kovari and Mr Pigot, envisaged that the engagement of contractors would occur were sensible and robust. The recruitment process would involve from two to five competent recruitment firms. These firms would compete by contributing to a pool of candidates from which the university would select the best applicant. Such a model is cost effective for the university, produces good candidates and is difficult to manipulate corruptly.

Mr Pigot stated that for contractor engagements of between $50,000 and $199,999, "Typically there is a requirement for three (3) separate independent quotations … ICT would go to three (3) separate recruitment agencies". Similarly, Mr Kovari also stated that multiple recruitment agencies should be approached.

Despite these principles, the processes in practice were weak within ICT, and university-wide processes were at best confusing and loosely enforced. Succuro's first engagement by the university did not arise from a formal engagement. During late 2006, Mr Demiralay simply recommended that the university use Succuro and the university began hiring Succuro contractors soon afterwards.

At the time it was first engaged by the university, Succuro was not a firm with a strong reputation. Succuro had obtained few contracts and none with the university. Unlike major recruitment firms, who are parties to the state C100 contract, the risk of loss of future earnings resulting from exposure of corrupt behaviour by Succuro was small. The state C100 contract is a whole-of-government contract with a panel of suppliers covering the provision of labour hire services, like those that Succuro provided, to public authorities. It was negotiated by specialist government procurement officials and appropriate due diligence checks were conducted as part of the relevant procurement processes.

Yet, during November 2009, Succuro was placed on an "informal preferred panel" of ICT recruitment companies, without a formal process or due diligence checks. Mr Pigot gave evidence about the creation of the panel:

[Mr Pigot:]… so essentially I led an interactive collaborative discussion that said who we were using, what are they like, what are your experiences with each of these agencies and from that my managers and I arrived at this five agency list.

This process of selecting recruitment agencies for the informal panel provided the opportunity for Succuro to gain a legitimate place on the preferred supplier panel. The reputation and competence of this recruitment firm was not independently assessed.

Had the process of selecting recruitment firms been restricted to companies that were parties to a state contract, some independent evaluation of capability would have been conducted at the outset. The need to retain the state contract would have provided motivation to act honestly. Such an approach would not provide a guarantee of honesty, but provides an additional layer of protection.

It is often argued that skills are so highly specialised in the IT field that a small panel of preferred suppliers chosen from the state contracts will often be unable to produce a pool of suitable applicants. The highly-specialised candidates needed by the employer may well be attached to the small recruitment firms.

Whether or not this is true in this case, the integrity of the employment processes could still have been maintained even though small recruitment firms were used. One option would have been to require candidates from the smaller firms to be processed and checked by those preferred firms that had already been approved to arrange contractor employment. If there was a decision to deal directly with a small recruitment firm, and to open up a new point of entry to university employment, then probity and background checks were required.

Even basic company checks could have led to the identification of Mr Demiralay's links with Succuro.

A Succuro contractor, David Anderson, gave evidence of the ease with which these checks can be conducted and the information they can reveal:

…there's a plethora of sites out there if you, you give your credit card, it's like a $44 fee, it will give you a rundown of the formation of a company or a trust or something along those lines, anything that's publicly recognisable information by ASIC and from finding out that, that's when I found the information about Succuro how, how it was owned and so forth.

…

I recognised Virginia's name there but I didn't recognise Todd's name because it came as Atilla so I went the next day and asked Andy if he knew Atilla and Andy … [Apin] *… said yeah, that's Todd.*

Recommendation 1

That, where possible, the University of Sydney should establish a single point of access for employment of ICT contractors, using multiple C100 recruitment firms in competition.

Recommendation 2

That, where access to ICT contract employment is not feasibly managed through C100 firms in competition, the University of Sydney should establish the probity and competence of alternative recruitment firms independently of the views of operational university staff. Such a process should include the conducting of background checks.

Confusion across corporate entities of the university

ICT was largely on its own. Changes to, and confusion concerning, policy and process, a lack of clarity about which bodies within the university were responsible and accountable for contractors, and an inability to enforce compliance when needed contributed to a partial oversight vacuum. The university was unclear whether recruitment suppliers were the responsibility of human resources or procurement. The process of engagement with suppliers and the selection of contractors was unclear. The university lacked a policy that described the recruitment process and lacked the financial management systems needed to analyse expenditures on contractors.

Even the financial relationship with the recruitment suppliers was poorly defined. There was confusion over whether the engagement of each contractor constituted a separate smaller engagement that attracted a low level of oversight, or whether all contractors sourced from one recruitment firm together constituted the engagement. In the latter case, the engagement of contractors through Succuro would have attracted a higher degree of oversight by the university procurement unit.

The 2006 Recruitment Policy unambiguously required that contractor usage should be managed by SydneyRecruitment. SydneyRecruitment is a section within the university's human resources business unit that manages the university's recruitment of staff. The 2006 Recruitment Policy states:

> *This document covers recruitment to all positions within the University including continuing, fixed term, contractors, consultants, student internships, temporary and casual positions.*
>
> …
>
> *All recruitment, including the use of external recruitment suppliers, is managed through SydneyRecruitment.*

The premise that the hiring of contractors was a recruitment function was not, however, unanimously held by university staff. In the same year that the Recruitment and Selection Policy was issued, and following discussions with the university's deputy director of finance, an 18 October 2006 email received by Mr Kovari (shown below) indicated that it was the university's procurement policy that applied to the selection of contractors.

Three years later, the Recruitment and Selection Policy also adopted the view that contractors were hired through procurement and removed all reference to contractors as follows:

> *The Policy applies to recruitment of continuing and fixed-terms positions. Recruitment for temporary and casual positions is covered by the Casual Employment Policy.*

SydneyRecruitment, however, still retained the responsibility for recruitment suppliers.

> *All recruitment including the use of external recruitment suppliers is managed through SydneyRecruitment.*

Given that labour hire arrangements are different from many other forms of procurement, it can be difficult to apply the requirements of purchasing/procurement policies to them directly. This became evident in the application of the three quotations requirement. While Mr Kovari and Mr Pigot considered that three quotations meant quotations from three different recruitment suppliers, the policy was not implemented this way in practice.

In practice, finance staff interpreted three quotations as requiring three people to be interviewed. In this case, the intention of Mr Demiralay's managers that multiple recruitment companies be approached was undermined by the fact that their interpretation of the policy differed from the way it was applied in practice.

The confusion concerning the policies and specific requirements for the recruitment of contractors is captured

Good afternoon:

Following discussions amongst the ICT Directors, we're looking to ensure consistency in the raising of contracts for contractors.

Could you therefore please ensure the following procedures are followed.

1. Quotation and Tender Requirements *
In engaging contractors, the following quotation and tender requirements (which in fact apply to the acquisition of all goods/services) are the minimum needed. Additional quotations or undertaking a tender process should be considered where the nature of the goods or services being acquired warrants it.

Value of Order /Agreement	Requirement
$200,000 and above	Tendering process Tender Board approval required.
$50,000 to $199,999	3 written quotations
$5,000 to $49,000	2 written quotations
$5,000 and below	Quotations optional

in Mr Kovari's statement to the Commission. Mr Kovari states:

> *I do not recall any formal document stating how contractors were to be recruited ... I remember contacting Patrick Woods, a deputy director within Finance to clarify with him what policy we needed to follow when recruiting contractors. I* [sic] *advised that you couldn't obtain the same CV from three different agencies. He also advised that the Purchasing Policy was in the process of being rewritten and based on my query he would ensure that contractors were subsequently included in the Purchasing Policy. I do not now recall whether contractors were subsequently included in the Purchasing Policy.*

Further difficulties with the use of procurement rules to guide the hiring of contractors through recruitment firms became apparent in determining the value of the procurement. Procurement safeguards are based on price thresholds. Procurement over $200,000 is required to be done through tender.

Procurement Services manages university procurement exceeding $200,000. If a business unit originally engages a supplier for less than $200,000 but the total price exceeds this value, the business unit is required to notify Procurement Services. Procurement Services was not notified when payments to Succuro exceeded $200,000. Confusion arose over whether each contractor represented a different procurement or whether there was a single large procurement from Succuro.

While Succuro ultimately received more than $1.5 million in payments from the university, ICT did not perceive any one engagement as exceeding the $200,000 threshold. Mr Pigot gave evidence that it treated each engagement of a Succuro contractor as a separate engagement:

> *…effectively this is a series of individual engagements whereby I guess the actual university engages a particular contractor through an agency, through an actual competitive procurement process. I'm not actually aware of an overarching agreement or an actual heads of agreement with any, with any recruitment agency, more it's an actual series of individual engagements based on a particular person for a particular length of time.*

The university itself failed to monitor adequately the ongoing expenditure of engaging Succuro. Mr Pigot indicated that, in hindsight, it would have been useful to have had a trigger process prompting examination of the relationship with a supplier where the use of a particular recruitment company exceeded a certain amount. Both Mr Pigot and Mr Kovari indicated that they had not received financial information sufficient to trigger or allow such analysis.

The university is considering implementing a financial analysis framework that will identify supplier expenditure that is at risk of exceeding $200,000, but is not being managed through Procurement Services. Outputs from such analysis will also drive associated educative and preventative actions. The Commission supports the implementation of such a framework.

Recommendation 3

That the University of Sydney implements its proposed financial analysis framework.

In summary, it is difficult to ensure compliance with policy requirements if there is confusion over what the policy requirements are. The number of suppliers to be involved in each recruitment and a clear definition of the value of a procurement with a supplier is a minimum. To this end, the university is developing a new Workforce Engagements and Payments Policy, part of which will cover the engagement of recruitment companies and contractors.

As this matter has demonstrated, labour hire arrangements made through recruitment suppliers does not sit well within typical procurement processes. The Commission recommends that the responsibility for labour hire be placed within SydneyRecruitment or a body constituted to manage contract labour.

Recommendation 4

That the University of Sydney's management of contract labour through recruitment suppliers be the responsibility of SydneyRecruitment or a specialist unit.

University control of employment processes – selection committees

Not only was Mr Demiralay able to manipulate employment offerings through the contractor process, he was also able to manipulate the offerings of permanent employment through the selection committee process. The selection processes of the university for general staff did not meet the most basic protections that exist across almost all of the public service, namely that: (i) selection committee members are more senior than the people they are interviewing, (ii) an independent representative sits on selection committees and (iii) selection committee members are required to make interests declarations with respect to candidates.

Mr Pigot described the principles of a robust selection committee. He stated that he would have expected the selection committee for a Field Services team leader position to consist of Mr Demiralay (as the team leader's manager), one of Mr Demiralay's peers, and a representative of SydneyRecruitment or human resources.

In practice, such a robust approach to recruitment did not happen and was not required by the university

The General Staff Selection Committee for all Non-Exempt roles is appointed by the Head. The membership includes:

- Head or nominee (Chair) – required;
- Relevant member/s of the School/Area (normally the immediate supervisor of the position) – required; and
- Another committee member, who may be a SydneyRecruitment representative or an HR representative.

All General Staff Selection Committees will include a minimum of three members.

policies. The selection committee that appointed Mr Demiralay's brother-in-law, Mr Tsipidis, to a permanent team leader position consisted of Mr Demiralay and two team leaders who reported to Mr Demiralay. Neither of these members were independent of Mr Demiralay and both were at the same grade as the team leader position for which Mr Tsipidis was applying.

A number of Field Service staff were recruited by poorly constituted selection committees. Panagiotis (Peter) Smeros, for instance, was appointed by a committee that consisted of three team leaders who reported to Mr Demiralay. Angelo Angelopoulos was interviewed for a team leader position and served on the selection committee of another team leader position later the same day.

Such practices were acceptable under the policies that mandated the composition of selection committees. General staff were allowed to be appointed by selection committees that lacked independent representation, and partly comprised staff of the same grade as the position being recruited. The selection committees' requirements from the university's current Recruitment and Selection Policy are presented above.

Curiously, such lax rules did not extend to academic selection committees covered by the same policy. The requirements surrounding academic recruitment were more robust and described in greater detail (see below).

Recommendation 5

That the relevant University of Sydney's policy for non-exempt general staff selection committees requires:

- **the presence of an independent member on selection committees**
- **members of selection committees to be more senior than the position for which they are recruiting.**

(A) Membership

(1) Academic Staff Selection Committees:

If a position is advertised across levels, the composition of the Academic Selection Committee must be as required for the most senior appointment.

The following represents the composition of the selection panel:

Membership	Appointment Level		
	A to C	D	E
Provost and Deputy Vice-Chancellor (or nominee)			√ (Chair)
Dean or Nominee	√ (Chair)	√ (Chair)	√
Nominee of the Academic Board	√	√	√ Chair of AB or nominee
Head or Nominee	√	√	√
Internal[4] School Member (nominated by Head)	√	√	√
External Member nominated by Head	Nil	√ External to the Faculty	√ External as approved by the Provost
Other members	Nil	Up to one other school member nominated by the Head	Up to two other members

The university's selection panel process also lacked basic protocols for the management of personal interests. Unlike the standard practice for most public sector selection panels, declarations of interest by selection committee members were not a routine part of the selection process. The university has indicated that it will now require all members on selection committees to complete external interest declarations. Consequently, it is not necessary for the Commission to make a recommendation on this point.

Inability to enforce probity in recruitment

Numerous examples of ineffective enforcement of recruitment policy accompanied the corrupt behaviour of Mr Demiralay, including matters of gender balance on panels, delegations and the recording of dissenting opinions by panel members.

Selection committees from 2009 onwards have been required to have a gender balance. Despite this easily-checked requirement, Mr Demiralay was able to form selection committees comprised only of male colleagues. These improperly constituted committees then appointed Mr Smeros and Mr Tsipidis.

The university's Recruitment and Selection Policy also required selection committee reports for positions such as those obtained by Mr Tsipidis and Mr Smeros to be approved by the head of an administrative unit. Mr Demiralay was not such a head but approved the relevant selection committee reports anyway. Again, these reports were accepted by the university. The Recruitment and Selection Policy places SydneyRecruitment as the key university business unit regarding recruitment, and therefore it should be responsible for ensuring compliance with this policy.

Another example of non-compliance occurred in relation to the appointment of Mr Hunt to a permanent position. Prior to Succuro being engaged, Mr Demiralay chaired a selection committee that interviewed two people for a technical team leader position. Rebecca Astar, a representative of SydneyRecruitment, also served on this selection committee. Ms Astar believed that one of the interviewees, Tina Huang, was capable of performing the job but Mr Demiralay disagreed. Ms Huang was ultimately hired by ICT in a project management role.

The selection committee report required the recording of Ms Astar's dissenting position, however, there was no record of Ms Astar's dissent on this document. No review of the selection process based on the selection committee report would have identified the concerns. The selection committee report simply notes that Ms Huang was interviewed and judged not capable of performing the position.

Ms Astar took her concerns about the conduct of the selection committee to her colleague, Ji Zhou, lead recruitment consultant, as did the other unsuccessful candidate, Steve Kokkinis. Ms Astar and Mr Zhou then took their concerns to Mr Demiralay. In a statement to the Commission, Mr Zhou recalls: "after the interview phase ... Ms Astar and I had 'robust' discussions with Mr Demiralay". Mr Zhou added, "I could not question Mr Demiralay's rationale for his decision not to recommend or appoint any of the candidates interviewed as I do not have the technical skills or knowledge required ... to challenge his decision".

Mr Demiralay then decided he wanted to use a recruitment agency. Succuro was subsequently engaged to fill the position, and Mr Hunt was interviewed and ultimately hired; an appointment for which Succuro received a finder's fee of $15,938.18. As noted earlier, the policy at the time stated that the recruitment of staff through recruitment agencies was the responsibility of SydneyRecruitment:

> *All recruitment, including the use of external recruitment suppliers, is managed through Sydney Recruitment.*

There is little point in the university having policy requirements concerning recruitment if they are not known and cannot be enforced. The university needs to ensure compliance with these requirements.

Recommendation 6

That the University of Sydney ensures the authority and responsibility of Sydney Recruitment is such that it is able to influence policy compliance at critical points in the recruitment process, and that it is held accountable for the exercise of that influence.

An electronic system of approvals can make the task of ensuring compliance easier and reduce the burden of paperwork more generally. The university is currently considering the implementation of such a system and the Commission supports its introduction. The Commission does, however, acknowledge that such a system may be costly and hence may need to be introduced in the context of a broader human resources system upgrade.

Recommendation 7

That the University of Sydney adopts an electronic approval system as part of any major enhancement of its human resources systems.

These recommendations are made pursuant to section 13(3)(b) of the ICAC Act and, as required by section 111E of the ICAC Act, will be furnished to the university and the Minister for Education.

As required by section 111E(2) of the ICAC Act, the university must inform the Commission in writing within three months (or such longer period as the

Commission may agree to in writing) after receiving the recommendations, whether it proposes to implement any plan of action in response to the recommendations and, if so, of the plan of action.

In the event a plan of action is prepared, the university 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 ICAC Act is concerned with the honest and impartial exercise of official powers and functions in, and in connection with, the public sector of NSW, and the protection of information or material acquired in the course of performing official functions. It provides mechanisms which are designed to expose and prevent the dishonest or partial exercise of such official powers and functions and the misuse of information or material. In furtherance of the objectives of the ICAC Act, the Commission may investigate allegations or complaints of corrupt conduct, or conduct liable to encourage or cause the occurrence of corrupt conduct. It may then report on the investigation and, when appropriate, make recommendations as to any action which the Commission believes should be taken or considered.

The Commission can also investigate the conduct of persons who are not public officials but whose conduct adversely affects or 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. The Commission may make findings of fact and form opinions based on those facts as to whether any particular person, even though not a public official, has engaged in corrupt conduct.

The ICAC Act applies to public authorities and public officials as defined in section 3 of the ICAC Act.

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 role of the Commission is to act as an agent for changing the situation which has been revealed. Its work involves identifying and bringing to attention conduct which is corrupt. Having done so, or better still in the course of so doing, 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 principal functions of the Commission, as specified in section 13 of the ICAC Act, include investigating any circumstances which in the Commission's opinion imply that corrupt conduct, or conduct liable to allow or encourage corrupt conduct, or conduct connected with corrupt conduct, may have occurred, and cooperating with public authorities and public officials in reviewing practices and procedures to reduce the likelihood of the occurrence of corrupt conduct.

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 section 7 of the ICAC Act as any conduct which falls within the description of corrupt conduct in either or both sections 8(1) or 8(2) and which is not excluded by section 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 9(1) provides that, despite section 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 section 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 section 8 is not excluded by section 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.

The Commission adopts the following approach in determining whether corrupt conduct has occurred.

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 sections 8(1) or 8(2) of the ICAC Act. If they do, the Commission then considers section 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.

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 *Rejfek 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.

I·C·A·C

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