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INDEPENDENT COMMISSION
AGAINST CORRUPTION



**INVESTIGATION INTO
UNDISCLOSED CONFLICTS
OF INTEREST OF A
UNIVERSITY OF SYDNEY
EMPLOYEE**

**ICAC REPORT
SEPTEMBER 2010**

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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 failure of an employee of the University of Sydney to declare conflicts of interest arising from her awarding University contracts worth more than \$350,000 and approving payments to a company jointly owned by her and her husband.

I 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 faithfully



The Hon David Ipp AO QC
Commissioner

Contents

Summary of investigation and results	5	Chapter 4: Manipulation of procurement processes	16
The results	5	Background	16
Recommendation that this report be made public	6	Australian Technology Park	16
Chapter 1: Background	7	Ross Street	18
How the investigation came about	7	Principal findings of fact	19
Conduct of the investigation	7	Corrupt conduct	19
The public inquiry	7	Section 74A(2) statement	20
Ms Yandell and Razorback	8	Chapter 5: Corruption prevention	21
University of Sydney policies	8	Corruption risks in procurement	21
Chapter 2: Conflicts of interest	10	Human factors	21
Allocation of cleaning contracts to Razorback	10	Process factors	23
Was Ms Yandell's failure to declare her conflicts of interest deliberate?	11	Conclusion	26
Dino Radovac	12	Appendix 1: The role of the Commission	27
Principal findings of fact	12	Appendix 2: Sections 8 and 9 of the ICAC Act	28
Corrupt conduct	13		
Section 74A(2) statement	13		
Chapter 3: Fraudulent invoices	14		
Consultancy services	14		
Camden campus	14		
Section 74A(2) statement	15		

Summary of investigation and results

This investigation by the Independent Commission Against Corruption (“the Commission”) concerned the conduct of Deborah Yandell, an employee of the University of Sydney (“the University”), who between 2007 and 2009 awarded University cleaning contracts worth more than \$350,000 to Razorback Services Pty Ltd (“Razorback”), and approved its claims for payment, without disclosing that she and her husband, Dino Radovac, jointly owned the company. Of the money paid to Razorback, nearly \$154,000 was transferred to accounts held jointly by Ms Yandell and Mr Radovac, and subsequently expended for their benefit. The Commission also examined allegations that she authorised payment of fraudulent invoices to Razorback and manipulated procurement processes in order to favour Razorback.

The investigation raised questions about the processes in place at the University for the management of conflicts of interest. These issues and weaknesses that existed in the University’s procurement and invoicing practices were examined for the purpose of identifying areas for improvement.

The results

The Commission found that Ms Yandell engaged in corrupt conduct by deliberately failing to declare her conflicts of interest in awarding work to Razorback, by approving its claims for payment, and by manipulating University procurement processes to favour Razorback. There was insufficient evidence to establish whether Razorback issued any fraudulent invoices. These findings are set out in chapters 2, 3 and 4 of this report.

Chapters 2, 3 and 4 of the report also contain statements, pursuant to section 74A(2) of the *Independent Commission Against Corruption Act 1988* (“the ICAC Act”) that the Commission is not of the opinion that the advice of the Director of Public Prosecutions (DPP) should be obtained with respect to the prosecution of Ms Yandell for any criminal offences. The reasons for this conclusion are set out in those chapters.

Ms Yandell resigned from the University in January 2010 during the Commission’s investigation. The Commission

therefore makes no recommendations in relation to any disciplinary action against Ms Yandell.

Chapter 5 sets out the Commission’s corruption prevention response to the conduct disclosed during the investigation. Since the allegations against Ms Yandell came to light, the University has introduced a range of fundamental reforms designed to better manage procurement, conflict of interest, and corruption risks. The Commission has made the following five corruption prevention recommendations to the University to assist in preventing conduct of the kind engaged in by Ms Yandell from recurring in the future.

Recommendation 1

That staff from the University of Sydney’s Campus Infrastructure Services (CIS) involved in the procurement of goods and services receive training in relation to the Purchasing Policy and procurement generally.

Recommendation 2

That all CIS staff with responsibility for certifying invoices be provided with information as to the nature and importance of their role in verifying that the work charged for has been completed satisfactorily.

Recommendation 3

That CIS requires all requests for non-routine or additional cleaning services to be made through the E-Service Desk.

Recommendation 4

That the Procurement Services Division of the University of Sydney develops clear processes and procedures for the procurement of goods, and for the evaluation of quotations under \$200,000.

Recommendation 5

That CIS establishes processes to review any “emergency” service arrangements after a period of three months. Furthermore, if the service is required on an ongoing basis,



alternative quotations should be obtained in accordance with the Purchasing Policy, and a written contract should be entered into with the service provider engaged.

As part of the performance of its statutory functions, the Commission will monitor the implementation of the recommendations made in this report. CIS will be requested to provide the Commission with an implementation plan. The Commission will also request progress reports and a final report on the implementation of the recommendations.

These reports will be posted 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 background information concerning the Commission's investigation, Ms Yandell, and relevant University of Sydney policies.

How the investigation came about

The investigation commenced in October 2009, after the Commission received a report from the University concerning Ms Yandell's failure to disclose her conflicts of interest arising from her interest in Razorback as well as her relationship with Dino Radovac, her husband and fellow shareholder in the company. The report was made pursuant to section 11 of the ICAC Act. This section imposes a duty on the principal officer of a public authority to report any possible corrupt conduct to the Commission.

The conduct reported to the Commission was serious and would, if established, constitute corrupt conduct within the meaning of the ICAC Act. The Commission decided that it was in the public interest to conduct an investigation for the purpose of establishing whether corrupt conduct had occurred, and whether there were any corruption prevention issues that needed to be addressed.

The Commission's role is set out in more detail in Appendix I.

Conduct of the investigation

The Commission's investigation involved obtaining information and documents from the University, various financial institutions and other sources by issuing notices under sections 21 and 22 of the ICAC Act, as well as interviewing and obtaining statements from a number of witnesses.

An initial investigation conducted by the Commission confirmed that during the period from 2007 to 2009, Ms Yandell allocated a number of University cleaning contracts to Razorback, valued at over \$350,000. It

was also established that she had approved a number of payments to Razorback.

The Commission's initial investigation also gave rise to a suspicion that Razorback may have submitted fraudulent invoices for work that was either not performed or for which the University was overcharged.

The Commission also examined whether Ms Yandell enabled the cleaning contracts for the University premises at Ross Street and the Australian Technology Park (ATP) to be awarded to Razorback by manipulating procurement processes.

The public inquiry

After taking into account the evidence it had obtained during the investigation and 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 considered the following:

- the serious nature of the matters being investigated, which involved allegations of a deliberate failure to declare conflicts of interest, and possible fraud and manipulation of procurement processes by a public officer in order to obtain personal financial benefits
- the desirability of exposing any corrupt conduct for the purpose of educating and deterring others that might be minded to engage in similar conduct
- the risk of prejudice to the reputation of persons who would be called to give evidence at the inquiry was not undue in the circumstances.

The public inquiry took place over five days from 21 June 2010. The Hon David Ipp AO QC, Commissioner, presided at the inquiry, and Kate Williams acted as Counsel Assisting the Commission. A total of 14 witnesses, including Ms Yandell and Mr Radovac, gave evidence.

In accordance with the usual practice of the Commission and the requirements of procedural fairness, the Commission served written submissions from Counsel Assisting that set out possible findings and recommendations with respect to Ms Yandell and other persons following the conclusion of the public inquiry. The Commission also provided them with the opportunity to respond. Submissions received in response were considered in preparing this report.

Ms Yandell and Razorback

In mid-2007, Ms Yandell was employed as a Cleaning Manager for the University's Campus Infrastructure Services (CIS) division. The CIS is responsible for the buildings and facilities at the University's various campuses, and for the provision of services to those campuses, such as cleaning. In October 2007, Ms Yandell was promoted to Manager Site Services.

Her duties in both roles included engaging cleaning contractors on behalf of the University to provide cleaning services, and approving payment of invoices issued to the University by those contractors.

As a person in the service of the University, which is a public authority for the purpose of the ICAC Act, Ms Yandell was a public official within the meaning of the ICAC Act.

Ms Yandell and Mr Radovac established Razorback on 10 May 2007. They were married to each other and living together as husband and wife at this time. They separated in late 2007, although they both continued to reside in the marital home until about early 2009. They own four properties jointly and maintain joint bank accounts, which they have operated for the entire period relevant to the Commission's investigation.

Mr Radovac was the sole director of Razorback. Ms Yandell and Mr Radovac each owned half the shares in the company. Ms Yandell's shares were transferred to Mr Radovac around 30 September 2009 without payment of any consideration. However, even after the transfer of her shares, funds from Razorback's account continued to be transferred to the home loan account and savings account she operated jointly with Mr Radovac.

By accepting the University's offer of appointment to the position of Manager Site Services in October 2007, Ms Yandell agreed not to act (or be seen to be acting) in conflict with the best interests of the University, and to notify her supervisor if any such conflict appeared or arose. Ms Yandell also agreed to comply with the University's policies and procedures, including the Code of Conduct. Ms Yandell agreed to the same obligations in a revised employment contract entered into on 28 July 2009.

University of Sydney policies

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;*
- *being involved in a tender process where you or your family have a vested interest in the outcome;*

...

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.

The 2003 Code was replaced from 15 April 2008 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."

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; or
 - (b) having a consulting arrangement with an external entity which is in a contractual relationship with the University.
- 3.4 The obligation to avoid conflicts of interest applies across all University activities. [emphasis added]

Section 4.1 of the Conflicts Policy provides that a personal, financial or external interest only creates a conflict of interest 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 prompt, full disclosure of any conflict of interest.

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:
 - (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. [emphasis added]

Purchasing Policy

The University also has a Purchasing Policy that came into effect on 1 February 2007.

The Purchasing Policy applies to all goods and services, and provides that:

- a tender process must be engaged in 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 to the value of between \$10,001 and \$49,999.

For the purposes of applying these requirements, regular or periodic orders for the same goods or services are assessed at the annual transaction value.

Chapter 2: Conflicts of interest

Between 2007 and 2009, Ms Yandell allocated cleaning contracts to Razorback and approved payment of some 267 Razorback invoices totalling over \$350,000. She did so without declaring any conflicts of interest arising from her part-ownership of Razorback or from her relationship with Mr Radovac.

Allocation of cleaning contracts to Razorback

From July 2007 and throughout 2008 and 2009, Ms Yandell engaged Razorback to carry out cleaning work at the University.

There were no written contracts between the University and Razorback for the work that it performed, and for which it issued invoices. The only documentation apart from the invoices were 19 purchase orders, each of which was raised by Ms Yandell and approved by her superior officer at the University.

The first cleaning job given to Razorback by Ms Yandell related to the Vice Chancellor's offices at the University. The existing cleaner became unavailable at short notice in July 2007.

Ms Yandell created a request to raise a purchase order for \$12,946 (plus GST) in favour of Razorback for this job and submitted it to her supervisor, Elizabeth Evans, who subsequently approved it. Contrary to the requirements of the applicable Code of Conduct, Ms Yandell did not disclose that she had a conflict of interest arising from her husband's involvement in Razorback or that she owned half of that company. The purchase order was approved on 30 July 2007.

The Purchasing Policy required two written quotations to be obtained for work to the value of between \$10,001 and \$49,999. Ms Yandell did not obtain any alternative quotes. She said that she did not believe quotations were required because she was engaging Razorback at the same rate as that charged by the existing cleaner.

The Commission accepts that Ms Yandell's belief that two quotations were not required in this case may well have been genuine, albeit erroneous, given her lack of understanding of the Purchasing Policy combined with poor management oversight. The Commission is also satisfied that there was an understanding among some staff that there was a panel of preferred cleaning contractors with whom the University had established prices, and quotations were not necessary if the established rates were to apply. Matters relating to the Purchasing Policy will be discussed further in relation to corruption prevention issues in chapter 5 of this report.

From mid-2007 to the end of 2009, Ms Yandell created 19 requests to raise purchase orders in favour of Razorback, including the requests relating to the Vice Chancellor's offices, the Camden campus works, and consulting services referred to in the next chapter. During this period, the University paid Razorback a total amount of \$355,843 for cleaning services. These payments were made against 267 invoices issued by Razorback, each of which was approved for payment by Ms Yandell and co-signed, at her request, by a University employee reporting to her. At no time did Ms Yandell disclose any conflicts of interest.

Payments made by the University to Razorback were deposited into the company's bank account, which both Mr Radovac and Ms Yandell had authority to operate. The Commission identified deposits totalling \$353,060.50 made by the University to Razorback's company account. This amount represented almost all of the funds deposited in the Razorback account during the period from mid-2007 to May 2010. The total amount of deposits from other sources was \$12,091.65. The discrepancy between the amount of \$355,843 referred to above and the amount of \$353,060.50 arose as a result of the Commission's inability to identify some minor deposits from the University, which may be included in the \$12,091.65 amount.

During the period from mid-2007 to May 2010, a total amount of \$158,001.92 was transferred from the Razorback account to the joint home loan account of

Ms Yandell and Mr Radovac. A further amount totalling \$8,074 was transferred to their joint savings account. Combined, this comes to a total of \$166,075.92. Even if one assumes that the \$12,091.65 (the total amount of deposits in the Razorback account from sources other than the University) was included in the amounts transferred to the joint home loan and savings accounts, and deducts this amount from \$166,075.92, it would mean that at least \$153,984.27 came from the University.

Ms Yandell clearly benefited from the University's engagement of Razorback in that:

- she owned half of the company that benefited from payments made by the University
- the receipt of those payments from the University enabled Razorback to pay funds into Ms Yandell's savings account held jointly with Mr Radovac, and enabled the reduction of her liability on their joint home loan account to their mutual benefit in the amount of \$153,984.27.

Ms Yandell rightly accepted that she received significant financial benefits as a result of Razorback getting the University contracts.

Was Ms Yandell's failure to declare her conflicts of interest deliberate?

Ms Yandell acknowledged that she understood it was a mandatory requirement of the relevant Codes of Conduct and the Conflicts Policy to disclose her conflicts of interest. She said that she did not do so because she simply did not give consideration to the need to make such a disclosure. She denied making a deliberate decision not to disclose her conflicts of interest. She acknowledged that in hindsight she should have disclosed her interest in Razorback and her personal relationship with Mr Radovac.

The Commission rejects Ms Yandell's evidence that she did not act deliberately to conceal her conflicts of interest. She agreed in her evidence that at the time she submitted the first two requests to raise purchase orders in favour of Razorback, which were approved by Ms Evans in July 2007, she was aware that she was required to disclose actual or potential conflicts of interest to her superior officers. Her actual conflicts of interest here were glaringly obvious. She was requesting approval of funds in a total amount of approximately \$19,000 to be paid by the University to a company then recently established in May 2007, in which she owned one-half of the shares and in which her husband owned the other half.

Ms Yandell was obviously an intelligent person. Her supervisors variously described her as intelligent and competent. She would have been well aware of the importance of declaring conflicts of interest, and the reasons why such declarations were required. She would have been well aware that by disclosing her conflicts of interest, Razorback risked losing University work, which would in turn have an adverse financial impact on her. The suggestion that her failure to disclose the conflicts of interest in July 2007 was inadvertent rather than deliberate is implausible, and is rejected by the Commission.

The conflicts of interest became even more obvious as time passed, and Razorback was engaged to provide more and more cleaning services to the University. It is inconceivable that it never occurred to Ms Yandell that she had conflicts of interest that she needed to disclose. That it did occur to her is supported by evidence that she took steps to conceal her relationship with Mr Radovac and her interest in Razorback from University staff.

David Wilson and another witness who is referred to in this report as "Witness KI" (his name having been suppressed pursuant to a direction made by the Commission) worked with Ms Yandell during the relevant period. They provided evidence of steps she took to conceal from them her relationship with Mr Radovac and her connection with Razorback.

Both Mr Wilson and Witness K1 told the Commission that Ms Yandell would always deal directly with Razorback. However, they acknowledged that she never specifically instructed them not to deal with Razorback themselves, and that they could obtain Razorback's contact details from its invoices if they wanted to make contact. She also did not exercise the option of placing Razorback's profile on the University's E-Service Desk, which was an electronic portal through which complaints and work requests could be tracked. The Commission accepts the evidence of Mr Wilson and Witness K1 that Ms Yandell always handled all matters concerning Razorback personally rather than have Mr Wilson or Witness K1 involved, and there was an implicit understanding that this was what was expected to happen where Razorback was concerned.

They also heard rumours that Mr Radovac was driving in Ms Yandell's old car around the University, whose appearance and plate number were recognised by University staff. Mr Wilson testified that on one occasion, he saw Mr Radovac getting out of a car he knew was previously used by Ms Yandell. He made a comment about this to Ms Yandell who was with him at the time. She told him that Mr Radovac was just driving a car that looked like her old car. Mr Wilson presented as a reliable witness, and the Commission accepts his evidence on this matter. The Commission also notes that Mr Wilson and Witness K1 were not cross-examined about this aspect of their evidence.

Ms Yandell told the Commission that she had no recollection of this incident. She denied making any attempt to cover up her relationship with Mr Radovac. However, if she had nothing to hide, she would have admitted to Mr Wilson that it was her car that Mr Radovac was driving instead of pretending that it was just a car similar to hers.

During the period from mid-2007 to the end of 2009, every occasion that Ms Yandell created and signed one of the 19 requests to raise purchase orders in favour of Razorback, and every time she approved payment of Razorback's 267 invoices, would have served as an opportunity to remind her of her obligations to disclose her conflicts of interest to her employer. It is inconceivable that it never once occurred to Ms Yandell that there were conflicts of interest that needed to be disclosed.

In all the circumstances, the Commission is satisfied that Ms Yandell deliberately failed to disclose conflicts of interest arising from her relationship with Mr Radovac and her involvement in Razorback. The Commission is satisfied that this failure was motivated by concern that if she disclosed her conflicts of interest, Razorback might cease to receive University work, and both she and the company would suffer financial detriment.

Dino Radovac

The Commission also examined the nature and extent of Mr Radovac's involvement, if any, in relation to Ms Yandell's activities, and whether he himself engaged in any corrupt conduct.

The Commission is satisfied that Mr Radovac was aware that discovery of his relationship with Ms Yandell and her interest in Razorback might lead to action being taken by the University, resulting in consequences adverse to his and Ms Yandell's interests. However, there is insufficient evidence on which to draw a conclusion that Mr Radovac himself engaged in any corrupt conduct.

Principal findings of fact

In making findings of fact and corrupt conduct the Commission applies the civil standard of proof of reasonable satisfaction taking into account the decisions in *Briginshaw v Briginshaw* (1938) 60 CLR 336 at 362 and *Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd* (1992) 67 ALJR 170 at 171.

The following are the principal findings of fact that the Commission has made concerning the conduct set out in this chapter.

1. Ms Yandell was aware at all times that as an employee of the University of Sydney she was under an obligation to declare any conflicts of interest in accordance with the requirements of the University's 2003 and 2008 Codes of Conduct and the Conflicts Policy.
2. Razorback Services Pty Ltd was registered as a company on 10 May 2007. Ms Yandell and her husband, Dino Radovac, were joint shareholders. She remained a shareholder until 30 September 2009, when she transferred her shares to Mr Radovac.
3. From 2007 to 2009, Ms Yandell allocated a number of cleaning contracts to Razorback. During this period, she submitted a total of 19 requests to raise purchase orders in favour of Razorback, and approved payment of 267 invoices issued by Razorback in the total amount of \$355,843.
4. Ms Yandell derived financial benefits as a result of the cleaning contracts allocated to Razorback. A total of \$353,060.50 out of the total amount paid by the University was deposited into Razorback's company account. Out of this amount, a total of at least \$153,984.27 was transferred to Ms Yandell and Mr Radovac's joint accounts, which was subsequently expended for their benefit.

5. Despite being aware of her duty to declare any conflicts of interest, Ms Yandell deliberately failed to notify the University of her relationship with Mr Radovac and her interest in Razorback in order to continue to benefit financially from work awarded to Razorback by the University.

Corrupt conduct

Three steps are involved in determining whether or not corrupt conduct has occurred in a particular matter. The first step is to make findings of relevant facts. The second is to determine whether the conduct, which has been found as a matter of fact, comes within the terms of section 8(1) or section 8(2) of the ICAC Act. The third and final step is to determine whether the conduct also satisfies the requirements of section 9 of the ICAC Act.

Corrupt conduct is defined in sections 8 and 9 of the ICAC Act. These sections are set out in Appendix 2.

The Commission finds that Ms Yandell engaged in corrupt conduct by awarding work to Razorback and approving payment of its invoices, while deliberately failing to declare her conflicts of interest to the University (arising out of her personal relationship with Mr Radovac and her interest in Razorback) in order to continue to benefit financially from University work awarded to Razorback.

This is because her conduct:

- could constitute or involve the dishonest or partial exercise by her of her official functions (for example, allocating cleaning contracts, raising purchase orders, and approving payment of invoices) and therefore comes within section 8(1)(b) of the ICAC Act
- could constitute or involve a breach of public trust on her part and therefore comes within section 8(1)(c) of the ICAC Act.

This conduct also falls within section 9(1)(b) of the ICAC Act on the basis that her conduct could constitute or involve a disciplinary offence involving misconduct.

The fact that Ms Yandell has resigned from the University, and is therefore not subject to a disciplinary offence, is not an impediment to describing her conduct during her employment as corrupt, as provided in section 9(2) of the ICAC Act.

There is no finding of corrupt conduct made by the Commission against Mr Radovac.

Section 74A(2) statement

In making a public report, the Commission is required by the provisions of 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 Director of Public Prosecutions (DPP) with respect to the prosecution of the person for a specified criminal offence
- b) taking of action against the person for a specified disciplinary offence
- c) taking of action against the person as a public official on specified grounds, with a view to dismissing, dispensing with the services of or otherwise terminating the services of the public official.

An “affected” person is defined in section 74A(3) of the 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 concerned.

For the purposes of this report, Ms Yandell and Mr Radovac are “affected” persons.

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 Ms Yandell for any criminal offences in relation to her conduct set out in this chapter. This includes the common law offence of misconduct in public office.

In the Commission’s opinion, an employee of an educational institution that receives public money is not, at common law, a public official for the purposes of the common law offence of misconduct in public office, and therefore that offence is not applicable to Ms Yandell’s conduct.

As Ms Yandell resigned from the University during the Commission’s investigation, the issue of disciplinary action does not arise.

There is no evidence suggesting that Mr Radovac engaged in any conduct that could constitute or involve a criminal offence. The Commission is therefore not of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Radovac for any criminal offence.

Chapter 3: Fraudulent invoices

Two of the issues identified in the course of the Commission's investigation were whether Razorback issued fraudulent invoices, and whether Ms Yandell approved payment of such invoices knowing that they were fraudulent. These issues are examined in this chapter.

Consultancy services

On 30 July 2007, Ms Yandell's supervisor, Ms Evans, approved the request made by Ms Yandell to raise a purchase order in favour of Razorback for cleaning consultancy services in the amount of \$6,000 (plus GST).

These consultancy services consisted of the provision of two reports: one relating to auditing of the delivery of cleaning services by the University's main cleaning contractor, and the other relating to the provision of advice on the tender process for a new main cleaning contractor.

Neither Razorback nor Mr Radovac had any prior experience in undertaking such audits or providing such advice. Mr Radovac told the Commission that the consultancy services he provided involved merely putting in order a document that had already been substantially prepared by another consultant, a person that subsequently died. He also admitted that the description of work on the invoices included work that had not in fact been undertaken by Razorback, but claimed that this was just an error on his part. There was evidence from witnesses that the contents of the Razorback reports were of limited value to the University. The reports were submitted to Ms Yandell on or around 17 August 2007. However, there is no indication that they were provided to anyone else at the University.

These circumstances gave rise to a suspicion that Razorback invoiced the University for consultancy services for which it was not properly qualified and which were of little use to the University. They also raised the possibility that Ms Yandell approved the relevant invoices with awareness of their false nature.

However, there is insufficient evidence to establish that Razorback issued fraudulent invoices in relation to these consultancy services or that Ms Yandell approved their payment while being aware of any dishonesty in connection with them.

Camden campus

In January 2008, Ms Yandell created a request to raise a purchase order in favour of Razorback in the amount of \$20,000 (plus GST) for "specialised floor maintenance cleaning requirement of Vet Clinic at Camden". Again, she did not obtain two quotations as required by the University's Purchasing Policy. She explained she did not believe the quotations were necessary since the work was to be done at the rate that the University had established with another contractor for this kind of work. However, there is no evidence that any cost calculation based on this rate was done at the time the request to raise the purchase order was created.

Razorback issued 10 invoices to the University with respect to Camden campus maintenance cleaning, each in the amount of \$2,000 (plus GST). With the exception of two invoices, the description of the work that appeared in each of these invoices was incorrect. Mr Radovac and Ms Yandell admitted this inaccuracy. However, they claimed that a correct description of the work (being external work, such as cobweb removal and tidying up) was recorded in supporting documents that were attached to the invoices. It is curious to note that Ms Yandell discovered the supporting documents amongst material at her former home, which she sought to explain by saying that she had a practice of taking documents home to work on.

Mr Radovac accepted that it was possible for these attachments to have been created after the invoices were issued, but denied that this was done as an attempt to justify the amounts claimed in the invoices when the work was not in fact carried out.

A number of witnesses provided statements and oral testimony that cast some doubt on whether any such external work was in fact carried out by Razorback. Neither the managers of the various buildings and facilities of the Camden campus, nor the employee retained to do external work of this nature on a regular basis, nor the main cleaning contractor of the Camden campus had any knowledge of such work having been performed by Razorback. Indeed, they were not aware of Razorback's presence on the campus at all, except to strip and seal the floor of the Veterinary Teaching Hospital in March 2008.

Mr Radovac sought to explain this by saying that he did the job after regular business hours. It is not easy to accept that Razorback would have been able to carry out all this work, regardless of the time of the day it was done, without ever coming to the notice of anyone else on campus. Nevertheless, there was no evidence that directly refuted Mr Radovac's explanation.

There is no logical explanation as to why Razorback would issue invoices bearing a description of work that was false, and at the same time submit a "supporting document" bearing a completely different description of work. It is also curious that Ms Yandell approved the invoices for payment without requiring Mr Radovac to correct the wrong description of work.

All these circumstances gave rise to a suspicion that, with the exception of the invoices pertaining to the stripping and sealing of the Veterinary Teaching Hospital floor in March 2008, the invoices issued by Razorback were fraudulent claims for payment of work that was in fact never carried out.

The Commission does not consider that the evidence provided by Ms Yandell and Mr Radovac on this issue is satisfactory. However, with regard to the standard of proof required the available evidence is not sufficient to establish that Razorback issued any fraudulent invoices in relation to the work at the Camden campus or that Ms Yandell knowingly approved payment of such fraudulent invoices.

The Commission makes no findings of corrupt conduct against Ms Yandell or Mr Radovac in relation to the allegation discussed in this chapter.

Section 74A(2) statement

In the Commission's view, there is insufficient evidence to establish that Ms Yandell or Mr Radovac engaged in any conduct that could constitute or involve a criminal offence in relation to the allegation discussed in this chapter. The Commission is therefore not of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Ms Yandell or Mr Radovac for any criminal offences.

Chapter 4: Manipulation of procurement processes

One of the matters investigated by the Commission was whether Ms Yandell manipulated procurement processes for the contracts with respect to the University sites at Ross Street and the ATP in order to favour Razorback.

Background

In September and October 2009 respectively, Ms Yandell issued “requests for quotations” (RFQs) for the cleaning services of two new sites that were to be leased by the University: Ross Street and the ATP. The RFQs were issued to a shortlist of contractors selected by Ms Yandell, which included Razorback.

When participating in the RFQ process for the two sites, Ms Yandell did not disclose her interest and that of her husband in Razorback to either her staff working with her in the evaluation of the quotes or to her superior officers at the University.

Ms Yandell developed the criteria against which quotations received in response to each RFQ would be evaluated. She also conducted the evaluations together with two University staff members, Mr Wilson and Witness K1. Razorback was the successful candidate for both contracts.

In the case of the Ross Street site, the merits of the quotes received were compared by giving a score each in relation to the time and cost submitted. For the ATP site, a score was also given for documentation. A total score would then be arrived at, with the contractor that had been given the highest score winning the contract.

The contractors’ quotes were evaluated according to how close their time and price submissions came to the benchmarks set by Ms Yandell. The particular score for time submissions was determined by applying a set productivity rate. Productivity rate in the cleaning industry refers to the number of square metres cleaned per hour, so the higher the productivity rate, the less time it takes to clean a defined space; conversely, the lower the productivity rate, the more time it takes to clean the area.

The productivity rate is derived by a list of guideline rates for different types of area maintained by the University.

In relation to each score for the respective criteria, a weighting in terms of percentage was given. For both the Ross Street and ATP sites, the number of hours per day or per week that a cleaning contractor submitted as the time required to complete the work was given a weighting of 70%. This meant that the score received by the contractor for the time criterion made up 70% of the total score given.

Mr Wilson, Witness K1, and Harry Banga, Director Procurement Services, all expressed the opinion that this 70% weighting system was undesirable, since one criterion could largely determine the outcome of the process and render the other criteria quite meaningless. Mr Banga also said that once an evaluation was carried out on any particular criteria, there should be an exercise of judgment, and the whole process should have a common sense approach rather than being just a mechanical process.

Ms Yandell sought to justify the 70% weighting system by arguing that if a contractor did not spend the time calculated by the University as appropriate, it was an indication that the contractor would not achieve the standard of cleaning required. She went on to say that if the contractor spent more time than the time set by the University, the contractor was likely to be inefficient. However, she agreed that because of the 70% weighting system a contractor who failed to get the submitted time close to the benchmark figure would be unfairly penalised in the overall evaluation; even if the submitted price was cheaper than that of other contractors.

Australian Technology Park

Evaluation criteria

For the provision of cleaning services to the ATP site, RFQs were issued on 2 October 2009 to Swan Services, HW Cleaning, Quad Cleaning, and Razorback. Before issuing the RFQs, Ms Yandell prepared evaluation criteria and an

evaluation matrix. The criteria were time (70% weighting), price (20% weighting), and documentation (10% weighting). Quotes were submitted on 15 October 2009. Ms Yandell denied discussing any aspect of the procurement process with Mr Radovac prior to him submitting the quotation documents on behalf of Razorback.

The benchmark time for the ATP contract was calculated by Ms Yandell as 32.73 hours per week, based on the square metre area and the productivity rates she applied to different parts of that area. The area was ascertained from plans provided to her by the University's CAD department, which issues plans and drawings for the University's physical premises. This matrix will be referred to as "the first ATP matrix".

It was required that quotes be submitted by 2 pm on 15 October 2009. At 3.35 pm on that day, Ms Yandell sent an email to Mr Wilson and Witness K1 attaching a different evaluation matrix, which will be referred to as "the second ATP matrix".

In the second ATP matrix, the area of the site had increased by 10 square metres, and the weekly, full clean productivity rate changed from 400 to 450, resulting in an overall decrease in the benchmark weekly cleaning time from 32.73 hours to 32.05 hours.

The outcome of the evaluation when applying the second ATP matrix was that Razorback was determined the winner, with Swan Services coming in second. It is significant to note that had the first ATP matrix been used to select the winner instead of the second ATP matrix, Swan Services would have won the contract instead of Razorback.

Conflicting evidence

As to the circumstances in which the second ATP matrix was issued and applied, there are significant differences between the evidence of Ms Yandell, on the one hand, and that of Mr Wilson and Witness K1, on the other hand.

Ms Yandell told the Commission that she altered the evaluation matrix because she realised that there was an error of 10 square metres in the plans (although she could not explain or identify that error), and an error in one of the productivity rates (which she thought may have been a typographical error but again could not explain how this would have occurred). She stated that she checked the matrix and realised the errors during the morning of 15 October 2009, and mentioned this to Mr Wilson. She did not get around to reissuing the matrix until the afternoon.

In the meantime, the quotes that had been submitted had been placed on Mr Wilson's desk but Ms Yandell said they had not been shown to her. She knew that Mr Wilson was not working on the evaluation before she provided the second ATP matrix because he was absent from his desk attending to other tasks. She denied that she made the changes to the matrix in order to effect a change in the outcome.

In clear conflict with Ms Yandell's evidence, Witness K1 told the Commission that the quotes were opened and read whilst he was sitting at a meeting table together with Ms Yandell and Mr Wilson at 1 pm on 15 October 2009. The first ATP matrix had been issued previously. Ms Yandell spent about five minutes looking at the documentation and figures submitted by each contractor. He and Mr Wilson then left the office to attend to other tasks.

Witness K1 further stated that there was a conversation, either at the meeting at 1 pm on 15 October or later in the afternoon, in which Ms Yandell referred to the need to finalise the figures in the matrix.

Witness K1 received an email from Ms Yandell that was sent at 3.35 pm on 15 October 2009 with the second ATP matrix attached. Application of this matrix favoured Razorback rather than Swan Services, notwithstanding that the price submitted by Swan Services was cheaper than Razorback by approximately \$400 per month, and the difference between them in relation to time was only six minutes per day.

Witness K1 said that Ms Yandell told him the matrix had been changed because CAD had issued updated plans for the site. Ms Yandell did not mention to him that she had made a mistake in the first ATP matrix.

Mr Wilson told the Commission that he could not specifically recall being present when the quotes were opened. However, he would normally have been present together with Ms Yandell and any other staff participating in the evaluation process when they were opened. He was not aware one way or the other whether Ms Yandell had read the quotes before issuing the second ATP matrix. Nor was he aware of any valid reason for making the changes Ms Yandell made to the matrix.

In contradiction of Mr Wilson and Witness K1's evidence, Ms Yandell denied that she opened the quotes with them, that she then reviewed the figures for time and price submitted by the contractors, and that she then sent them an email attaching the second ATP matrix after reviewing the figures.

Analysis of the evidence

The Commission accepts the evidence given by Witness K1 that the quotes were opened and read by Ms Yandell, Mr Wilson and himself together at 1 pm on 15 October 2009. Witness K1's evidence is consistent with Mr Wilson's evidence about normal practice, although Mr Wilson did not specifically recall opening the quotes in this case. There is also no apparent reason why Witness K1 would make up a false story in relation to this matter, whereas Ms Yandell had an obvious interest in concealing any improper conduct on her part.

Furthermore, the Commission has serious doubts as to Ms Yandell's credibility as a witness, generally. There are compelling reasons (outlined earlier in this report) to reject Ms Yandell's reasoning that her consistent failure to disclose her conflicts of interest to the University was not deliberate.

The Commission acknowledges that there was an inconsistency in the evidence provided by Mr Wilson and Witness K1 in their statements and their oral testimony given at the public inquiry with respect to whether they worked out the winner by applying the first ATP matrix first, followed by the second ATP matrix or vice versa. However, the Commission takes the view that this inconsistency of detail can be accounted for by memory lapse over time, and is in any event immaterial and does not detract from the credibility of Mr Wilson or Witness K1 as witnesses.

What is important is that the evidence establishes that:

- the ATP matrix applied to select the winner was changed *after* the quotes were received, and that Ms Yandell had an opportunity to review them

- there is no evidence capable of establishing any errors or any valid reason to make the changes to the evaluation matrix, other than Ms Yandell's evidence that the area was wrong and she made a mistake about one of the productivity rates. There is no independent evidence of any error in the area shown on the plans supplied by CAD, and used for the first ATP matrix. Ms Yandell is unable now to explain the nature of the alleged error in relation to the productivity rate or how the error could have occurred
- the result of the change was to award the contract to Razorback in preference to Swan Services, despite the significantly cheaper price offered by Swan Services
- Ms Yandell gave evidence that the result of the evaluation process was not extraordinary but simply the result of a calculation using predetermined evaluation criteria. Yet, she had previously given evidence that the overriding principle to be applied in evaluating quotations was to look for the best value for money. Her acceptance of the outcome as legitimate without reconsidering it, particularly as it was clearly contrary to that overriding principle and called for a review, therefore lacks credibility.

The above matters should be considered in the context of Ms Yandell's relationship and joint financial affairs with Mr Radovac, her association with Razorback (from whose account funds continued to be transferred to their joint accounts), and the financial benefit that she consequently stood to gain if Razorback won the job.

Accordingly, the Commission rejects Ms Yandell's evidence as to her reasons for issuing the second ATP matrix. The Commission is satisfied that Ms Yandell deliberately manipulated the evaluation matrix to ensure that Razorback won the ATP contract.

Ross Street

On 11 September 2009, Ms Yandell issued RFQs for the cleaning of a new site to be acquired by the University at 1 Ross Street. The request was issued to cleaning contractors HW Cleaning Services, Swan Services, and Razorback, who were selected by Ms Yandell on the basis that they were existing cleaning service providers to the University. Razorback enjoyed this status only because Ms Yandell had, by this time, directed a substantial volume of University cleaning work to it without disclosing to the University her conflicts of interest.

The quotations were submitted by 18 September 2009. They were evaluated based on criteria selected by Ms Yandell, and using a matrix developed by her for applying

these criteria. Her supervisor at the time, John Barrett, had no involvement in selecting the evaluation criteria, and left the evaluation of the quotes to Ms Yandell. There were no guidelines, tools or templates available to Ms Yandell from the University's Procurement Services to use in evaluating the quotes. Ms Yandell said that she invited the input and comments of her staff in relation to the evaluation criteria. However, this claim is in conflict with the evidence of Mr Wilson and Witness K1, who told the Commission that they were merely given instructions to follow.

Ms Yandell applied only two evaluation criteria. The first criterion was weekly cleaning time, for which she calculated a benchmark number of hours per week based on the square metre area to be cleaned, and the productivity rate that she considered appropriate for each part of that area. This criterion was given a 70% weighting. The second criterion was the contractor's hourly rate, for which Ms Yandell selected a benchmark rate per hour. This criterion was given a 30% weighting.

Swan Services submitted a price per month of \$1,348.26, compared to \$2,038.23 per month submitted by Razorback. However, Razorback won the job due to the 70% weighting given to the time criterion, merely because it submitted a number of hours per week that was closest to the benchmark chosen by Ms Yandell.

Ms Yandell's allocation of a 70% weighting to time was unjustifiable, and her treatment of the evaluation process as a mechanical exercise rather than one calling for a judgment on value for money was unsatisfactory.

Ms Yandell denied providing Mr Radovac with the benchmark time she had determined for the Ross Street contract. Mr Radovac also denied receiving such information from Ms Yandell. The notion that Razorback coincidentally happened to submit a quote based on a daily cleaning time that came closest to the benchmark weekly cleaning time stipulated by Ms Yandell, resulting in Razorback winning the contract, is suspicious to say the least.

Notwithstanding the concerns above, there is insufficient evidence to conclude that Ms Yandell provided information to Razorback about the applicable benchmark weekly time or suggested to Razorback a daily cleaning time that should be submitted to ensure that it won the contract.

There is also insufficient evidence to establish that she allocated the 70% weighting to time for the purpose of ensuring that Razorback, with the benefit of "inside information" about the benchmark weekly cleaning time, would be the successful bidder for the contract. Unlike the RFQ process for the ATP contract, Ms Yandell did not impose a new evaluation matrix that favoured Razorback after seeing all the quotes received.

Principal findings of fact

Based on the evidence set out in this report, the Commission is satisfied that the following principal facts have been established to the requisite standard of proof:

1. In September and October 2009, Ms Yandell issued RFQs to cleaning contractors selected by her, which included Razorback, for cleaning contracts for two University sites at Ross Street and ATP.
2. When participating in the evaluation process for these contracts, she did not disclose the conflicts of interest arising from her relationship with Mr Radovac and her interest in Razorback to the University.
3. She developed the evaluation criteria to be used in selecting the successful contractor for both jobs. One criterion was the time to be taken by the contractors to complete the work that was to be scored against a benchmark figure determined by Ms Yandell. She gave a 70% weighting to this score, which had the effect of heavily penalising contractors that failed to get the submitted time close to the benchmark figure.
4. The outcome of the evaluation for both the Ross Street and ATP contracts was that Razorback was the winner of both jobs, even though the cost submitted by Swan Services was significantly cheaper than the cost submitted by Razorback in both cases.
5. In relation to the ATP site, Ms Yandell issued an evaluation matrix before quotes were received from the contractors, and provided it to the staff that were to perform the evaluation. She subsequently issued a second evaluation matrix with changes made after she had an opportunity to review the quotes received. She instructed her staff to employ the new matrix to determine the winner of the contract. She did so in order to ensure that Razorback would be awarded the contract for the ATP site.
6. Ms Yandell falsely cited errors in respect of the relevant area and one of the productivity rates in the first matrix as her reasons for creating the second matrix for the ATP site.

Corrupt conduct

The Commission finds that Ms Yandell engaged in corrupt conduct by manipulating the procurement process in relation to the cleaning contract for the University's ATP site in order to ensure that Razorback won the job.

This is because her conduct:

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- could constitute or involve the dishonest or partial exercise by her of her official functions and therefore comes within section 8(1)(b) of the ICAC Act
 - could constitute or involve a breach of public trust on her part and therefore comes within section 8(1)(c) of the ICAC Act.

This conduct also falls within section 9(1)(b) of the ICAC Act on the basis that her conduct could constitute or involve a disciplinary offence involving misconduct.

Section 74A(2) statement

The Commission does not consider there is sufficient admissible evidence on which to prosecute Ms Yandell for any criminal offences in relation to the conduct disclosed in this chapter.

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 Ms Yandell for any criminal offences.

As Ms Yandell resigned from the University during the Commission's investigation, the issue of disciplinary action does not arise.

There is no evidence suggesting that Mr Radovac engaged in any conduct which could constitute or involve a criminal offence.

The Commission is therefore not of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Radovac for any criminal offences.

Chapter 5: Corruption prevention

This chapter examines the factors that allowed, encouraged or caused Ms Yandell's corrupt conduct, and sets out how such conduct might be prevented in the future.

Corruption risks in procurement

Procurement has long been recognised as a high-risk activity vulnerable to corrupt behaviour. In situations where organisations cannot identify their needs, cannot determine an appropriate price or confirm that the service has been delivered, they are particularly susceptible to corruption. In addition to these process factors, there were additional human factors in this case that allowed the corrupt behaviour to occur.

Human factors

Staff competence

A lack of understanding of the Purchasing Policy at multiple levels within CIS created a significant risk of corruption. This, combined with a lack of enforcement of the policy by management, enabled Ms Yandell's corrupt conduct to go undetected.

John Cox

Mr Cox was Ms Yandell's manager from June 2007 to July 2009. He told the Commission that he was aware of the tendering procedure but was not familiar with the details of the Purchasing Policy.

Mr Cox knew, at a minimum, that quotations had to be obtained according to certain thresholds. Despite this, he acknowledged that he was not sure if managers reporting to him were adhering to the policy:

Q: *What comfort did you have that managers in your division were in fact following the requirement to obtain quotations at all?*

A: *I'm not sure that I have an answer for that.*

Mr Cox said that the required number of quotations was routinely not obtained by staff in his area. In such a situation where Mr Cox relied on his staff member's assurances that a suitable price was being charged, rather than relying on actual quotations, the University had no guarantee that this was in fact the case. Mr Cox provided the following evidence to the Commission:

Q: *So the only comfort you had that the University was getting value for money for the Vice-Chancellor's office and residence cleaning work was if you were told the standard rates of the various contractors who might carry out the work. Is that correct?*

A: *That's right.*

Q: *Do you have a specific recollection of being told that information?*

A: *We had a lot of one-off contract situations like this so the answer is no, I don't have a specific recollection of this per se or the VC's office per se but in discussing it with Debbie it would have been what the current rates were and who else she'd actually spoken to.*

Q: *Is it fair to say this is another instance in which you had to place a great deal of trust in Ms Yandell?*

A: *I believe so.*

The Commission heard from a variety of witnesses that Ms Yandell was very capable. Ms Evans, who supervised Ms Yandell for a brief period in 2007, "found Debbie to be intelligent, articulate, display [sic] good problem solving skills". Mr Cox "found Debbie Yandell to be both competent and an exceptionally hard worker". Mr Barrett, her line manager from May 2009, told the Commission that Ms Yandell "had good knowledge of cleaning procedure, which is a complex area to get your head around". In a statement, John Mullis, an auditor at the University,

told the Commission that he “found Debbie Yandell to be very competent and confident and able to answer all of my questions regarding cleaning services. In my view Debbie had knowledge of all of the processes in her area of responsibility but also had end-to-end control of these processes”.

Managers are accountable for the actions and work of their staff in the workplace. While managers may have a large range of responsibilities, they also have a crucial role in preventing and detecting corruption. When staff present as being particularly competent and “resident experts” in a particular area, managers often perform fewer checks. However, managers who do not acquaint themselves with the details of relevant procurement policies or fail to perform checks on procurement paperwork are creating a corruption risk. While the changes recommended in this report and those already implemented in CIS are aimed at reducing the likelihood of corruption occurring, they are contingent on individuals in oversight positions being willing and able to actively perform checks to ensure procurement paperwork not only looks correct but is correct.

Ms Yandell

Although it was not her primary role, Ms Yandell’s position as Manager Site Services of CIS required her to perform a number of tasks relating to procurement. These tasks included:

- identifying the need to engage contractors
- sourcing potential contractors to engage
- completing requisition paperwork
- managing contractor work
- recommending the payment of invoices.

Despite performing these tasks, Ms Yandell told the Commission that she had not read the Purchasing Policy in detail, and was familiar only with the requirements for quotations.

Ms Yandell erroneously held the view that suppliers that had provided the University with their standard rates for certain cleaning services could be engaged directly on those rates. It was Ms Yandell’s understanding that this conformed with the Purchasing Policy and was in accordance with general practice in CIS. Ms Yandell had at no time been corrected in her belief by her line managers. The ongoing acceptance of this practice allowed Ms Yandell to put Razorback forward for work based on “standard rates” rather than actual quotations, and thus enabled the opportunity for corrupt conduct.

Ms Yandell’s staff

Staff knowledge of procurement policies is a safeguard against corruption. It is the Commission’s experience that where procurement panel members are inexperienced in this type of work or have not received adequate training they are less likely to question or challenge a decision proposed by the convenor or to insist that the correct process is followed. Neither Mr Wilson nor Witness KI had received any training in purchasing or procurement. Indeed, Ms Yandell stated their involvement in the evaluation of quotations at I Ross St and ATP was intended as a “development opportunity” for both staff members. In fact their inexperience and poor processes allowed Ms Yandell to develop all the related procurement paperwork without challenge or question.

A further illustration of Mr Wilson and Witness KI’s lack of understanding of procurement and financial processes is in relation to invoice certification. Invoices submitted by cleaning contractors are forwarded to CIS Finance for payment after being certified by one staff member and authorised or approved by another staff member. As in many organisations, the role of the staff member certifying the invoice is to verify and attest that the work charged for has been satisfactorily completed or delivered. This certification step is a fundamental corruption prevention mechanism. The role of the staff member approving the invoice is to vouch that funds are available within the budget to meet the payment, and to approve the payment of the invoice out of those funds. In signing the invoices, both the certifier and the approver must ensure that the invoices provide a description of the work that is sufficient to identify the work, and verify that it has been completed. The description of the work on the invoice should match the description on the purchase order.

Ms Yandell understood the process for certifying and approving invoices, and gave evidence that she believed it was understood by her staff. However, Ms Yandell’s staff generally did not make any inquiries to verify that the work charged for had been completed satisfactorily prior to certifying an invoice. Mr Wilson gave the following evidence in regard to his certification of invoices.

Q: What was your practice when an invoice was submitted to you for certification in relation to checking detail on the invoices and any supporting documentation?

A: My role was to, to sign them.

THE COMMISSIONER: Just sign them?

A: Yes.

Q: Not check them?

A: Well, no.

Q: So you were a rubber stamp?

A: Pretty much.

Invoices were frequently approved for payment by Ms Yandell in the first instance, and then certified by her staff. Mr Wilson gave evidence that this left him with the impression that Ms Yandell had ensured the work was undertaken, and that if he made independent inquiries to check whether the work had been done, he would be seen as undermining Ms Yandell's authority. Witness KI also had this experience, and provided evidence that when invoices were presented to him for certification Ms Yandell had already approved them and entered them into a spreadsheet. He told the Commission that:

You've been handed something from a position of authority and you sign it and you hand it back.

Witness KI was not asked to check whether the work had been done, and provided the following evidence:

Q: *So is it fair to say that you would certify invoices without paying much regard to the description of the work or the detailing and any supporting documentation?*

A: *Yes. Because it would be our belief that as someone in her position, she wouldn't be passing it to us for a signature unless she was sure herself, because it was coming out of her budget.*

No independent checking was carried out to ensure the Razorback work had been completed at the Camden campus. None of the Camden campus staff that gave evidence to the Commission was contacted to verify that the work had been undertaken at their site. Neither of Ms Yandell's staff members reported ever attending the Camden campus, and so had to rely on Ms Yandell entirely. Subsequent to the allegations concerning Ms Yandell coming to light, CIS has introduced a procedure that requires invoices for work performed away from the main Camperdown and Darlington campuses to be certified by University staff at the campus where the service has been provided.

With respect to the offsite certification of invoices, it is therefore unnecessary for the Commission to make a recommendation. More generally, however, the Commission is of the view that the proper process for certifying invoices was poorly understood. As a result, many invoices were certified and approved for payment without any independent check to verify that the work charged for had been completed satisfactorily. This is a significant corruption risk for any organisation. It is noted that Colin Rockliff, Director CIS, acknowledged the

problem in CIS and gave the following evidence to the Commission:

At the moment the stamp...that goes on an invoice and it does say "I certify the works have been completed, I certify" et cetera, I think we need to actually run some courses as to what that actually means, when the person's putting their signature at the bottom what does that actually mean they're doing.

Mr Rockliff also recognised the need for training in procurement.

These views have led the Commission to make the recommendations that follow.

Recommendation 1

That staff from the University of Sydney's Campus Infrastructure Services (CIS) involved in the procurement of goods and services receive training in relation to the Purchasing Policy and procurement generally.

Recommendation 2

That all CIS staff with responsibility for certifying invoices be provided with information as to the nature and importance of their role in verifying that the work charged for has been completed satisfactorily.

Process factors

In addition to the staff competency issues outlined above, there were a number of process factors that allowed the corrupt conduct to occur. While the University had engaged Swan Services as the University-wide cleaning contractor, CIS practice was to routinely work around this contract, resulting in many smaller companies carrying out cleaning work. The control that exists from having one contractor was lost by the regular and accepted practice of engaging multiple, smaller companies. The need for cleaning services was difficult to determine, and when quotations were requested for work of lower financial value, no process existed for evaluating those quotations. The result was a loose system of control, so that when an emergency situation arose, Ms Yandell could nominate Razorback to undertake cleaning work, and that engagement could continue over numerous years.

Contract control systems

A practice had arisen within the University of working around the existing cleaning contract rather than dealing with any service problems. This approach provided an opportunity for corruption.

Swan Services was awarded a “whole-of-university” cleaning contract for the University of Sydney in 2005 and again from 1 January 2008 until the end of 2010. The contract included dispute resolution clauses, and a set of key performance indicators. Under the Swan Services contract, the University reserved the right to retain any other persons/entities to supply cleaning services.

The Commission was told that the University engaged many different companies to provide cleaning services across its various campuses. This situation appears to have led to widespread uncertainty as to which companies held an actual contract with the University.

In his statement, Mr Cox told the Commission that:

I am unsure who was providing cleaning services at the Camden campus. It may have been Razorback.

In fact, HW Cleaning provided cleaning services to the Camden campus, and also operated without a written contract. Mr Wilson stated that he had no reference list of contractors when certifying invoices, and Witness K1 expressed uncertainty as to which cleaning contractors were subject to written contracts.

There was a lack of clarity around who held a contract and what was provided for in that contract. Since the allegations were made, CIS has established an electronic contract register. It is therefore not necessary for the Commission to make a recommendation on this particular issue.

Provisions existed in the Swan Services contract for the company to undertake maintenance cleaning of the type undertaken by Razorback. Ms Yandell’s justification for the use of Razorback over Swan Services on the main campus related to the alleged poor performance of Swan Services. However, rather than deal with this under the clauses of the contract, work was directed by Ms Yandell to other companies (including Razorback).

Engaging other contractors to carry out work that could have been performed under the main contract unnecessarily fractured the University’s control over cleaning services. Mr Rockliff told the Commission that the University’s cleaning contract is up for renewal at the end of 2010. CIS intends to tighten the specifications of the tender and contract so as to ensure any exceptions in the performance of the contract are not deferred to another contractor in the first instance. This will remove the discretion available to CIS to engage another contractor for work that is covered by an agreement with a primary contractor. The Commission will provide advice on the preparations for the new tender, if requested. It is therefore not necessary for the Commission to make a recommendation on this issue.

Inability to determine need

When an organisation is unable to determine its need for a particular type of service or product, it is easier for corruption to occur. In this case, there was no consolidation of work requests in one location, making it impossible to check the organisation’s overall cleaning need.

All University of Sydney staff have access to the E-Service Desk system, and can use it to request additional non-routine cleaning work. This is then reviewed by CIS staff, and if they agree the work is required, a work order is generated and assigned to a contractor. However, in reality such requests are often received from a variety of sources (for example, phone calls and discussions in meetings), and are subsequently not recorded in the E-Service Desk. This means that there is no record of the work requested against which purchase orders or invoices can be cross-referenced. The absence of supporting documentation of this nature places managers that approve paperwork in a position where they are unable to rely on a work request to verify that the work is actually required.

None of the work undertaken by Razorback was listed in the E-Service Desk. The allocation of work to Razorback was handled separately, and solely by Ms Yandell. The Razorback work was therefore not linked to a service request from a University staff member. In the absence of all requests for non-routine cleaning work being recorded in the E-Service Desk, Ms Yandell’s line managers had no choice but to take Ms Yandell’s assurances that the work was actually required, as no paperwork was available to verify that the work was requested by an individual user.

Better use could be made of the E-Service Desk to assist managers in determining whether work is genuinely required. In giving evidence at the public inquiry, Mr Rockliff accepted that having a variety of ways in which additional services could be requested made it difficult to maintain controls on expenditure on contractors. He said that it would be preferable for all work requests to be made through the E-Service Desk, and that steps had been taken to ensure this occurred in the future.

The Commission therefore makes the following recommendation.

Recommendation 3

That CIS require all requests for non-routine or additional cleaning services to be made through the E-Service Desk.

Lack of a process for evaluation of quotations

While the Purchasing Policy required that quotations be obtained, it provided no guidance as to how they should be evaluated. As discussed in chapter 4, the Commission found that Ms Yandell manipulated the procurement processes for the ATP contract to favour Razorback. A significant factor that allowed Ms Yandell to do this was the absence of a process for evaluating quotations.

The Procurement Services Division of the University generally has no involvement in the procurement of items under \$200,000, and was not involved in the procurement process for cleaning services for either the Ross Street or ATP sites. Ms Yandell was therefore free to establish her own criteria for the evaluation of the quotations for both locations without any requirement to involve the other panel members. Furthermore, she could apply those criteria in a mechanical way, without regard to which quote represented the best overall value for money for the University.

The Commission accepts the evidence of Mr Banga, Director Procurement Services, that from a resource perspective it is not practicable for Procurement Services to be involved in the procurement of all goods and services under \$200,000. However, the absence of an established process or guidelines for the evaluation of quotations for goods and services with a value of less than \$200,000 continues to be a significant corruption risk for the University. Mr Banga told the Commission that Procurement Services is in the process of developing guidelines, tools and templates to be used in the evaluation of quotations, and proposes to introduce those new materials to CIS staff with a formal training program. Mr Rockliff has committed to work with Procurement Services in this endeavour and intends that use of the new materials by CIS staff be a mandatory requirement.

The Commission therefore makes the following recommendation.

Recommendation 4

That the Procurement Services Division of the University of Sydney develops clear processes and procedures for the procurement of goods, and for the evaluation of quotations under \$200,000.

Urgency and tight timeframes

The risk of corruption increases when decisions are made in emergency situations. Within CIS' weak system of few procedures, lack of adherence to routine processes, poor supervision and lack of understanding of proper processes by staff, an emergency was a ready opportunity for corruption. Urgency can be used as justification for

non-compliance with policy and procedures. In the case of the Vice Chancellor's office, a sudden withdrawal of services genuinely required an urgent response. Ms Yandell nominated Razorback to undertake the cleaning of the Vice Chancellor's office, and gave evidence that Razorback was initially asked to undertake the work for a four-week period in July 2007. Despite this, the purchase order requesting that Razorback undertake the work was approved for the remainder of 2007. At that point in time, Razorback had only been in existence since May 2007, had no history with the University, and no client references (although none was requested).

In addition to the remainder of 2007, Razorback's engagement continued throughout 2008 and 2009 without alternative quotations being obtained and without a written contract being entered into between Razorback and the University. What had commenced as an emergency arrangement had become an ongoing engagement.

The initial engagement to undertake cleaning services for the Vice Chancellor's office also gave Razorback an opportunity to obtain other work onsite. In October 2007, Ms Yandell was requested to provide a list of current University cleaning contractors to undertake work at the Quadrangle. Razorback was subsequently selected to undertake the work. Ms Yandell gave the following evidence to the Commission:

Q: *Razorback came to be on the list that you gave to Mr Kelly only because you had engaged them to take over Mr Brook's work on the consulting?*

A: *Correct*

Q: *And because you had engaged them initially on an emergency basis to clean the Vice-Chancellor's office?*

A: *Yes.*

Q: *In each case without disclosing your conflict of interest?*

A: *Yes.*

Q: *So their engagement in relation to those two matters became an opening for them to be engaged for other cleaning work at the university. Is that right?*

A: *Yes.*

The Commission is of the view that this situation was possible because no controls were in place to review engagements agreed on as a result of emergencies or exceptional circumstances. In giving evidence at the public inquiry, Mr Rockliff accepted that such a process would be appropriate and that it would be desirable to:



...put in place a proper contract so you just don't get this incremental creep that appears to have occurred in the past...

These views have led the Commission to make the following recommendation.

Recommendation 5

That CIS establishes processes to review any “emergency” service arrangements after a period of three months. Furthermore, if the service is required on an ongoing basis, alternative quotations should be obtained in accordance with the Purchasing Policy, and a written contract should be entered into with the service provider engaged.

Conclusion

Since the allegations against Ms Yandell became known, CIS has introduced a number of changes to their procedures. These changes, along with the implementation of the recommendations made in this report, will strengthen the procurement processes at CIS.

As part of the performance of its statutory functions, the Commission will monitor the implementation of the recommendations made in this report. CIS will be requested to provide the Commission with an implementation plan. The Commission will also request progress reports and a final report on the implementation of the recommendations. These reports will be posted 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 New South Wales, 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: Sections 8 and 9 of the ICAC Act

Sections 8 and 9 of the ICAC Act provide as follows:

8 General nature of corrupt conduct

- (1) 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.
- (2) Corrupt conduct is also any 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 could involve any of the following matters:
- (a) official misconduct (including breach of trust, fraud in office, nonfeasance, misfeasance, malfeasance, oppression, extortion or imposition),
 - (b) bribery,
 - (c) blackmail,
 - (d) obtaining or offering secret commissions,
 - (e) fraud,
 - (f) theft,
 - (g) perverting the course of justice,
 - (h) embezzlement,
 - (i) election bribery,
 - (j) election funding offences,
 - (k) election fraud,
 - (l) treating,
 - (m) tax evasion,
 - (n) revenue evasion,
 - (o) currency violations,
 - (p) illegal drug dealings,
 - (q) illegal gambling,
 - (r) obtaining financial benefit by vice engaged in by others,
 - (s) bankruptcy and company violations,
 - (t) harbouring criminals,
 - (u) forgery,
 - (v) treason or other offences against the Sovereign,
 - (w) homicide or violence,
 - (x) matters of the same or a similar nature to any listed above,
 - (y) any conspiracy or attempt in relation to any of the above.
- (3) Conduct may amount to corrupt conduct under this section even though it occurred before the commencement of this subsection, and it does not matter that some or all of the effects or other ingredients necessary to establish such corrupt conduct occurred before that commencement and that any person or persons involved are no longer public officials.
- (4) Conduct committed by or in relation to a person who was not or is not a public official may amount to

corrupt conduct under this section with respect to the exercise of his or her official functions after becoming a public official.

- (5) Conduct may amount to corrupt conduct under this section even though it occurred outside the State or outside Australia, and matters listed in subsection (2) refer to:
 - (a) matters arising in the State or matters arising under the law of the State, or
 - (b) matters arising outside the State or outside Australia or matters arising under the law of the Commonwealth or under any other law.
- (6) The specific mention of a kind of conduct in a provision of this section shall not be regarded as limiting the scope of any other provision of this section.

9 Limitation on nature of corrupt conduct

- (1) 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.
- (2) It does not matter that proceedings or action for such an offence can no longer be brought or continued, or that action for such dismissal, dispensing or other termination can no longer be taken.
- (3) For the purposes of this section:

applicable code of conduct means, in relation to:

- (a) a Minister of the Crown—a ministerial code of conduct prescribed or adopted for the purposes of this section by the regulations, or
- (b) a member of the Legislative Council or of the Legislative Assembly (including a Minister of the Crown)—a code of conduct adopted for the purposes of this section by resolution of the House concerned.

criminal offence means a criminal offence under the law of the State or under any other law relevant to the conduct in question.

disciplinary offence includes any misconduct, irregularity, neglect of duty, breach of discipline or other matter that constitutes or may constitute grounds for disciplinary action under any law.

- (4) Subject to subsection (5), 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 this section 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.
- (5) Without otherwise limiting the matters that it can under section 74A (1) include in a report under section 74, the Commission is not authorised to include a finding or opinion that a specified person has, by engaging in conduct of a kind referred to in subsection (4), engaged in corrupt conduct, unless the Commission is satisfied that the conduct constitutes a breach of a law (apart from this Act) and the Commission identifies that law in the report.
- (6) A reference to a disciplinary offence in this section and sections 74A and 74B includes a reference to a substantial breach of an applicable requirement of a code of conduct required to be complied with under section 440 (5) of the *Local Government Act 1993*, but does not include a reference to any other breach of such a requirement.



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