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ICAC

INDEPENDENT COMMISSION
AGAINST CORRUPTION



INVESTIGATION INTO ALLEGATIONS THAT A MANAGER AT THE UNIVERSITY OF TECHNOLOGY, SYDNEY (UTS) SOLICITED AND ACCEPTED MONEY, GIFTS AND OTHER BENEFITS FROM UTS CONTRACTORS

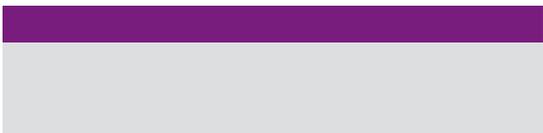
ICAC REPORT
MARCH 2013

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ISBN 978 1 921688 40 9

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Mr President
Madam Speaker

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

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

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

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

Yours sincerely



The Hon David Ipp AO QC
Commissioner

Contents

Summary of investigation and results	5	Chapter 3: Mr Faysal and Targetti Australia Pty Ltd	28
Results	5	Travel provided by Targetti	28
Recommendation that this report be made public	7	UTS policies that applied	29
Chapter 1: Background	8	Why was the travel provided?	31
How the investigation came about	8	Corrupt conduct	32
Why the Commission investigated	8	Section 74A(2) statement	33
Conduct of the investigation	9	Chapter 4: Outside work and confidential information	34
The public inquiry	9	Outside work	34
The University of Technology, Sydney	10	Corrupt conduct	37
Nabil Faysal	10	Section 74A(2) statement	38
UTS policies	10	Disclosure of confidential information	38
Chapter 2: Solicitation of money and gifts from UTS contractors and suppliers	14	Chapter 5: Corruption prevention	42
How the allegations involved corrupt conduct	14	A changing environment	42
Mr Faysal's role at UTS	14	Mr Faysal's return to work	42
Solicitation of money	15	What can UTS learn?	43
Findings of fact	21	Procurement at UTS	44
Solicitation of gifts and other benefits	22	Appendix 1: The role of the Commission	45
Corrupt conduct	24	Appendix 2: Making corrupt conduct findings	46
Section 74A(2) statements	26		

Summary of investigation and results

Results

This investigation by the Independent Commission Against Corruption (“the Commission”) examined allegations that, between 2006 and 2012, Nabil Faysal, a manager at the University of Technology, Sydney (UTS), solicited and accepted money, gifts and other benefits from UTS contractors that he dealt with in the course of his work. It also examined allegations that Mr Faysal undertook private work for a company that was a UTS contractor or was interested in obtaining work at UTS, knowing that this created a significant conflict of interest, and that he improperly disclosed confidential UTS information to two other UTS contractors.

Chapter 2 of the report contains findings that four UTS contractors, namely Cady Pty Ltd, KB Electrics Pty Ltd, Rega Controls Pty Ltd and Wayne Hood, paid a total of \$119,325 to Mr Faysal’s private company between April 2006 and May 2008, even though Mr Faysal did not do any of the work that purportedly led to these payments being made. The contractors made the payments at Mr Faysal’s request because they thought that Mr Faysal would use his position to harm their business with UTS if they did not pay him. Three of the contractors were issued with false invoices by Mr Faysal to justify the payments made to his company.

The amounts paid to Mr Faysal by the four contractors were \$20,400 (Cady Pty Ltd), \$14,000 (KB Electrics Pty Ltd), \$43,620 (Rega Controls Pty Ltd), and \$41,305 (Mr Hood).

All of these contractors worked regularly for UTS and received substantial income from that work. From 2006 to 2012, Cady Pty Ltd invoiced UTS for work in the amount of \$3,231,304.60, KB Electrics Pty invoiced UTS for \$2,038,813.81, Rega Controls Pty Ltd invoiced UTS for \$3,040,945.34 and, from 2008 to 2012, Mr Hood invoiced UTS for \$9,504,027.90.

Findings are also made that Mr Faysal accepted \$41,685.50 for payment of overseas travel for himself and his family and an iPad computer from Ramsey Franjeh of Rega Controls Pty Ltd, and a chair worth over \$2,500 from another UTS contractor in circumstances where he was involved in procurement activity concerning the allocation of work to that contractor.

Findings are made in chapter 2 that Mr Faysal engaged in corrupt conduct by soliciting and accepting the money, travel and gifts set out above. A finding is also made that Mr Hood engaged in corrupt conduct by providing the payments listed above to Mr Faysal. The other four contractors dealt with in chapter 2, unlike Mr Hood, gave full and frank evidence at the public inquiry about their involvement with Mr Faysal. It is in the public interest for the Commission to encourage witnesses to tell the truth about matters it is investigating and, in the circumstances, the Commission has made no findings of corrupt conduct against those four contractors.

Chapter 3 of the report contains findings that Mr Faysal accepted overseas travel worth \$61,568.19 from another company, Targetti Australia Pty Ltd (“Targetti”), between 2006 and 2011. During that period, Targetti was a supplier to UTS, and counted UTS as one of its more valuable clients. Findings are made that Mr Faysal did not disclose to UTS the receipt of travel paid for by Targetti, and that he accepted the paid travel knowing that it was a significant breach of applicable UTS policies to do so because of his influence and involvement in UTS procurement. A finding of corrupt conduct is made against Mr Faysal in respect of his receipt of this travel. Counsel Assisting the Commission did not submit that a finding of corrupt conduct be made against any of the Targetti directors and, in these circumstances, no such finding has been made.

Chapter 4 of the report contains findings that Mr Faysal undertook private work for Webster Wagner Engineering

Pty Ltd, despite knowing that it was a conflict of interest to do so as the company was a UTS contractor or interested in work at UTS, and that he deliberately failed to disclose this conflict of interest. The chapter also contains findings that Mr Faysal improperly disclosed confidential UTS information to assist particular contractors win work at UTS. Findings are made that these actions by Mr Faysal amounted to corrupt conduct.

Statements pursuant to section 74A of the *Independent Commission Against Corruption Act 1988* (“the ICAC Act”) are made in the report that the Commission is of the opinion that consideration should be given to obtaining the advice of the Director of Public Prosecutions with respect to the prosecution of Mr Faysal for offences of soliciting and receiving corrupt benefits pursuant to section 249B of the *Crimes Act 1900* and also that consideration should be given by UTS to taking disciplinary action against Mr Faysal with a view to his dismissal in the event that he succeeds in being reinstated to the service of UTS following the proceedings he has commenced in Fair Work Australia contesting his dismissal.

Mr Faysal was an experienced and senior staff member at UTS. At the time of his return to work in July 2010, following a period of suspension, the area in which he worked was undergoing significant change and restructure as a result of the commencement of a billion-dollar project to refurbish UTS facilities. One consequence was that there was some confusion about the nature of his role.

Such an environment created opportunities for corruption by Mr Faysal. Mr Faysal was able to use his position, seniority and expertise to influence UTS procurement staff to direct work to companies that might provide him with personal benefits. This was despite the fact that Mr Faysal was investigated and counselled in July 2010 for breaches of UTS policies, including conflict of interest issues relating to his association with a UTS contractor.

In the Commission’s view, a properly constructed management plan for Mr Faysal’s return to work after his suspension would have helped to minimise the occurrence of corrupt activities by him after July 2010. The continuing development of UTS’ current program to identify and implement procurement best practice, and communicating UTS’ procurement and probity requirements to contractors, would also minimise the risk of conduct similar to Mr Faysal’s occurring in the future.

Chapter 5 contains the following corruption prevention recommendations:

Recommendation 1

That UTS employs strategies, such as return to work management plans, to address any residual risks associated with staff returning to duties and to ensure an appropriate level of support for line managers with regard to overseeing a plan and/or other strategies.

Recommendation 2

That UTS continues its program to identify and implement procurement best practice for supplier and contractor panels and other supplier agreements.

Recommendation 3

That UTS develops a strategy to engage and communicate with suppliers and contractors regarding UTS procurement and probity requirements.

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

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

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

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

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

Recommendation that this report be made public

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

Chapter 1: Background

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

How the investigation came about

In February 2011, the Commission commenced an investigation after receiving an anonymous complaint that Nabil Faysal, then the manager of engineering services in the Facilities Management Office (FMO) of UTS, had received illicit payments from persons or companies contracted to provide services to UTS. The investigation later examined whether Mr Faysal and members of his family might also have corruptly received other benefits from such persons or companies.

Why the Commission investigated

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

- i. *corrupt conduct, or*
 - ii. *conduct liable to allow, encourage or cause the occurrence of corrupt conduct, or*
 - iii. *conduct connected with corrupt conduct,*
- may have occurred, may be occurring or may be about to occur.*

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

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

If Mr Faysal or members of his family had received illicit payments or benefits from contractors to UTS in return for Mr Faysal exercising his public official functions to favour those contractors, this could amount to corrupt conduct as it could involve conduct that constitutes or involves the dishonest or partial exercise of his official functions under section 8(1)(b) of the ICAC Act.

For the purposes of section 9(1)(a) of the ICAC Act, such conduct may constitute or involve a criminal offence, being an offence of accepting corrupt commissions or rewards pursuant to section 249B of the *Crimes Act 1900* ("the Crimes Act"). It might also constitute or involve a disciplinary offence within section 9(1)(b) of the ICAC Act, being breaches by Mr Faysal of the provisions of UTS' code of conduct and its purchasing policy concerning conflicts of interest, as well as the prohibition in UTS' gifts and benefits policy against accepting gifts over the value of \$250. For the purposes of section 9(1)(c) of the ICAC Act, the conduct could also constitute or involve reasonable grounds for dismissal, dispensing with the services of or otherwise terminating the services of Mr Faysal.

The Commission also took into account the senior position held by Mr Faysal and that the alleged conduct involved an abuse of his position in the area of procurement, which is one of the main areas where corruption occurs in the NSW public sector.

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

Conduct of the investigation

During the course of the investigation the Commission:

- interviewed and/or obtained statements from a number of persons, including UTS employees and contractors to UTS
- obtained documents from various sources by issuing 69 notices under section 22 of the ICAC Act
- executed two search warrants issued under section 40 of the ICAC Act
- conducted 14 compulsory examinations.

The public inquiry

Prior to deciding to hold a public inquiry, the Commission reviewed the information that had been gathered in the investigation. After taking into account each of the matters set out in section 31(2) of the ICAC Act, the Commission determined that it was in the public interest to hold a public inquiry for the purposes of its investigation. In making that determination, the Commission had regard to the following considerations:

- procurement is a high risk area for public authorities; a public inquiry into the allegations would expose the particular corrupt conduct involved, and raise public awareness of the issues involved in the area of procurement
- the allegations were serious as they involved a longstanding and senior manager at UTS who had allegedly engaged in the conduct over an extended period of time and had received substantial money and benefits
- the conduct was alleged to have occurred notwithstanding the existence of policies, procedures and processes that might have been expected to minimise corrupt conduct of the type

alleged; it was in the public interest to establish why the foregoing did not prevent or detect the alleged corrupt conduct, and so assist in identifying possible reforms

- while there was a risk of prejudice to the reputations of Mr Faysal, the UTS contractors involved and UTS itself, that prejudice was not undue in light of the seriousness of the alleged corrupt conduct, the cogency of the evidence then available to the Commission, and the public interest in exposing conduct of the kind in question
- public exposure of the matter may serve as an important deterrent.

Assistant Commissioner Theresa Hamilton presided at the inquiry and Jason Downing acted as Counsel Assisting the Commission. The public inquiry was conducted over four days, from 24 to 27 September 2012. Mr Faysal and eight other witnesses gave evidence at the inquiry.

Following the conclusion of the public inquiry, Counsel Assisting the Commission prepared submissions setting out the evidence, and identifying the findings and recommendations the Commission could make based on that evidence. These submissions were provided to the relevant persons, including Mr Faysal, and submissions were invited in response. Mr Faysal requested and was given an extension of time to reply to those submissions. He ultimately elected not to make any submissions in reply to the Commission. All submissions received were taken into account in preparing this report.

Mr Faysal did not impress the Commission as a witness of credit. In many instances, Mr Faysal's evidence was implausible if not incredible, and contradicted by the evidence of other witnesses or contemporaneous documents. For that reason, the Commission has approached his evidence with considerable caution unless it is corroborated by other reliable evidence.

The University of Technology, Sydney

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

UTS has significant capital assets in the form of buildings and teaching facilities in the Sydney metropolitan area. Until 2010, the Facilities Management Unit (FMU) of UTS was responsible for operational matters relating to these facilities, such as building services, maintenance, small works projects and refurbishments, cleaning and security.

In 2010, the FMU was divided into the Project Management Office (PMO) and the FMO. This new structure came about as a result of the commencement of works under a multi-million dollar project to expand and redevelop a number of buildings and facilities called the City Campus Master Plan Program of Work.

The FMO continued to look after the day-to-day operations of UTS, while the PMO was intended to focus on delivering the capital works specified in the city campus master plan.

Nabil Faysal

Mr Faysal holds a bachelor of engineering degree and is a mechanical engineer by profession. On 1 November 1999, he began work within the FMU at UTS as a senior mechanical engineer and continued in that capacity through to 29 March 2007.

From 30 March 2007 to 9 August 2009, Mr Faysal was acting manager of accommodation and refurbishment within the FMU and responsible for overseeing a number of project managers working within the unit. From 10 August 2009 to 23 March 2010, he held the position of manager of engineering services, again within the FMU.

From 24 March 2010 to 11 July 2010, Mr Faysal was suspended on full pay while UTS conducted an investigation into his conduct. The investigation concerned allegations of misconduct, including the incorrect application of UTS' procurement policy and undertaking work outside UTS as a consultant for a company, Webster Wagner Engineering Pty Ltd ("Webster Wagner Engineering"), which had business dealings with UTS.

On 2 July 2010, Mr Faysal was formally censured in relation to breaches of UTS' code of conduct, outside work policy and procurement policy, and counselled. He returned to work on 12 July 2010 as the manager of

engineering services, and continued in that position until his employment was terminated on 3 April 2012.

Throughout the period of his employment at UTS, Mr Faysal was both a full-time UTS employee and a director and shareholder of a company known as NA & CW Investments Pty Ltd ("NA & CW Investments"). The other director was Mr Faysal's wife, Chafica Faysal.

UTS policies

As a UTS employee, Mr Faysal was required to comply with a number of UTS policies.

Code of conduct

On 11 April 2002, UTS approved a code of conduct, applicable to all staff ("the 2002 Code"). The relevant provisions of the 2002 Code are set out below.

Clause 5(b) of the 2002 Code provided:

Personal interests

Staff are expected not to use or manipulate their official position in order to gain personal benefit. For example, arranging paid overseas travel ostensibly for work purposes as a means to undertake personal study or to visit relatives.

Clause 9 of the 2002 Code provided:

Acceptance of gifts and benefits

It is unethical for us as staff to solicit any gifts, benefits or additional money for ourselves or another employee. Nor should we accept gifts or benefits which might in any way compromise or influence us in our official capacity. We must not influence or try to influence our colleagues by giving them gifts, or other inducements.

As a general rule, a line can be drawn in situations where a gift could be seen by others as an inducement which could place a staff member under an obligation. Gifts of nominal value generally used for promotional purposes by the donor or moderate acts of hospitality may be accepted. Often it is difficult for individuals to determine whether they have been compromised through receipt of a gift or benefit. Gifts of more than nominal value and benefits or other inducements offered or received by staff should be reported to the staff member's supervisor. If in doubt, guidance should be sought from supervisor(s) in specific instances.

Clause 10 of the 2002 Code provided:

Outside work and private practice

UTS staff are permitted under certain conditions to engage in outside work, provided such employment does not adversely affect their work performance at the University or does not give rise to a conflict or potential conflict of interest. (Human Resources policy "Outside Work" sets out the conditions under which staff may undertake consulting and private professional practice).

From 17 August 2011, the 2002 Code was replaced with a new code of conduct ("the 2011 Code"). The 2011 Code applied to all staff, and also extended to UTS affiliates. Affiliates included contractors and any other persons appointed or engaged by UTS to perform work, duties or functions for UTS.

Section 4 of the 2011 Code set out a number of broad principles relating to personal and professional behaviour of UTS staff and affiliates, including:

- (c) *act in the best interests of the University and in accordance with UTS values*
...
- (e) *make decisions reasonably and without bias using the factual information available*
- (f) *maintain timely, adequate and appropriate documentations to support decisions made*
...
- (h) *be familiar with, implement and comply with all University policies, directives, procedures and guidelines*

Section 4.4 of the 2011 Code dealt with conflicts of interest:

Conflicts of interest can be actual, perceived or potential.

4.4.1 Types of conflict of interest

Conflicts of interest may include, but are not limited to, the following:

(a) Financial interests

An example of a financial conflict of interest which may arise is where a Staff member or Affiliate who has a financial interest in an external entity (eg company, sole trader, government authority, etc) is in a position to influence contracts between that entity and the University.

(b) Personal interests

Staff and Affiliates are expected not to use or manipulate their official position in order to gain personal benefit.
...

4.4.2 Disclosure and resolution of conflicts of interest

Staff and Affiliates are required to disclose to their supervisor immediately any financial, personal or other interest or potential interest which could directly or indirectly compromise the performance of their work, duties or functions or conflict with the University's interests, and take action to avoid the conflict. (In the case of an Affiliate, the disclosure should be made to the supervisor or contact person designated under the Affiliate's contract or instrument of appointment or engagement.)

Procurement policies

UTS had a procurement policy that was approved on 5 June 2006. It was revised, with the new version taking effect on 7 December 2011. It applied to the whole process of procurement, including quotes and tenders, and to the supply of all goods and services acquired by UTS.

The policy set out a number of key principles that applied to all procurement activities, including:

Principle 1 – Value for Money

"Value for money" is the core principle that underpins the procurement process so as to ensure the best available procurement outcome is achieved. "Value for money" is determined by evaluating all proposals for a particular procurement activity against the applicable evaluation criteria and assessing all relevant risks, costs and benefits on a whole of life basis. A decision on price alone does not represent best value for money.

This principle shall be a major underlying factor in the choice of a supplier, subject to the goods or services being of satisfactory quality and fit for the purpose for which they are required.

Principle 2 – Open and Effective Competition

The principle of open and effective competition will be used to achieve efficiency, innovation and choice and to provide transparency and probity to the University procurement process.
...

Principle 3 – Probity and Ethical Behaviour

The principle of probity and ethical behaviour governs the conduct of all procurement activities. All University

delegates who have the authority to procure goods and services must comply with the standards of integrity, probity, professional conduct, and ethical behaviour as stated below:

- *To deal fairly, impartially and consistently with all suppliers;*
- *To keep confidential all sensitive information obtained as part of the procurement process;*
- *To declare any potential conflict of interest prior to the commencement of a procurement activity and abstain from any procurement activity where it has been deemed that a perceived or actual conflict of interest exists;*
- *To ensure that the entire procurement process is documented in such a way as to demonstrate that decisions were made in accordance with these procurement principles.*

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

- an open tender process or a selective tender process was required for the acquisition of goods or services or capital works over the value of \$100,000
- a minimum of three written quotations was required for goods or services where the value was from \$50,001 to \$100,000
- a minimum of two written quotations was required for goods or services where the value was from \$10,001 to \$50,000
- a minimum of one quotation was required where the value was from \$2,000 to \$10,000
- quotations were not required for purchases of items less than \$2,000.

These requirements did not apply to procurements that were covered by a preferred supplier agreement (except where there was more than one preferred supplier for the particular good or service). There were no preferred supplier arrangements between UTS and the contractors that are discussed in this report.

The quotation and tender requirements did not apply where there was only a single source or specific or unique supplier. The vice-chancellor or a member of the UTS executive was required to authorise the procurement if that was the case. The procurements that are discussed in this report did not involve single source or specific or unique suppliers.

Section 5.7 and 5.9 of the policy set out a number of matters designed to ensure the fairness of the quotation and tender process.

Section 5.7 provided:

Provision of quotation / tender documentation to tenders

All quotation providers / tenderers must be provided with the same documentation relating to the proposed procurement. If a quotation provider / tenderer requires further information or clarification that may be pertinent to other tenderers, then the University should provide that information to all quotation providers / tenderers.

Section 5.9 provided:

Confidentiality and other ethical considerations

Probity and ethical behaviour are essential at all stages of the quotation / tendering process including the receipting and processing of tenders. Subject to 5.12 below [relating to providing feedback to unsuccessful parties], no information provided by a quotation provider / tenderer relating to a quotation or tender should be divulged to another quotation provider / tenderer at any stage during the process or after it has concluded.

Outside work policies

UTS' outside work policy was approved on 7 February 2002. In 2009, the policy was superseded by an outside work directive ("the 2009 Directive"). The policy and directive provided a framework for UTS to approve the undertaking of outside work by UTS staff (including professional practice and private consulting). They also set out conditions for undertaking outside work and the rights and obligation of staff and UTS in respect of such work.

All outside work was required to be approved by an appropriate supervisor. Approval for professional practice (as distinct from private consulting) would normally be given only where a staff member held a part-time appointment or was prepared to convert to a part-time appointment. Private consulting under the policy had no such restriction.

In both cases, the supervisor had to be satisfied that the proposed work would not be an actual or potential conflict of interest with, or contrary to, the best interests of UTS.

The 2009 Directive stated:

Outside work is not a right of staff but an activity which is undertaken with obligations on the staff member to perform satisfactorily and ensure that outside work does not interfere with the efficient discharge of University employment responsibilities.

In undertaking outside work staff members must be careful to avoid any real or apparent conflict of interest with the University including work that may be seen as in competition with the University. Outside work should be in the interest of the University.

The outside work guidelines also stated in relation to private consulting that a supervisor should ensure that there would be no impact on the staff member's effectiveness in the workplace and that the staff member was performing at a satisfactory level. Generally, outside work was to be done outside normal work commitments and, at least in relation to academic staff, should not exceed one work day per week or 48 working days per year on such work for a full-time staff member.

The 2009 Directive provided:

5.1.1.2 Support staff and senior staff in non-academic aligned roles

For full-time, part-time and part-year support or senior staff, it is expected that outside work will not impact adversely on the performance of their duties at UTS. In most cases, this will preclude undertaking outside work during normal working hours.

The directive set out various criteria to be considered when approving outside work, including the following:

- (b) *The outside work activity will not interfere with the efficient discharge of the staff member's employment obligations at UTS*
- (c) *The staff member is performing his/her work within the University satisfactorily*
- ...
- (e) *The staff member will for the duration of the outside work be careful to avoid any real or apparent conflict of interest with the University, including involvement in work that may be seen as in competition with the University.*

The 2009 Directive also specified that a staff member must "demonstrate that they will manage on an ongoing basis any real or perceived conflict of interest with the University".

Gifts and benefits policies

UTS had a gifts and benefits operational directive that came into effect on 1 May 2006. It stated that it was "not appropriate for university employees to be offered or to accept gifts and benefits that affect, or may be seen to be likely to affect, the performance of their official duties".

A gift or benefit meant items received by a UTS employee in the course of their official duties. The policy also covered gifts and benefits received by an immediate family member or close associate of a UTS employee that might reasonably be attributed to an employee's duties or association with UTS.

All gifts and benefits were required to be declared in writing and submitted to UTS' Governance Support Unit. The policy stated that all significant gifts (valued between \$50 and \$250) and major gifts (valued over \$250) were the property of UTS.

The policy set out standards for deciding whether a gift or benefit should be accepted, including that:

- the gift or benefit would not influence, or have the potential to influence, a UTS employee in such a way as to compromise or appear to compromise the integrity and impartiality of a UTS employee, or to create a conflict of interest or the reasonable perception of a conflict of interest
- the acceptance of the gift or benefit is not related to advice or decisions about awarding contracts
- any obligation, or potential obligation, implied in accepting a gift or benefit of more than nominal value has been assessed by a supervisor as not compromising the integrity and impartiality of UTS.

The policy required gifts and benefits to be rejected in the following circumstances:

- the gift or benefit is intended or is likely to cause the recipient to act in a partial manner in the course of their duties
- a reasonable observer would think that the recipient may be under obligation to act in a partial manner.

The policy indicated that decisions about whether a gift or benefit should be accepted would be made by a supervisor or a more senior person.

Chapter 2: Solicitation of money and gifts from UTS contractors and suppliers

This chapter examines the circumstances in which Mr Faysal received money, gifts and other benefits from contractors to UTS.

How the allegations involved corrupt conduct

The Commission examined allegations that Mr Faysal took advantage of his official functions to solicit money, gifts and benefits from UTS contractors for him and his family, knowing that the contractors would accede to his requests because they believed that he was in a position to threaten or improve their business with UTS.

If these allegations were true, Mr Faysal's conduct would amount to corrupt conduct under the ICAC Act as conduct that came within section 8(1)(a) of the ICAC Act, in that it adversely affected or could adversely affect, either directly or indirectly, the honest or impartial exercise of official functions by Mr Faysal.

It was also conduct that was not excluded by section 9 of the ICAC Act, as it could constitute or involve:

- a criminal offence within section 9(1)(a), being an offence pursuant to section 249B of the Crimes Act
- a disciplinary offence within section 9(1)(b), being breaches of the provisions of UTS' code of conduct, gifts and benefits policy and procurement policy relating to declaring and avoiding conflicts of interest and soliciting and accepting gifts
- reasonable grounds for dismissing, dispensing with the services of or otherwise terminating the services of Mr Faysal within section 9(1)(c).

Mr Faysal's role at UTS

Mr Faysal told the Commission that he generally had little or no responsibility for, or influence in, the process of recommending and allocating contracts.

Between 1999 and 2007, Mr Faysal held the position of senior mechanical engineer. He said that his role was limited to providing technical advice.

Between 2007 and 2009, Mr Faysal was the acting manager of accommodation and refurbishment, and held a number of financial delegations. He claimed that he merely "rubber stamped" the procurement recommendations put before him, and never declined or queried those recommendations.

After returning from suspension in mid-2010, Mr Faysal held the position of manager of engineering services until he was dismissed. He said that his role was again limited to providing advice only, primarily to the PMO in respect of the city campus master plan. He said that he had no involvement at all in procurement from that time onwards. That also appeared to be the understanding of the deputy vice-chancellor, Patrick Wood, who stated he thought that Mr Faysal was "not to have any further ability to influence or procure" at UTS after he returned to work in July 2010.

The Commission is satisfied, however, that Mr Faysal exercised significant influence in UTS' procurement process throughout his employment, including in the making of recommendations regarding tenders and quotes. The Commission is also satisfied that this remained the case after he returned from suspension in July 2010.

Throughout his employment, Mr Faysal held a senior role within the facilities management area of UTS. He was senior to the project managers who were responsible for delivering UTS projects and managing procurement for their projects. While responsibility for project procurement usually lay with the project managers, Mr Faysal's role included

providing advice to them and others that could significantly influence what they recommended.

As senior mechanical engineer, then manager of accommodation and refurbishment, and finally manager of engineering services, Mr Faysal's role included advising and sometimes supervising project managers. His expertise in the area of mechanical engineering was well regarded, and his opinions and advice carried significant weight in light of his seniority.

Mr Faysal himself told the Commission that his advice could include who would be the appropriate contractor to carry out certain work or who should be asked to provide a tender or quotation. He also approved lists of subcontractors who might be asked to quote or tender for work.

On at least one project, Mr Faysal provided advice to the project manager resulting in a change in the work and the supplier contracted. The eventual supplier in that case was Targetti Australia Pty Ltd ("Targetti"), the subject of the next chapter. Clearly, Mr Faysal was in a position to affect procurement choices by the FMU, and later the PMO and the FMO, whether or not he was formally responsible for any specific procurement decisions or held any formal delegations.

As will be seen below, companies doing business with UTS firmly believed that Mr Faysal was in a position of influence in relation to the allocation of contracts, and this was the reason that they provided Mr Faysal with money, gifts and other benefits at his request.

Solicitation of money

Between early 2006 and mid-2008, four UTS contractors paid Mr Faysal a total of \$119,325. The payments were made to Mr Faysal's private company, NA & CW Investments. The contractors and the payments they made were:

- Cady Pty Ltd – \$20,400
- KB Electrics Pty Ltd – \$14,000
- Rega Controls Pty Ltd trading as Rega Controls – \$43,620
- Wayne Hood – \$41,305.

It was not in dispute that Mr Faysal received that money nor that the payments were made by contractors who Mr Faysal knew were regularly engaged by UTS or supplying goods to UTS. The issue for determination by the Commission was the purpose of those payments.

Mr Faysal said that the payments were mostly for professional services he provided privately to the contractors through his company. Invoices issued by NA & CW Investments purported to set out the details of that work. One of the contractors, Mr Hood, also gave evidence confirming that Mr Faysal undertook work for him as described in the invoices.

The remainder of the payments, being payments amounting to \$17,300, were said to be for corporate gifts supplied by Mr Faysal's wife to one of the contractors, Rega Controls Pty Ltd. A number of invoices purported to set out the goods supplied. Mrs Faysal gave evidence to the Commission confirming that the corporate gifts were supplied.

Other cogent evidence before the Commission, however, told a different story.

The principals of three contractors, Michael Cady of Cady Pty Ltd, Keith Boobyer of KB Electrics Pty Ltd and Ramsey Franjeh of Rega Controls Pty Ltd, each told the Commission that the payments listed above were made by them because Mr Faysal asked them for money. They gave evidence that Mr Faysal performed no work in return for the money. Mr Cady and Mr Franjeh told the Commission that the invoices issued to them by Mr Faysal

were simply intended to conceal the true circumstances of the payments. No invoices appear to have been issued in relation to Mr Boobyer. All three contractors believed that Mr Faysal was in a position to affect their business with UTS adversely. For the reasons outlined above in relation to Mr Faysal's position at UTS, the Commission is satisfied that that was indeed the case.

Mr Cady and Cady Pty Ltd

Cady Pty Ltd is a small private company providing air conditioning and electrical services. Its principal, Mr Cady, is a qualified electrician and air conditioning mechanic. He had carried out work for UTS since 1997. In the period from 2006 to 2012, his company invoiced UTS for \$3,231,304.60. He first met Mr Faysal in or around 2002 or 2003.

Between 6 April 2006 and 17 October 2007, Mr Cady made five payments to Mr Faysal's company totalling \$20,400, as follows:

Date	Payment
6 April 2006	\$2,200
10 November 2006	\$4,000
23 February 2007	\$4,000
18 April 2007	\$1,200
17 October 2007	\$9,000
Total	\$20,400

Invoices issued by NA & CW Investments stated that these amounts were for Mr Faysal's engineering services on projects for Mr Cady outside UTS.

Mr Cady told the Commission, however, that Mr Faysal had never done any work for him, and did not do any of the work described in the invoices. He said that the invoices were to "cover up" the fact that he was giving money to Mr Faysal so that it would "look like it was all legit".

Mr Cady told the Commission that the payments came about because Mr Faysal had asked him for money on a number of occasions, saying to him, "look I'm short of cash, I need some money". He paid Mr Faysal whatever might be consistent with any projects he had on hand that Mr Faysal was supposed to be working on. He said that he paid the money because he thought that he might not be invited to quote or tender for UTS work in the future if he refused, although Mr Faysal had not directly threatened him with any consequences if he did not pay.

Mr Cady believed, however, that Mr Faysal had a significant role in deciding who might be invited to tender

for UTS work because of his position. He was aware that Mr Faysal held a senior engineering position, and had noticed that Mr Faysal organised and advised the project managers. He knew that there were many contractors "bashing on the door trying to get into UTS" that Mr Faysal might favour if he refused to pay. As a result, he did not want to "rock the boat" with Mr Faysal by refusing to pay.

Mr Cady had been working steadily at UTS, and the university provided most, if not all, of the work that he was doing around that time. He did not want to lose the UTS work because it would be difficult for him to find other work due to his age. He was concerned that he might well lose that work if he did not pay Mr Faysal what he asked.

Mr Boobyer and KB Electrics Pty Ltd

Mr Boobyer is an electrician by trade, who works through his private company, KB Electrics Pty Ltd. He started doing work at UTS in about 1994. In the period from 2006 to 2012, his company invoiced UTS for \$2,038,813.81. Mr Boobyer first met Mr Faysal in or about 2004.

Between 19 April 2006 and 15 November 2007, Mr Boobyer made five payments totalling \$14,000 to Mr Faysal's company on the following occasions:

Date	Payment
19 April 2006	\$2,000
21 June 2006	\$2,000
10 November 2006	\$2,000
13 April 2007	\$4,000
15 November 2007	\$4,000
Total	\$14,000

Mr Faysal claimed that the above payments were for work he did for Mr Boobyer, and that he had issued invoices for his work. There were no invoices produced or put before the Commission from Mr Faysal. Mr Boobyer said that he had never received any invoices from Mr Faysal.

In any event, Mr Boobyer told the Commission that Mr Faysal had never performed any work for him or his company at any time in return for the payments.

Mr Boobyer said that each of the payments came about because Mr Faysal "just brought it up", saying something on the lines of "I need a cheque for this" and telling him, Mr Boobyer, how much he wanted. He did not recall Mr Faysal telling him why he needed the money.

Mr Boobyer paid Mr Faysal the money because he thought it would be like "insurance" to stay on the list of contractors

quoting for UTS work. He had “been around a long time”, and said he was not altogether surprised by such a request. He said, however, that there was no threat made or anything said about what might happen if he refused the request. Mr Boobyer nonetheless assumed Mr Faysal might ensure that he was removed from UTS’ contractors list if he did not make the payments.

Mr Boobyer believed that Mr Faysal was in a position to do that. At that time, he was dealing with Mr Faysal quite regularly. He thought Mr Faysal held a supervisory role and was senior to UTS project managers, and may even have been acting as “director” around the time that the payments were requested. When Mr Boobyer made the last two payments in 2007, Mr Faysal was in fact the acting manager of accommodation and refurbishment.

By 2006, UTS work had become a considerable part of Mr Boobyer’s business. He told the Commission that he had given up a lot of work elsewhere to keep on doing UTS work. It would have been a considerable blow to his business if he were no longer invited to quote or tender for UTS work, and he made the payments in these circumstances.

Mr Franjeh and Rega Controls Pty Ltd

Mr Franjeh formed his company, Rega Controls Pty Ltd, in March 2004. Its business was to supply automation controls for building management systems, and related services, such as design, installation, servicing and maintenance.

From 2006 to 2012, his company invoiced UTS for \$3,040,945.34. Mr Franjeh considered UTS to be a “very important client” of Rega Controls Pty Ltd.

Between 1 December 2006 and 11 October 2007, Rega Controls Pty Ltd made payments totalling \$43,620 to Mr Faysal’s company on four occasions, as follows:

Date	Payment
1 December 2006	\$4,500
31 May 2007	\$4,120
11 October 2007	\$17,300
11 October 2007	\$17,700
Total	\$43,620

Invoices issued by NA & CW Investments to Rega Controls Pty Ltd purported to account for the payment of \$35,000 on 11 October 2007. These invoices stated that \$17,700 was for Mr Faysal’s professional services on three projects outside UTS, and \$17,300 was for various corporate gift items, such as notebooks, mugs, pens, stationery, and various items of clothing, supplied by Mr

Faysal’s company. No invoices were produced in relation to the first two payments.

Mr Franjeh told the Commission that there was no work done by Mr Faysal at all for his company, and there was no work done as described in the invoices. He also told the Commission that there were no corporate gifts supplied to him or his company by Mr Faysal’s company. Mr Franjeh said that all of the invoices issued to him by Mr Faysal were false and did not relate to any real work or real product being supplied.

Mr Franjeh said that the payments came about after Mr Faysal told him that he needed money. So far as he could recall, it was Mr Faysal who suggested using company invoices to “cover” the payments, and he asked Mr Franjeh for the names of projects to prepare the false invoices.

In relation to the October payments, Mr Franjeh said Mr Faysal told him that he wanted to buy a car for his wife and “needed \$35,000 addition[al]” funds. When Mr Franjeh told Mr Faysal that he could not justify that amount for Mr Faysal’s purported engineering services on his projects, Mr Faysal suggested he would use his wife’s gifts business to justify the rest.

Mr Faysal did, in fact, purchase a vehicle for \$49,500 a few days after the October payments were made and it was registered in Mr Faysal’s and his wife’s name.

Mr Franjeh told the Commission that he decided to make the payments because he was “scared” of what might happen to his UTS business if he did not pay Mr Faysal. His company was relatively young and small, and in the process of establishing itself.

Mr Franjeh thought Mr Faysal was the UTS “technical guru” and that he was involved in giving work to Rega Controls Pty Ltd at that time. He said that Mr Faysal would often say to him, “there’s a lot of work coming from UTS”, which Mr Franjeh connected with Mr Faysal’s requests for money. As a result, he believed that Mr Faysal was in a position to harm or help his business as he saw fit, and he did not want to upset Mr Faysal by refusing to pay him the money he asked for.

Mr Franjeh’s evidence that Mr Faysal did not carry out the work described in the invoices was supported by other evidence; most significantly the evidence of James Leighton. Mr Leighton was then the operations manager for Rega Controls Pty Ltd, and managed its projects, including approving project expenditures. He gave evidence concerning the three projects that Mr Faysal claimed to have worked on, as detailed below.

Liverpool Westfield Shopping Centre

One of the invoices from Mr Faysal's company dated 11 September 2007 stated it was for design and documentation for modifications to a monitoring system at the Westfield Shopping Centre at Liverpool. Mr Faysal told the Commission, at least at first, that his work involved marking out where sensors were to be placed for that system.

Mr Leighton told the Commission that the Westfield project was completed in mid-2006, as required by the contract with Westfield. That was well before the date of Mr Faysal's invoice. Mr Leighton said that he was responsible for the particular work that Mr Faysal claimed he had done. Mr Leighton also oversaw the commissioning of the system in November 2006. According to Mr Leighton, Mr Faysal provided no technical advice on this project.

Faced with that evidence, Mr Faysal then claimed to have been brought in beforehand, and again after the system was commissioned to correct the work of Mr Leighton. This had not been suggested in his earlier evidence and was unsupported by any other evidence.

Monte Saint Angelo Mercy College project

Mr Faysal also issued two invoices to Rega Controls Pty Ltd for his services, dated 2 May 2007 and 2 October 2007, totalling \$9,020. Both described the work as being the "Provision of ventilation documentation and controls" for the Monte Saint Angelo Mercy College. Mr Faysal said that the invoices related to work on two separate projects on different buildings at the college.

The evidence of Mr Leighton again contradicted Mr Faysal. Of the two projects carried out by Rega Controls Pty Ltd at the college, one related to ventilation specifically (being ventilation louvres), while the other related to installing air conditioning controllers. Both were completed sometime before Mr Faysal issued his invoices, with the first being completed in late 2006 and the second in the first half of 2007.

Mr Leighton said that he was responsible for both these projects. He told the Commission that he and another employee completed the relevant documentation, including the ventilation documentation that Mr Faysal claimed to have completed.

Smith Street project

Mr Faysal issued two invoices dated 30 July 2007 and 24 August 2007 totalling \$8,200 to Rega Controls purportedly for work at commercial premises at 25 Smith Street, Parramatta. The work was described as "Provision of ventilation documentation and Controls", one invoice being for stage 1 of the project and the other for stage 2.

Mr Leighton gave evidence that he was responsible for the completion of this project, including the commissioning of the equipment installed. He said that he and the consultant who designed the system completed the documentation and engineering. Mr Leighton said that Mr Faysal had had no involvement in the project, did not provide any documentation for the project and he had never seen Mr Faysal at the site.

Corporate gifts

Mr Faysal issued four invoices totalling \$17,300 dated between August and October 2007 to Rega Controls Pty Ltd for the purported supply of corporate gift items. On 11 October 2007, a payment of \$17,300 was made by Rega Controls Pty Ltd in relation to those invoices. Mrs Faysal, the wife of Mr Faysal, claimed to have arranged the goods for Mr Franjeh's order because that was her side of the business that she and her husband were involved in.

All four invoices omitted details about the quantities supplied and the prices of individual items. Mr Faysal claimed that it was "not necessarily" the case that invoices would normally include these details. It is, however, unusual for invoices to omit such details precisely because the quantities supplied and prices charged cannot be determined from the face of the invoice.

The evidence of Mrs Faysal was of no assistance in determining the quantities or prices of the goods that were said to have been supplied. On her evidence, Mr Franjeh's order was the most significant order that she had ever dealt with in her business. She told the Commission, however, that she did not recall and could not even estimate what she had supplied to Mr Franjeh, nor the approximate cost of the items supplied. Her lack of recall extended to the suppliers that she used. She could not produce a single document to corroborate any aspect of her evidence about the goods claimed to have been supplied.

In the Commission's view, it is not credible that Mrs Faysal could not have recalled at least some of the details if what she claimed had in fact occurred.

It was also implausible that Rega Controls Pty Ltd would have ordered corporate gifts items in the quantities suggested by the invoices.

In late 2007, Rega Controls Pty Ltd was a small and fairly young company with only a few employees. Its gross turnover averaged between \$1 million and \$2 million. It was in this context that Mr Faysal and Mrs Faysal claimed to have supplied Rega Controls Pty Ltd with what could only have been large, if not huge, quantities of promotional corporate gift items worth \$17,300 altogether. These included pens and stationery (\$4,500), notebooks and mugs (\$4,900), and various corporate-branded shirts and caps (\$3,000) and pants and jackets (\$4,900).

In fact, as outlined above, Mr Franjeh admitted that no corporate gifts were supplied to Rega Controls Pty Ltd, and that the invoices were produced to justify a payment he made to Mr Faysal to help him to buy a car.

Mr Hood

Mr Hood had been doing UTS work at the university for around 25 years through his building business. From 2008 to 2012, he invoiced UTS for \$9,504,027.90.

Between 19 April 2006 and 26 June 2008, Mr Hood's business made payments to Mr Faysal's company that purported to relate to work at the University of Sydney (a university for which Mr Hood also worked) on nine occasions, totalling \$41,305, as follows:

Date	Payment
19 April 2006	\$3,300
6 June 2006	\$4,025
23 February 2007	\$4,120
13 April 2007	\$3,960
3 August 2007	\$4,170
7 December 2007	\$4,240
5 February 2008	\$4,900
5 February 2008	\$4,650
2 May 2008	\$7,940
TOTAL	\$41,305

There were invoices issued by NA & CW Investments relating to all but the first two payments and the payment on 7 December 2007. There were no invoices or any other documents to justify the first two payments and the payment on 7 December 2007.

Unlike the other three contractors, Mr Hood maintained that these invoices related to work that Mr Faysal had genuinely carried out for him relating to projects at the University of Sydney. These invoices did not, however, stand up to close scrutiny. There were significant discrepancies between the invoices and the payments actually made by Mr Hood. The discrepancies were consistent with at least some of the invoices having been created at a later point in time to explain the payments received by Mr Faysal.

Mr Faysal himself told the Commission that he had created a number of these invoices in August 2009 to prove his income for tax purposes. He told the Commission that he may have erred in recreating the details of some of the work he performed for Mr Hood. At the least, it was clear

that little reliance could be placed upon the invoices as either accurate or contemporaneous records that might corroborate the evidence of Mr Faysal and Mr Hood.

Mr Hood himself was a far from impressive witness. His evidence in key respects was implausible. On occasion, he contradicted evidence he had given only minutes earlier.

He told the Commission that Mr Faysal carried out work for him in 2007 at the University of Sydney. Mr Hood was the head contractor on a project involving the basement ventilation system of that university's physics building. He said that Mr Faysal provided engineering advice in respect of the air conditioning, and installed "a lot of the ductwork". Mr Hood agreed that Mr Faysal would normally issue his invoices fairly soon after performing work. Mr Faysal's invoice for that work was dated 4 August 2007.

The evidence before the Commission, however, showed that the physics building project was completed sometime in March, months before Mr Faysal's invoice was apparently issued. Mr Hood could not explain that delay.

The University of Sydney itself had no record of Mr Faysal or his company in its project file relating to the physics building project. Nor did it have any record of Mr Faysal attending the university to carry out work, being issued with a contractor identification card, completing its induction course for contractors or carrying out any work at all.

The University of Sydney project file showed that Mr Hood had subcontracted another company, Coral Air Conditioning, to install the air conditioning for the project. Another company, Shelmedines Consulting Engineers, had been engaged to carry out the mechanical engineering work.

Faced with that evidence, Mr Hood claimed Mr Faysal was engaged to undertake additional work on the installation. He told the Commission that the University of Sydney contacted him because the installation "wasn't working the way that I think the university expected it to" and that there was "something wrong about it". He claimed the University of Sydney told him to get it fixed. There had been no suggestion in Mr Hood's earlier evidence that additional work was involved.

Mr Hood claimed that he preferred to have Mr Faysal do the work rather than Coral Air Conditioning, which was responsible for the installation of the unit, or Shelmedines Consulting Engineers. He said that he wanted "just to get it done quick and get out of the job".

Tellingly, Mr Hood's evidence about the work carried out by Mr Faysal was inconsistent with the evidence of Mr Faysal about his work for Mr Hood. Mr Faysal told the Commission that he would never have undertaken

any physical labour, or arranged for equipment or labour for a project. Further, his invoice to Mr Hood stated only that he provided “mechanical engineering design and documentation for the ventilation system of [the] basement”. There was no mention of installation work.

Other evidence given by Mr Hood was less than persuasive, and suggested to the Commission that he was being deliberately evasive in his evidence. The question of whether Mr Hood thought Mr Faysal had a role in allocating UTS work or recommending who might be allocated such work was material to determining why Mr Hood might have given money to Mr Faysal. When asked whether he thought that Mr Faysal had such a role, Mr Hood first said that he thought that Mr Faysal did have a role. He then said that he did not, before finally saying that he would have expected that Mr Faysal did have such a role. In the result, the Commission is satisfied that Mr Hood thought that Mr Faysal was influential in allocating work at UTS.

Mr Hood also told the Commission that Mr Faysal was the only mechanical engineer he had ever engaged. He then immediately gave evidence that he had engaged other mechanical engineers, but was unable to recall who they were. Asked about his earlier evidence, he replied only that, “That was about half a minute ago”. Whether Mr Hood had ever had the need to engage another mechanical engineer over the course of 25 years or more of his career was obviously relevant to considering whether the occasions on which he purportedly engaged Mr Faysal were legitimate.

Mr Hood finally acknowledged that he had never engaged any other mechanical engineer besides Mr Faysal.

In all the circumstances, the Commission is satisfied that Mr Hood did not engage Mr Faysal to undertake the work described in the invoices issued by him that related to work, or potential work, for the University of Sydney. The Commission is also satisfied that Mr Faysal did not perform any work in relation to the first two payments and the payment on 7 December 2007.

Suspect invoices

The invoices issued by Mr Faysal for his purported professional services to the three contractors dealt with above (neither the fourth contractor, Mr Boobyer, nor Mr Faysal produced any invoices in relation to any work purportedly done) were of doubtful authenticity on their face. They lacked the detail usually present in invoices for professional services. The work was described in brief generic terms, did not refer to or itemise any particular tasks involved nor set out the time taken and the rate charged. There was simply insufficient information on the face of the invoices to account for what was done and charged for in any detail.

Mr Faysal well knew what should appear in invoices for professional and other works. He had dealt with many UTS contractors and suppliers. He himself issued other detailed invoices for professional work (albeit some years later) more consistent with what would usually be expected.

The lack of information in the invoices issued to the three contractors is consistent with Mr Faysal creating some or all of the invoices when he had only the most basic information at hand regarding the work he was supposed to have carried out. Mr Faysal himself confirmed that some of the invoices before the Commission were created long after the alleged work had been completed, apparently to prove in some way the work he claimed he had undertaken years before.

In the result, the Commission is of the view that no reliance could be placed on any of the invoices produced by Mr Faysal to corroborate his evidence about the work he claimed to have performed for the three contractors dealt with above.

Absence of any corroborating documentation

The invoices for Mr Faysal’s professional services to Mr Cady, Mr Franjieh and Mr Hood and the corporate gifts supplied to Mr Franjieh were the only documents produced relating to Mr Faysal’s dealings with these three contractors. It was telling that the invoices, doubtful on their face, stood as the only documents produced from any quarter to prove his work or the supply of corporate gifts.

Across all the invoices, the most common work said to have been done by Mr Faysal involved the provision of documentation, being either “mechanical engineering design and documentation” or “provision of ventilation documentation and controls”. Despite that, not a single engineering design document or drawing or any kind of correspondence relating to such documents was produced or put before the Commission.

Mr Faysal claimed that that was because of two computer failures that resulted in the loss of all his documents connected with that work. Similarly, Mr Hood, who alone supported Mr Faysal’s claim that he had done genuine work for the payments he received, claimed to have also suffered a misfortune resulting in the destruction of all documents said to corroborate Mr Faysal’s work for him. Mrs Faysal could also produce no records in relation to how, or from whom, she had sourced the corporate gifts that she said were supplied.

For the reasons outlined above, the Commission did not find Mr Faysal, Mr Hood or Mrs Faysal to be credible witnesses. The Commission is satisfied that there would have been at least some documents available to corroborate

their evidence if work had genuinely been performed by Mr Faysal or corporate gifts genuinely supplied.

Absence of professional insurance

Throughout the period that Mr Faysal claimed to have performed professional work for the four contractors, Mr Faysal did not carry professional indemnity insurance.

Mr Faysal explained that he decided not to take out insurance because he could simply correct any mistake he might make. Any mistake, he said, would hardly be a “deadly mistake” that would “break” him. He said that he was prepared to take the risk of carrying out work while uninsured.

Given the work Mr Faysal claimed to have performed, that was most unlikely.

Invoices relevant to work supposedly carried out for Mr Hood described work performed on one occasion as being to “attend to testing and commissioning of the Fire System... including Fire Certification”. Clearly, such work, if performed improperly or incorrectly, could well involve potentially serious consequences and significant liability. That would have been quite evident to Mr Faysal if he had genuinely carried out that work.

In the Commission’s view, the absence of professional indemnity insurance is consistent with the suggestion that Mr Faysal was not undertaking any private professional work during this period. This is especially so as he did take out such insurance at a later period when he was genuinely working for Webster Wagner Engineering.

Findings of fact

Mr Cady and Mr Boobyer gave frank, consistent and credible evidence that the payments they made to NA & CW Investments came about following requests for payment from Mr Faysal, and did not relate to any engineering work or services provided by Mr Faysal. This evidence was against their own interests as it implicated them in potential wrongdoing.

Similarly, Mr Franjeh and Mr Leighton gave clear evidence that Mr Faysal did not do any engineering work for Rega Controls Pty Ltd to justify the payments made to him. In the case of Mr Franjeh, this evidence was against his own interest as it implicated him in potential wrongdoing.

The Commission accepts the evidence of Mr Cady, Mr Boobyer, Mr Franjeh and Mr Leighton on this issue.

Mr Franjeh’s evidence that Mr Faysal and his wife did not, through their company, supply corporate gift items to Rega Controls Pty Ltd in return for payments made to Mr Faysal was also credible and persuasive. Mr Franjeh’s evidence in

this regard is supported by the unsatisfactory nature of the purported invoices for the corporate gifts and the lack of any other documentation to support the genuineness of this transaction. The Commission considers that the evidence of Mrs Faysal on this topic should be given no weight, as she did not present as a credible witness and could produce no records of any kind beyond the invoices referred to above to support her evidence.

In coming to its conclusions about Mr Franjeh’s evidence, the Commission has taken account of the fact that Mr Franjeh had claimed in earlier evidence at a compulsory examination that Mr Faysal had done work for him and that the invoices he paid for Mr Faysal were genuine. At the public inquiry, however, Mr Franjeh frankly volunteered that his earlier evidence was false, and gave evidence that no work was undertaken by Mr Faysal, which was supported by the evidence of Mr Leighton. Mr Franjeh gave this evidence despite the potential harm to his business reputation and the prospect of prosecution for matters arising from his payments to Mr Faysal and from having given false evidence in the compulsory examination.

The only witness who supported Mr Faysal’s evidence about the work he did for UTS contractors was Mr Hood. Mr Hood presented as an unreliable witness, for the reasons outlined in the preceding sections, and no reliance can be placed on his evidence. The Commission is satisfied that Mr Hood paid Mr Faysal money on the same basis as the other contractors; that is, not because Mr Faysal did any genuine work for him on University of Sydney projects but because he thought Mr Faysal would use his position to disadvantage his business with UTS if he did not pay him.

Mr Faysal disagreed with the evidence given by Mr Cady, Mr Boobyer and Mr Franjeh, and maintained that he had done work for them in return for the payments made to him. He could advance no reason why Mr Cady, Mr Boobyer and Mr Franjeh might give false evidence about these matters and, as noted earlier in this report, the Commission found Mr Faysal to be a witness of little or no credit.

The Commission is satisfied to the requisite standard that the invoices were a sham, and that Mr Faysal had never undertaken any work for Messrs Cady, Boobyer, Franjeh and Hood, nor supplied any corporate gift items to Mr Franjeh. That conclusion is supported by the absence of any other documentation to show Mr Faysal’s work, his lack of professional indemnity insurance at the relevant time and the unsatisfactory nature of the invoices themselves.

The Commission is also satisfied that Mr Faysal asked Messrs Cady, Boobyer and Franjeh for money in circumstances where he knew and intended that they would believe that he could influence the UTS

procurement process to their detriment if they refused to pay the money. That was because Mr Faysal was in a position of influence in the UTS procurement process and was aware that Messrs Cady, Boobyer and Franjeh knew this to be the case.

The Commission has taken into account the fact that Mr Faysal declared some of the payments he received from the four contractors in his taxation returns, which could support an inference that those payments at least were legitimate. The Commission considers, however, that the weight of the evidence, including the clear evidence of Messrs Franjeh, Cady and Boobyer that the payments were not legitimate, militates against any such inference being drawn.

Solicitation of gifts and other benefits

In the period from 2006 to 2012, Mr Faysal also received the following benefits and gifts from Mr Franjeh and Wilkhahn Asia Pacific (“Wilkhahn”), another UTS supplier:

- travel for Mr Faysal and his family to the value of \$41,685.80 paid for by Mr Franjeh
- an iPad tablet computer worth approximately \$400 or more from Mr Franjeh
- a Modus executive chair costing approximately \$2,500 from Wilkhahn.

There was no dispute that Mr Faysal received these benefits and gifts, or that they were given to him by Mr Franjeh and Wilkhahn. Nor was there any question that both of these contractors were then doing business with UTS.

Mr Faysal also accepted significant international travel from another UTS supplier, Targetti, between 2006 and 2011. This is examined in the following chapter.

The Commission examined whether Mr Faysal had improperly solicited these benefits, in particular whether:

- Mr Faysal asked Mr Franjeh to pay for his travel and give him an iPad, knowing that Mr Franjeh believed that his UTS business would be harmed if he refused
- Mr Faysal asked for the Modus chair from Wilkhahn, relying on the fact that the assistance that he had given to Wilkhahn as a UTS employee had been, and would continue to be, valuable to Wilkhahn’s UTS business.

The evidence showed that Mr Franjeh was supplying goods to UTS at the time he provided the above benefits to Mr Faysal. The evidence also showed that Mr Faysal was involved in placing significant orders for furniture with

Wilkhahn on behalf of UTS around the time Wilkhahn provided him with the Modus chair.

Mr Faysal’s knowledge of policy

UTS’ code of conduct and gifts and benefits operational directive prohibited the solicitation of money, gifts and benefits. These policies also prohibited staff from accepting gifts or benefits that might compromise or influence them in their official capacity. All gifts or benefits of more than nominal value were required to be disclosed.

Mr Faysal acknowledged that taking money or accepting gifts from companies quoting for, or tendering for, work at UTS would give rise to a conflict of interest if his role involved having some input into the procurement process. He knew that, as a UTS employee, it would be corrupt to accept gifts and benefit of more than nominal value from people doing business with UTS.

He told the Commission that he had not read the code of conduct until 2010, but accepted that he was obliged to have done so. He also said that he had not read the gifts and benefits operational directive at all, and was not aware of the specific requirements of that directive.

The gifts

Travel benefits

Between 2006 and 2011, Mr Franjeh paid for travel for Mr Faysal and his family on four occasions. In all, Mr Franjeh paid for travel to the value of \$41,685.80.

Between 12 June and 24 July 2006, Mr Faysal, his wife and three of their daughters travelled to Beirut, Lebanon. Mr Faysal and his wife had family who lived in Lebanon. The travel was arranged and paid for by Mr Franjeh. Mr Franjeh told the Commission that he paid for the travel after “Mr Faysal asked me if you know he want to go to Lebanon and if I can pay for the trips”. The cost of this travel was \$8,547.12.

Between 28 June and 25 July 2008, Mr Faysal, his wife and their five daughters travelled to Beirut, Lebanon. Mr Franjeh also arranged and paid for the travel on this occasion. Mr Franjeh said that this came about after he was again asked by Mr Faysal to pay for the travel. He told the Commission that it was “[t]he same thing as before, he asked me for payment and I pay him”. The cost of this travel was \$16,200.

Between 18 October and 28 October 2008, Mr Faysal flew to Germany to attend an office furniture and facilities exhibition. While he had been invited to attend by Thu La, a senior project consultant with Wilkhahn, his travel expenses of \$11,665 were paid by Mr Franjeh. There was no connection between Mr Franjeh’s business and that of Wilkhahn, and no business reason why Mr Franjeh would

pay for Mr Faysal's travel to this event. According to Mr Franjeh, it came about after Mr Faysal organised the travel and then asked Mr Franjeh to pay for it.

From 25 June to 5 August 2011, Amanda Faysal, Mr Faysal's daughter, travelled to Madrid, Spain, to attend a language course. Mr Franjeh said that Mr Faysal told him that, "his daughter is looking for some you know sponsor, people to sponsor her she going to Spain". He understood that to be a request from Mr Faysal for someone to pay for his daughter to go to Spain. Mr Franjeh told the Commission that he "volunteered" to sponsor Amanda Faysal. He did so by paying Amanda Faysal's course fees and travel, the total cost of which was \$5,293.68.

There was no evidence that Amanda Faysal was herself aware of, or involved in, the arrangements made between her father and Mr Franjeh to pay for her travel to Spain.

Mr Faysal's evidence

Mr Faysal first told the Commission that he had disclosed to UTS that contractors were paying for travel for him and his family on various occasions. That included the travel paid for by Mr Franjeh, as well as the travel paid for by Targetti (dealt with in the next chapter):

Q: ... in relation to all of the travel that you've done where it's been paid for by someone else, that is Rega or Targetti ... – A [Mr Faysal]: Yes.

Q: ... do you say that on each and every occasion you have told Mr [Glen] Rabbitt [Mr Faysal's supervisor] that this travel has been paid for by this organisation? – A: Yes.

Q: Every time? – A: Yes.

Q: Has it always been orally, that is you've spoken to him? – A: Exactly.

Q: Have you ever ... ? – A: 'Cause I have to apply for annual leave and I have to tell him where I'm going and how I'm going.

Q: All right. When you apply for annual leave you don't have to tell him how you're getting to America or how you're getting to Beirut, do you, he's not going to care about that? – A: No, I used to tell him.

Q: Right. And you say on every occasion you have explicitly said to him in words, this is being paid for [by] Rega or Targetti? – A: Yes.

He said that Mr Rabbitt simply did not want to know about it, and that "we don't need to worry about these details".

Mr Rabbitt was and is a director and a senior manager at UTS. He had been working in a senior capacity since

1998. He told the Commission that he was unaware that Mr Faysal and his family had travelled overseas at the expense of Mr Franjeh. Had he been informed of this fact, as Mr Faysal claimed, Mr Rabbitt was in no doubt that he would have told Mr Faysal that, "it wouldn't be appropriate, it'd be a conflict of interest and I wouldn't approve it".

Given Mr Rabbitt's position, experience and knowledge of UTS policies, it is unlikely that he would have responded in the way claimed by Mr Faysal, which would have involved a serious disregard of Mr Rabbitt's responsibilities as a manager and director of UTS. Perhaps unsurprisingly, Mr Faysal later retreated from his evidence in this regard.

In the public inquiry, Mr Faysal said that he did not tell Mr Rabbitt about the travel paid for by Rega Controls Pty Ltd (albeit maintaining that he had disclosed the travel paid for by Targetti). He said that he did not disclose it because it was "personal", and had "nothing to do with my work at UTS or anything". He claimed to be able to "differentiate" between his interests as an employee, and his personal and business life outside UTS. In relation to Rega Controls Pty Ltd, particularly, he said that he saw no conflict of interest as he had no input into their tenders.

Mr Faysal told the Commission that the travel paid for by Rega Controls Pty Ltd was payment "in kind", in return for Mr Faysal agreeing to be "on call" to provide Mr Franjeh with professional services. There had been no earlier evidence from Mr Faysal about such an arrangement. Nor was there any other evidence, including from Mr Franjeh himself, to support the suggestion that such an arrangement existed. The suggestion was not put to Mr Franjeh, who gave clear evidence that Mr Faysal did not perform any work for him at all.

The Commission rejects Mr Faysal's evidence that this travel was provided as payment in kind. His evidence is inconsistent with earlier evidence given by him and plainly suggests recent invention on his part.

There is little doubt that the travel Mr Franjeh paid for was "personal" in the sense that it was for the personal benefit and enjoyment of Mr Faysal and his family. It was, however, highly relevant to UTS because it was given to Mr Faysal by a person doing business at UTS and with whom Mr Faysal dealt with often as part of his official duties at UTS.

The iPad

In early 2012, Mr Franjeh gave a new iPad (a tablet computer) to Mr Faysal. This item was worth well over \$250, the threshold for a major gift specified in UTS' gifts policy. Mr Faysal kept the iPad for his own personal use. He did not disclose this gift to anyone at UTS.

Mr Franjeh told the Commission that the gift was prompted by Mr Faysal telling him that he was interested in getting an iPad. Mr Franjeh took this to be a hint by Mr Faysal that he wanted Mr Franjeh to buy it for him.

Mr Faysal said that he did not ask Mr Franjeh to buy him an iPad. He nonetheless accepted it, even though the UTS gifts policy required him to disclose and refuse such gifts unless acceptance was approved. Mr Faysal kept this gift, despite accepting during his evidence at the inquiry that it would be corrupt conduct if a person kept a gift from a UTS contractor for their own benefit without disclosing it to UTS.

Mr Faysal explained that this occasion was different as he was not involved in “any procurement, I didn’t sit on any tender assessment that involved Rega Controls on this matter”, and he considered it “part of my personal life”, as he had done a lot for Mr Franjeh.

The Commission rejects Mr Faysal’s explanation, as the evidence clearly shows that this was a gift from a UTS contractor, which Mr Faysal was required to declare and surrender to UTS.

The executive chair

In early 2009, Mr Faysal received a gift, in the form of a Modus chair, from Wilkhahn. The value of the chair was around \$2,500, which was well over the major gifts threshold of \$250 set out in UTS’ gifts policy. It was not in dispute that Mr Faysal kept the chair and did not disclose it to UTS.

The evidence showed that this gift was solicited by Mr Faysal.

An email on 22 March 2009 from Ms La, then a senior project consultant at Wilkhahn, to her supervisor, Lisa Schlicht, set out the reasons why Wilkhahn agreed to the gift. Ms La stated:

When Nabil [Mr Faysal] was here last time to inform us about the tender for the Aline chairs, he absolutely did us a great favour.

He was also telling me between the lines that he likes the Modus chair a lot :)))

... overall he showed so much support in the last 12 months that I would like to ask you if we can give him a Modus (284/81).

- *value of orders since Dec 2007 = 1.4Mil*
- *took annual leave to go to Orgatec with us. Paid his own flight.*
- *is going to support us again in 2009*
- *has read all brochures of Wilkhahn I have ever given*

to him – is making big advertisement for Wilkhahn at UTS.

... I’m confident that he is going to help us out again in 2009. What do you think?

Ms Schlicht told the Commission that she agreed to the gift for the reasons set out in the email. It is plain that the gift was being considered because of Mr Faysal’s assistance in Wilkhahn’s business dealings with UTS, including the value of orders placed and the support given by Mr Faysal to Wilkhahn in their dealings with UTS generally. More significantly, it was also anticipated in the email that Mr Faysal would continue to give support in Wilkhahn’s business dealings with UTS.

It was a significant and real conflict of interest for Mr Faysal to have accepted, much less solicited, a gift of such value in circumstances where (from Wilkhahn’s perspective at least) he was championing their products within UTS.

Mr Faysal, however, had a different version of events. He denied suggesting to Ms La that he wanted a chair and did not know how she might have gotten that impression. He told the Commission that the chair was a personal gift from Ms La. He explained that it had been a farewell gift to Ms La from Wilkhahn, and she gave it to him because she was unable to take it with her.

The Commission rejects that evidence. It was at odds with the plain meaning of the email above. It was also inconsistent with the evidence of Ms Schlicht, which is accepted by the Commission. The Commission finds that the chair was given to Mr Faysal by Wilkhahn after he hinted that he wanted one and after he had apparently been instrumental in obtaining a number of large orders from UTS for Wilkhahn.

Corrupt conduct

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

First, the Commission makes findings of relevant facts on the balance of probabilities. The Commission then determines whether those facts come within the terms of sections 8(1) or 8(2) of the ICAC Act. If they do, the Commission then considers section 9 and the jurisdictional requirements of section 13(3A).

In the case of subsection 9(1)(a), the Commission considers whether, if the facts as found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that the person has committed a particular criminal offence.

In the case of subsections 9(1)(b), 9(1)(c) and 9(1)(d) the

Commission considers whether, if the facts as found were to be proved on admissible evidence to the requisite standard of on the balance of probabilities and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that the person has engaged in conduct that constitutes or involves a thing of the kind described in those sections.

The Commission is satisfied that the following facts have been established to the requisite degree:

- Mr Faysal exercised significant influence in UTS' procurement process throughout his employment, including in the making of recommendations regarding tenders and quotes. This remained the case after he returned from suspension in July 2010.
- Messrs Cady, Boobyer, Franjeh and Hood all believed that Mr Faysal had a significant role in, or exercised significant influence upon, UTS' procurement process and was therefore able to affect the allocation of work to them by UTS.
- Messrs Cady, Boobyer, Franjeh and Hood made a number of payments to Mr Faysal's private company between 2006 and 2008. Those payments totalled \$119,325 and were made in response to requests for money from Mr Faysal.
- Mr Faysal has never carried out work in a private capacity for Messrs Cady, Boobyer, Franjeh and Hood, nor supplied any corporate gift items to Mr Franjeh, to justify such payments and the invoices that purported to show such work or supply of corporate gifts were sham invoices.
- Mr Franjeh also paid for overseas travel for Mr Faysal and his family on three occasions between 2006 and 2011, to a total value of \$41,685.80, in response to requests from Mr Faysal that he do so.
- Mr Faysal asked Messrs Cady, Boobyer, Franjeh and Hood for the money and the payment for travel expenses referred to above knowing and intending that they would believe that he could influence the UTS procurement process to their detriment if they refused.
- Messrs Cady, Boobyer, Franjeh and Hood made the payments referred to above, and Mr Franjeh paid for the travel referred to above, because they believed that Mr Faysal could influence the UTS procurement process to their detriment if they refused.

Mr Faysal's conduct in soliciting and accepting the payments and benefits referred to above is corrupt conduct for the purpose of section 8(1)(a) of the ICAC Act. It is

conduct that could adversely affect, either directly or indirectly, Mr Faysal's honest or impartial exercise of his official functions.

For the purpose of subsection 9(1)(a) of the ICAC Act, it is relevant to consider section 249B of the Crimes Act. That section provides as follows:

- (1) *If any agent corruptly receives or solicits (or corruptly agrees to receive or solicit) from another person for the agent or for anyone else any benefit:*
 - (a) *as an inducement or reward for or otherwise on account of:*
 - (i) *doing or not doing something, or having done or not having done something, or*
 - (ii) *showing or not showing, or having shown or not having shown, favour or disfavour to any person, in relation to the affairs or business of the agent's principal, or*
 - (b) *the receipt or any expectation of which would in any way tend to influence the agent to show, or not to show, favour or disfavour to any person in relation to the affairs or business of the agent's principal,*
the agent is liable to imprisonment for 7 years.

The term "agent" includes a public official, and in this case the reference to the agent's principal would be a reference to UTS.

The Commission is satisfied that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Faysal committed criminal offences under section 249B(1)(a) of the Crimes Act of corruptly soliciting and receiving a benefit as an inducement for showing or not showing favour or disfavour to UTS contractors in relation to procurement activity by UTS or under section 249B(1)(b) by corruptly soliciting and receiving a benefit, the receipt of which would tend to influence him to show, or not show, favour or disfavour to UTS contractors in relation to procurement activity by UTS. For the purposes of that section, it is sufficient that the benefit was solicited or received as an inducement to do something or to show, or not to show, favour or disfavour. It is not necessary to show that Mr Faysal actually did anything after receiving the payment as an inducement to show favour or not show disfavour to the UTS contractors.

Mr Faysal's conduct also comes within subsection 9(1)(b) or subsection 9(1)(c) of the ICAC Act. The Commission is satisfied that if the facts it has found were to be proved, on admissible evidence, to the appropriate civil standard and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Faysal had committed a disciplinary offence by breaching the UTS code of conduct, gifts and benefits policy and procurement policy, in particular those provisions dealing with declaring and avoiding conflicts of interest and prohibiting the solicitation and acceptance of money, gifts and other benefits. The Commission is also satisfied that such breaches would provide reasonable grounds for dismissing, dispensing with the services of or otherwise terminating the services of Mr Faysal.

Mr Hood's conduct in providing the payments to Mr Faysal referred to above is corrupt conduct for the purpose of section 8(1)(a) of the ICAC Act. It is conduct that could adversely affect, either directly or indirectly, Mr Faysal's honest or impartial exercise of his official functions.

For the purpose of subsection 9(1)(a) of the ICAC Act, the Commission is satisfied that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Hood committed criminal offences under section 249B(2)(b) of the Crimes Act of corruptly giving a benefit the receipt of which would tend to influence Mr Faysal to show favour or not to show disfavour in relation to Mr Hood's work with UTS.

The other three contractors dealt with in this section, unlike Mr Hood, gave full and frank evidence at the public inquiry about their involvement with Mr Faysal. It is in the public interest for the Commission to encourage witnesses to tell the truth about matters it is investigating and, in the circumstances, the Commission has made no findings of corrupt conduct against the other three contractors dealt with in this section.

Other gifts

The Commission is also satisfied of the following to the requisite standard:

- Mr Faysal solicited and accepted the gift of an iPad computer from Mr Franjeh for Mr Faysal's own benefit and in circumstances where he was involved in procurement activity concerning the allocation of work to UTS contractors, including Mr Franjeh and his company
- Mr Faysal solicited and accepted the gift of a Modus chair from Wilkhahn for his own benefit and in circumstances where he was involved in

procurement activity concerning the allocation of work to UTS contractors, including Wilkhahn.

Such conduct on the part of Mr Faysal is corrupt conduct for the purpose of section 8 of the ICAC Act. It is conduct that could adversely affect, either directly or indirectly, Mr Faysal's honest or impartial exercise of his official functions and therefore comes within section 8(1)(a) of the ICAC Act.

Mr Faysal's conduct also comes within subsection 9(1)(b) or subsection 9(1)(c) of the ICAC Act. The Commission is satisfied that, if the facts it has found were to be proved on admissible evidence to the appropriate civil standard and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Faysal had committed a disciplinary offence by breaching UTS' code of conduct, gifts and benefits policy and procurement policy, in particular those provisions dealing with declaring and avoiding conflicts of interest and prohibiting the solicitation and acceptance of money, gifts and other benefits. The Commission is also satisfied that such breaches would also provide reasonable grounds for dismissing, dispensing with the services of or otherwise terminating the services of Mr Faysal.

Mr Franjeh and Ms Schlicht gave full and frank evidence at the public inquiry about their involvement with Mr Faysal. It is in the public interest for the Commission to encourage witnesses to tell the truth about matters it is investigating and, in the circumstances, the Commission has made no findings of corrupt conduct against Mr Franjeh nor Ms Schlicht.

Section 74A(2) statements

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

- a. obtaining the advice of the Director of Public Prosecutions (DPP) with respect to the prosecution of the person for a specified criminal offence
- b. the taking of action against the person for a specified disciplinary offence
- c. the taking of action against the person as a public official on specific grounds, with a view to dismissing, dispensing with the services of or otherwise terminating the services of the public official.

An "affected" person is defined in section 74A(3) of the ICAC Act as a person against whom, in the Commission's

opinion, substantial allegations have been made in the course of, or in connection with, the investigation.

The Commission is satisfied that Messrs Faysal, Cady, Boobyer, Franjeh and Hood are affected persons.

Mr Faysal

The Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Faysal for offences of soliciting and receiving corrupt commissions or rewards pursuant to section 249B(1) of the Crimes Act in relation to the following matters:

- the solicitation and receipt of money by Mr Faysal from Mr Cady on five occasions between around 6 April 2006 and 17 October 2007
- the solicitation and receipt of money by Mr Faysal from Mr Boobyer on five occasions between around 19 April 2006 and 15 November 2007
- the solicitation and receipt of money by Mr Faysal from Mr Franjeh on four occasions between around 1 December 2006 and 11 October 2007
- the solicitation and receipt of paid travel by Mr Faysal for himself and/or his family from Mr Franjeh on four occasions between around June 2006 and August 2011.

Although the evidence that Mr Faysal gave was subject to an order under section 38 of the ICAC Act, and is therefore not admissible against him in criminal proceedings, there are financial, banking and travel records available in relation to benefits received by Mr Faysal. The evidence of Messrs Boobyer, Franjeh and Cady could also be made available to the DPP if appropriate indemnities were provided.

UTS dismissed Mr Faysal from its employ on 3 April 2012. Mr Faysal has since commenced proceedings in Fair Work Australia contesting his dismissal. In the event that Mr Faysal succeeds in being reinstated to the service of UTS, the Commission is of the opinion that UTS should give consideration to the taking of action against Mr Faysal as a public official in relation to the matters set out in this chapter for disciplinary offences or with a view to dismissing, dispensing with the services of or otherwise terminating the services of Mr Faysal.

In relation to Messrs Boobyer, Cady, Franjeh and Hood, the Commission is not of the opinion that sufficient admissible evidence is available to warrant obtaining the advice of the DPP with respect to their prosecution.

Chapter 3: Mr Faysal and Targetti Australia Pty Ltd

From 2006 to 2011, Targetti, a lighting and accessories supplier to UTS, regularly paid for international travel for Mr Faysal. This chapter examines the circumstances in which Targetti came to provide that travel to Mr Faysal and whether Mr Faysal disclosed to UTS any of the travel and the fact that it was being paid for by a UTS contractor. Unlike the matters examined in the previous chapter, in this matter it was argued during the inquiry that most of the relevant travel was provided to Mr Faysal for legitimate business-related purposes.

How the allegations involve corrupt conduct

The Commission investigated whether Mr Faysal accepted payments of his overseas travel expenses by Targetti in breach of UTS policy, and whether he omitted to inform UTS about his acceptance of these payments because he knew that UTS would have directed him to refuse them.

If proven, Mr Faysal's conduct would amount to corrupt conduct under section 8(1)(a) of the ICAC Act, as it adversely affected or could adversely affect, either directly or indirectly, the honest or impartial exercise of official functions by Mr Faysal. It was also conduct that was not excluded by section 9 of the ICAC Act as it could constitute or involve a disciplinary offence or offences within section 9(1)(b) involving breaches of the provisions of UTS' code of conduct relating to declaring and avoiding conflicts of interest, and UTS' gifts and benefits policy requiring him to decline gifts over \$250 or to seek approval before accepting such gifts, and for the purposes of section 9(1)(c) of the ICAC Act could provide reasonable grounds for dismissing, dispensing with the services of or otherwise terminating the services of Mr Faysal.

Travel provided by Targetti

Targetti is a supplier of lighting products. Its head company is located in Europe. It had done business with UTS directly and indirectly for some years, and considered UTS to be a major client.

Scott Phillips is the company's managing director. Its other directors are Leon Karpel (also its sales manager) and Amanda Hinostroza. Mr Karpel was Mr Faysal's main point of contact with the company.

From 2006 to 2011, Mr Faysal travelled overseas each year at the expense of Targetti or its directors, as set out below. He generally flew business class and his accommodation and incidental expenses were also paid for by Targetti.

- Between 24 April and 8 May 2006, Mr Faysal travelled to Vienna, Frankfurt, Pisa and Beirut. Mr Karpel travelled with him to Europe. The ostensible purpose of the European leg of the trip was to attend a large lighting and furniture trade fair. The flight to Beirut was for personal reasons, but was also paid for by Targetti. The cost of Mr Faysal's travel and accommodation was \$9,208.08.
- Between 18 and 30 April 2007, Mr Faysal again travelled to Europe with Mr Karpel. On this occasion, Mr Faysal went to Vienna, Milan and London. This trip involved Mr Faysal visiting a Targetti building and undertaking some specialist lighting training. Mr Faysal's travel and accommodation cost \$8,511.42.
- Between 5 and 20 April 2008, Mr Faysal and his wife travelled to Abu Dhabi, Frankfurt, Florence, Venice and Vienna. Mr Phillips and Mr Karpel travelled with them to Europe. The occasion was the anniversary of Targetti's head

company based in Europe and representatives of its various subsidiary companies and their clients were invited to attend. The cost of the travel and accommodation for Mr Faysal and his wife was \$25,575.77.

- Between 26 and 29 June 2009, Mr Faysal and his wife travelled to New Zealand for a holiday. They travelled with all three directors of Targetti, and stayed in a residence that one of the directors maintained in New Zealand. Mr Faysal's travel and that of his wife was paid for personally by one of the Targetti directors, Ms Hinostroza. It amounted to \$651.80.
- Between 9 and 13 November 2010, Mr Faysal travelled to China with Mr Phillips and Mr Karpel. The purpose was to visit a lighting factory associated with the Targetti company. Mr Faysal's travel costs amounted to \$7,988.09.
- Between 11 and 17 April 2011, Mr Faysal travelled with Mr Karpel to London and Milan. The occasion for this trip was a furnishings exhibition in Milan. The total cost of Mr Faysal's travel was \$9,633.03.

Targetti had made arrangements for Mr Faysal to travel to Germany with Mr Karpel in April 2012 to attend another exhibition. Mr Faysal withdrew a few days before he was to travel, citing illness. Targetti was to have paid for that trip as well.

In all, Targetti, or its directors, paid no less than \$61,568.19 in relation to travel for Mr Faysal and his wife (that figure does not include all accommodation and incidental expenses that Targetti paid or reimbursed to Mr Faysal). There was no dispute that Targetti had paid for the travel and accommodation for Mr Faysal and his wife set out above, or the amount paid by Targetti. Nor was there any

dispute that Mr Faysal travelled for the purposes set out above.

UTS policies that applied

UTS' 2002 Code required staff to avoid conflicts of interest or potential conflicts of interest. It also required staff to disclose any interest that could compromise the performance of their duties or conflict with the interests of UTS. One example of a conflict of interest given was the use or manipulation of a staff member's position for personal benefit in the form of overseas travel ostensibly justified as being for work purposes.

UTS' gifts and benefits operational directive, which commenced on 1 May 2006, was to the same effect. It warned staff against accepting gifts that might compromise their integrity and impartiality or give rise to a conflict of interest or a perception of a conflict, and instructed staff to disclose all gifts and benefits to their supervisor. It stated that decisions about whether a gift or benefit should be accepted were to be made by a supervisor or a more senior person.

Mr Faysal said that he had not read these policies. He nonetheless denied breaching UTS' policies, whether or not he was aware of their specific requirements, for the following reasons:

- the travel was not a benefit
- he had disclosed the travel to his supervisor, Mr Rabbitt
- he did not have a conflict of interest, as he had little or no involvement in procurement during his work at UTS' FMU, PMO and FMO.

Mr Faysal also claimed that he had never compromised the interests of UTS and was always fair-minded.

Was it a gift or benefit?

Mr Faysal told the Commission that the travel he accepted from Targetti was “to the best interest of the University”. He claimed that it was of no benefit to him personally to be travelling for days, and the travel was part and parcel of his work for UTS. Mr Phillips also took issue with characterising the trips as a benefit for Mr Faysal. He said that the trips were educational (albeit provided with the intention that they might lead to sales for Targetti), and that the knowledge gained by Mr Faysal benefited UTS.

There was no evidence that the travel undertaken by Mr Faysal was any part of his work at UTS. His position and duties did not require him to undertake that travel. Nor was there any evidence to suggest that Mr Rabbitt or any other person at UTS had told Mr Faysal to undertake this travel or had authorised this travel.

On each occasion that Mr Faysal travelled at Targetti’s expense, he used his personal leave entitlements to excuse his absence from UTS. He did not ask UTS to absorb the cost of his absence by treating it as though he were at work. This does not sit easily with his claim that the travel was for the purposes of his work at UTS. It is, however, consistent with Mr Faysal considering that the trips were for his personal benefit.

Rather than it being required or even accepted by UTS that Mr Faysal might travel for the educational opportunities offered by Targetti, the evidence showed that UTS would have been of quite a different view. Mr Rabbitt told the Commission it was inappropriate for Mr Faysal to have accepted travel paid for by Targetti for whatever reason. He said that, as Mr Faysal’s supervisor, he would not have approved it and Mr Faysal would have been directed to refuse it.

In the circumstances, the Commission does not consider Mr Faysal’s claim that he accepted the travel because it was part of his UTS work and for the benefit of UTS to be credible.

Targetti, and Ms Hinostroza, also paid for travel for Mr Faysal that involved no “educational” aspect:

- the trip in April 2006 included a diversion to Beirut where Mr Faysal had family
- the trip with his wife in 2008 was to attend the celebrations of the 80th anniversary of Targetti’s head company in Milan
- the 2009 New Zealand trip, again with his wife, was a holiday, and paid for personally by Ms Hinostroza.

All of this travel was plainly for Mr Faysal’s personal benefit and enjoyment.

The Commission is satisfied that the travel paid for by Targetti, or its directors, and accepted by Mr Faysal,

whether ostensibly for educational purposes or not, was a gift or benefit for Mr Faysal. The Commission is also satisfied that Mr Faysal considered it to be for his own benefit and accepted it as such.

Did Mr Faysal tell UTS?

In all cases, the travel accepted by Mr Faysal came within the scope of UTS’ 2002 Code and the 2006 gifts and benefits directive. These policies encompassed everything of value given or provided to an employee in the course of or arising from their official duties. Under those policies, Mr Faysal was required to disclose to UTS the proposal that Targetti or its directors would pay for his travel and seek approval to accept such travel.

At his compulsory examination conducted in September 2012, Mr Faysal claimed that he told Mr Rabbitt on each and every occasion about the travel provided to him by Targetti and Rega Controls Pty Ltd (discussed in the previous chapter). When giving evidence at the public inquiry, however, Mr Faysal said, “I told them in some instances, some instances I didn’t tell them but the Targetti ones I told them, I told my supervisor verbally”. He then said that he told Mr Rabbitt only about the Targetti trips in 2006, 2007 and 2008, claiming that he stopped because Mr Rabbitt simply did not want to hear about his travel.

Mr Phillips told the Commission that he thought that UTS was aware that Targetti was paying for Mr Faysal’s travels. There was no basis for that assumption. There was no evidence of any correspondence between UTS and Targetti regarding this travel nor of any discussions between Targetti and anyone at UTS regarding that travel, apart from Mr Faysal himself.

Mr Faysal’s evidence was strongly disputed by Mr Rabbitt, who said that Mr Faysal never told him that he was offered or accepted travel paid for by Targetti or any other companies doing business with UTS.

As indicated in chapter 1, the Commission found Mr Faysal to be a witness whose evidence should be treated with caution in the absence of independent supporting evidence. There was no evidence to support Mr Faysal’s claim that he told Mr Rabbitt about the travel paid for by UTS contractors. Further, Mr Faysal’s evidence on this topic changed materially over time, and was contradicted by the evidence of Mr Rabbitt, whom the Commission found to be a credible and reliable witness.

In the circumstances, the Commission is satisfied that Mr Faysal did not disclose to Mr Rabbitt or any other appropriate person at UTS that he was offered or accepted travel paid for by Targetti or its directors. The Commission is also satisfied that UTS was unaware from any other source that Mr Faysal was accepting such travel.

Mr Faysal told the Commission that he did not tell UTS about his New Zealand trip with Targetti directors in 2009 because it was “personal”, and therefore not required to be disclosed to UTS. Mr Faysal gave similar evidence regarding the non-disclosure of the gifts and benefits he received from Mr Franjeh and Ms Lu (discussed in the previous chapter).

Mr Faysal’s evidence about accepting these gifts and benefits showed a fundamental misconception about his obligations and responsibilities as an employee of UTS. The fact that the benefits were provided to him on a “personal” basis by UTS contractors was precisely the sort of situation that demanded transparency and disclosure and which UTS’ policies were intended to regulate.

Involvement in procurement

Mr Faysal claimed to have had little involvement in procurement during his employment and no involvement at all after returning to work in July 2010. He said that he thought there was no conflict of interest for him as he was not formally responsible for, or associated with, procurement from that time. The Commission has not accepted Mr Faysal’s evidence in that respect. As with the companies dealt with in the previous chapter, it was Mr Faysal’s role and influence within UTS that influenced Targetti executives to favour him with many invitations to travel abroad at their expense.

In his senior advisory position, Mr Faysal was in a position to influence and increase the purchase and use of Targetti products by UTS, and there was evidence before the public inquiry that he did so. The value of the business (whether directly or indirectly) provided to Targetti by UTS increased after Mr Faysal went on such trips. There was also evidence that in 2011 Mr Faysal was instrumental in the substitution of Targetti products on a project in a way that bypassed the usual UTS procurement procedures. Whether or not Mr Faysal acted partially in that case, there was a significant and obvious conflict of interest in his accepting travel from Targetti when he was in a position to influence such decisions by UTS.

Whether Mr Faysal knowingly breached the policies

Mr Faysal knew that UTS maintained a website where its policies and procedures could be accessed by staff. He accepted that UTS had likely notified him about policies by email, but maintained that he did not read any of the policies until 2010, when he was under investigation by UTS.

Even though he claimed that he had not read UTS’ gifts and benefits directive, Mr Faysal told the Commission that

he understood it would be corrupt to accept gifts and benefits for his personal use from people doing contract work at UTS without disclosing it to his supervisor. This type of conduct, in any event, is self-evidently corrupt.

The Commission is satisfied that Mr Faysal knew that, as an employee of UTS, he was not permitted to accept gifts and benefits from UTS contractors unless they had been disclosed to his supervisor.

The Commission has found that Mr Faysal did not tell Mr Rabbitt or UTS about the travel he undertook that was paid for by Targetti or its directors. It is satisfied that Mr Faysal did not do so because he thought that UTS would likely tell him to refuse the travel.

Why was the travel provided?

The directors of Targetti all told the Commission that Mr Faysal was invited to travel overseas for “educational” purposes. Mr Phillips told the Commission that educating its clients was a principal part of the company’s philosophy, and one way in which it did this was to invite three or four select client representatives overseas each year to attend exhibitions and fairs, or to tour Targetti facilities and installations. As the company was inviting Mr Faysal, it would normally pay all of his travel, accommodation and incidental expenses. Mr Phillips did eventually concede, however, that one reason for providing this educational opportunity for good clients was to increase or maintain Targetti’s business prospects with those clients.

The evidence before the Commission confirmed that most, but not all, of the travel paid for by Targetti or its directors involved Mr Faysal attending trade exhibits and fairs in Europe and visiting Targetti facilities. The exceptions were a side trip to Beirut in 2006, a trip to attend Targetti celebrations in 2008 and a trip to New Zealand in 2009, all of which involved no educational purposes at all.

Mr Phillips and his fellow directors considered Mr Faysal to be a key person within UTS who could give Targetti better access to UTS to promote and sell their products. Mr Phillips denied that there was any condition or understanding with Mr Faysal that there would have to be increased sales of Targetti products in return for the travel provided. The Commission is satisfied, however, that Mr Faysal’s role within UTS was a major factor in Targetti’s decisions to invite Mr Faysal to travel overseas at its expense on so many occasions.

Did Targetti know Mr Faysal breached UTS policy?

Mr Phillips told the Commission that it did not occur to him that there were issues with Mr Faysal accepting their invitations over the years. Nor did it occur to his fellow directors. He said that his company was not aware of the relevant UTS policies although they were aware that such policies existed. He said that his company would not have offered the trips to Mr Faysal if they were aware that UTS did not allow it.

The directors were of the view that it was for Mr Faysal to ensure that his receipt of travel was acceptable to UTS. As such, they saw no need to take any steps to advise UTS or confirm for themselves that it was acceptable. Mr Phillips thought that if their invitations were accepted by Mr Faysal, then it must have been acceptable to UTS.

Mr Phillips also agreed, however, that he had no reason to think that UTS knew Targetti was paying for Mr Faysal's travels. Certainly there was nothing in the manner in which Targetti provided this travel that would have alerted UTS. The invitations were made to Mr Faysal directly. Apart from correspondence with Mr Faysal himself, there were no correspondence or discussions about these trips between Targetti and anyone from UTS. As a result, no one at UTS would know of the travel being paid for by Targetti unless Mr Faysal himself disclosed it. He did not do so.

Mr Phillips and his company had dealings with other public departments and authorities and had extended invitations like those given to Mr Faysal to other public officials before, including employees of other universities. None had accepted. Mr Phillips told the Commission that he was aware that it could be regarded as a conflict of interest for a public official to accept overseas travel paid for by a private company, and that was why public officials usually declined his company's invitations. Mr Faysal was the only public official, in fact the only person, who accepted their invitations with such regularity and over such an extended period of time.

Mr Phillips said he thought that Mr Faysal was in a "special position" at UTS, and so not bound by the usual rules that applied to public officials. That was partly because Mr Faysal alone accepted their invitations. It was also because he considered Mr Faysal "far more innovative, far more lateral thinking than anyone we'd ever met before and I thought that therefore the way he operates was purely condoned by the university." Neither he nor his fellow directors ever confirmed with UTS that that was the case.

The fact that Mr Faysal freely accepted Targetti's invitations offered no reasonable basis for thinking that Mr Faysal was in some way exempt from the rules applying to public officials.

The Commission accepts, however, that Mr Faysal did not disabuse the Targetti executives of their assumptions that UTS condoned his travels. The Commission also accepts that there was no intention on their part to deliberately conceal those travels from UTS.

The personal trips paid for by Targetti

Mr Phillips agreed that some trips that were paid for Mr Faysal had no business purpose and were "personal". These trips were offered to Mr Faysal because of his position, and his continuing relationship with the company. At that time, Targetti was doing business with, or expected to be doing business with, UTS. For these reasons, Mr Phillips and his fellow directors ought to have had even stronger reservations about whether it was appropriate to have paid for these trips for Mr Faysal. As discussed above, the fact that these trips were a "personal" gift for Mr Faysal did not take them outside the purview of UTS.

Corrupt conduct

The Commission is satisfied that the following has been established to the requisite standard:

- Between 2006 and 2011, Mr Faysal (on occasion, in company with his wife) travelled overseas each year at the invitation and expense of Targetti or its directors.
- At no time did Mr Faysal disclose to his supervisor, Mr Rabbitt, nor to UTS, that he was accepting travel paid for by Targetti or its directors. Mr Rabbitt and UTS did not know that Mr Faysal was accepting such travel until it became known as a result of the Commission's investigation.
- Between 2006 and 2011, Targetti was a supplier of goods to UTS (either directly or indirectly). Throughout that time, Mr Faysal was in a position to influence and increase the purchase and use of Targetti products by UTS by reason of his senior advisory position. This created a conflict of interest for Mr Faysal in accepting any gifts or benefits from Targetti or its directors.
- Mr Faysal knew that, as a UTS employee, he was not permitted to accept gifts and benefits from UTS contractors unless it was disclosed to his supervisor. He did not disclose the travel paid for by Targetti or its directors because he thought UTS would direct him to refuse it. He accepted the travel knowing that it was a breach of his obligations as an employee of UTS to do so.
- In all cases, the travel paid for by Targetti or its directors was a personal gift or benefit for Mr

Faysal. Mr Faysal thought of it as such, and accepted it in a personal capacity.

- The travel paid for by Targetti or its directors was a gift or benefit within the scope of UTS' code of conduct and gifts and benefits policy. Those policies required Mr Faysal to at least disclose the invitations to travel that he received from Targetti or its directors, and to decline those invitations due to their value unless UTS had approved him accepting them. More generally, he was required to disclose and avoid any conflicts of interest, including those arising from gifts or benefits offered by a UTS contractor.

Mr Faysal's conduct in deliberately failing to disclose to UTS that a UTS contractor (or a director of a UTS contractor) was paying for his overseas travel and in accepting such payment is corrupt conduct for the purpose of section 8 of the ICAC Act. It is conduct that could adversely affect, either directly or indirectly, Mr Faysal's honest or impartial exercise of his official functions and therefore comes within section 8(1)(a) of the ICAC Act.

For the purposes of section 9(1)(b) and section 9(1)(c) of the ICAC Act, the Commission is satisfied that, if the facts it has found were to be proved on admissible evidence to the appropriate civil standard and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Faysal had committed a disciplinary offence by breaching the UTS code of conduct and gifts and benefits policy, in particular those provisions dealing with declaring and avoiding conflicts of interest and prohibiting the acceptance of benefits. The Commission is also satisfied that such breaches would also provide reasonable grounds for UTS dismissing, dispensing with the services of or otherwise terminating the services of Mr Faysal.

Counsel Assisting the Commission did not submit that a finding of corrupt conduct be made against any of the Targetti directors and, in these circumstances, no such finding has been made.

Section 74A(2) statement

For the purposes of the matters examined in this chapter, the Commission is satisfied that Mr Faysal is an affected person.

As noted in the previous chapter, Mr Faysal was dismissed by UTS on 3 April 2012 and has commenced proceedings contesting his dismissal. In the event that Mr Faysal succeeds in being reinstated to the service of UTS, the Commission is of the opinion that UTS should give consideration to the taking of action against Mr Faysal

as a public official in relation to the matters set out in this chapter for disciplinary offences or with a view to dismissing, dispensing with the services of or otherwise terminating the services of Mr Faysal.

Chapter 4: Outside work and confidential information

This chapter examines allegations against Mr Faysal relating to his work outside UTS for a UTS contractor, and the disclosure of confidential information to UTS contractors.

Outside work

How the allegations involve corrupt conduct

Between August 2008 and December 2011, Mr Faysal provided engineering services through his company, NA & CW Investments, to a UTS contractor, Webster Wagner Engineering. Webster Wagner Engineering was a company actively involved in quoting and tendering for UTS work.

The Commission investigated whether Mr Faysal did work for Webster Wagner Engineering knowing that it was a conflict of interest, or potential conflict of interest, to do so. This would be a breach of his obligations under the conflict of interest provisions of UTS' outside work policy as well as the conflict of interest provisions of UTS' code of conduct.

If proven, Mr Faysal's conduct could amount to corrupt conduct within section 8(1)(a) of the ICAC Act in that it adversely affected or could adversely affect, either directly or indirectly, the honest or impartial exercise of official functions by Mr Faysal. This was because Mr Faysal had an interest in continuing to work for Webster Wagner Engineering which was, in turn, interested in continuing to obtain work from UTS. Mr Faysal's interest in obtaining paid work from Webster Wagner Engineering could have led him to exercise his official functions partially so as to assist Webster Wagner Engineering to obtain UTS work.

Such conduct would come within section 9(1)(c) of the ICAC Act, being conduct that could constitute or involve reasonable grounds for dismissing, dispensing with or otherwise terminating Mr Faysal's services for failure

to comply with the conflict of interest provisions of the outside work policy and the code of conduct.

Webster Wagner Engineering and UTS work

Webster Wagner Engineering is a privately owned company. Its principal director and shareholder is Chelliah Karunaharan, who went by the name Haran Chelliah in his business dealings. Mr Chelliah is an electrical engineer by training, and his company provided general engineering consulting services in areas such as electrical, mechanical, fire and hydraulics, including to UTS.

From 2006 to March 2010, the company billed UTS for services to the value of \$564,842.31. The company has not undertaken work at UTS since 2010. The cessation of work roughly coincided with the start of an investigation into Mr Faysal for breaches of UTS policy relating to his association with the company. Following the investigation, there was no bar to the company seeking further work from UTS, and Mr Chelliah continued to receive emails regarding upcoming UTS work from time to time.

Although Mr Chelliah did not receive any UTS work after March 2010, he remained interested in such work. In fact, he said that he had contacted Mr Rabbitt and another UTS employee to see about getting more UTS work after that time.

Work carried out by Mr Faysal for Webster Wagner Engineering

Mr Faysal first commenced undertaking work for Webster Wagner Engineering in 2008. Between August 2008 and July 2011, Mr Faysal was paid a total of \$149,230.75 from Webster Wagner Engineering, as follows:

Financial year	Total payments
2008–09	\$27,380.00
2009–10	\$57,815.00
2010–11	\$63,265.75
2011–12	\$770.00
TOTAL	\$149,230.75

There was no dispute that Mr Faysal provided the relevant professional services to Webster Wagner Engineering or that he received the above payments.

From 24 March to 11 July 2010, Mr Faysal was suspended on full pay because of a UTS investigation into his association with Webster Wagner Engineering. He continued to undertake work for Webster Wagner Engineering during that period. He told the Commission that the majority of his work for Webster Wagner Engineering that year occurred during his suspension. That was not the case. Less than half of what he earned that year was earned while he was suspended.

After 2010, the only company for which Mr Faysal did outside work was Webster Wagner Engineering.

UTS policies that applied

UTS' 2002 outside work policy and later the 2009 Directive required UTS staff to seek the approval of UTS before engaging in outside work. It was indicated that approval might be given for a limited amount of paid, outside work.

The UTS code of conduct required staff to disclose and avoid any potential conflict of interest. The 2009 Directive indicated that staff should be careful to avoid real or apparent conflicts of interest in their outside work, and

also referred staff to the code of conduct. It was also considered a conflict of interest if outside work interfered with the staff member's work for UTS.

Before 2010, it was a conflict of interest for Mr Faysal to undertake work for Webster Wagner Engineering. That was because Webster Wagner Engineering was then bidding, and carrying out work, for UTS in an area in which Mr Faysal had senior management and decision-making roles.

After he returned to work in 2010, Webster Wagner Engineering remained interested in working for UTS. The Commission is satisfied that this continued to give rise to a potential conflict of interest for Mr Faysal. Mr Faysal nonetheless continued to work for Webster Wagner Engineering. An issue for determination by the Commission was whether Mr Faysal did so knowing that it was a potential conflict of interest and therefore a breach of his obligations under UTS policies.

Mr Faysal is counselled about policy

Mr Faysal told the Commission that it was only during UTS' investigation in 2010 that he became aware of the outside work policies. During that investigation, he said that he thought that only the 1999 code of conduct, given to him when he started work, applied to him.

On 2 July 2010, following the conclusion of the investigation, Mr Faysal was formally censured and counselled by the deputy vice-chancellor, Mr Wood, and Mr Rabbitt. A document was prepared setting out what Mr Faysal was to be counselled about. The document stated:

1. *Outside Work — Draw his attention [to] the University's expectation concerning obtaining approval for outside work, and ensuring that the activity does not result in a conflict of interest with UTS work*

- ...
2. *Code of Conduct* — Clear up his understanding about the Code provided to him on appointment ... Draw to his attention the requirements concerning adhering to UTS policies, including *Outside Work* and to ensure that his personal and professional behaviour is consistent with expectations. Note conflict of interest issues must be addressed prior to him being involved – should discuss these with his supervisor to have them resolved. Clarify for him what a conflict of interest means and what he might do if such circumstances are to arise again in the future
- ...
5. *General expectation of him as a member of the senior staff group* — it is not sufficient to claim lack of knowledge as the basis for escaping his responsibility to be aware of UTS policies and procedures. As a senior staff member he is expected to demonstrate leadership and to manage himself and others in line with UTS policies and guidelines. If he is [in] any doubt, then he should discuss this with his supervisor in the first instance. It is apparent that he understands that he has obligations to engage in continuing professional development to maintain his registration as an engineer. The University also has an expectation that he maintain his currency of knowledge and awareness of University policies, procedures and practices as they apply to him and his role at UTS.

Mr Wood stated that, during the counselling session, they discussed the letter of censure sent to Mr Faysal following UTS' investigation. He said that Mr Faysal was counselled to adhere strictly to all UTS policies and procedures, and told that any further breach would result in his dismissal. Mr Rabbitt confirmed that Mr Faysal was counselled in accordance with the note quoted above. Mr Rabbitt also said that Mr Faysal was told that he would not be permitted to do outside work for UTS consultants or contractors because it would be a conflict of interest.

Mr Faysal, however, claimed that there was no discussion at all about conflicts of interest at the meeting, and that he was not told he could not work for UTS contractors. He said that he was simply told that he would be required to submit outside work applications.

The Commission was not persuaded by Mr Faysal's evidence.

The meeting followed an extensive investigation into his association with Webster Wagner Engineering. The note prepared for that meeting recorded in some detail what Mr Faysal was to be counselled about, which were matters

arising from, and consistent with, the findings of the investigation. It was not credible that Mr Faysal was simply told to submit outside work applications with no other discussion of his obligations. This evidence was also contradicted by the evidence of Mr Rabbitt and Mr Wood.

The Commission is satisfied that Mr Rabbitt and Mr Wood counselled Mr Faysal in accordance with the matters set out in the note. The Commission is also satisfied that Mr Faysal was told that he would not be permitted to do outside work for UTS consultants or contractors.

Disclosure and outside work applications

Mr Faysal submitted his first application to undertake outside work on 9 August 2010. The application covered the period from August to December 2010. On 1 February 2012, he submitted his second application to cover the 2012 calendar year. Both applications were approved. No application was submitted for 2011, despite Mr Faysal having undertaken work for Webster Wagner Engineering that year.

The applications stated that Mr Faysal would be self-employed. Neither application mentioned that he was intending to undertake work for Webster Wagner Engineering. Notably, Mr Faysal attached to his 2012 application a list he had prepared of the projects and hours worked in 2011. That list also gave no indication that all of the work listed related to projects for Webster Wagner Engineering. That was a significant and material omission.

The 2010 application also significantly understated the number of hours that Mr Faysal actually worked. Mr Faysal provided an estimate of a total of 120 hours, which might involve approximately five or six hours a week. In the period from August to December 2010 alone, however, he worked no less than 187 hours for Webster Wagner Engineering.

Mr Faysal claimed that he told Mr Rabbitt that he was undertaking work for Webster Wagner Engineering. He disagreed with the proposition that he had never told Mr Rabbitt at any time that he intended to, or was doing work for, UTS contractors, including Webster Wagner Engineering.

Mr Rabbitt told the Commission otherwise. He knew of Webster Wagner Engineering and that they had worked for UTS and might work for UTS in the future. He gave evidence that he did not know, and Mr Faysal never told him, that Mr Faysal was undertaking, or intending to undertake, work for Webster Wagner Engineering. Mr Rabbitt was in no doubt that undertaking work for companies performing contract work or tendering or quoting for work at UTS would be in breach of the code of conduct. He said that he would not have approved an application to undertake such work.

Mr Rabbitt's evidence was consistent with UTS' clearly written codes, policies and procedures, and his role in ensuring compliance with that policy. It was also consistent with the concerns that Mr Rabbitt then knew UTS had about Mr Faysal and potential conflicts of interest as a result of his outside work.

The Commission prefers the evidence of Mr Rabbitt, and is satisfied that Mr Faysal did not tell Mr Rabbitt that he was working for Webster Wagner Engineering at any time.

Conflict of interest

There was no mention in either of Mr Faysal's applications for outside work approval of any conflict of interest or potential conflict of interest. Mr Faysal claimed that he did not think it was a conflict of interest for him to work for Webster Wagner Engineering as it was not, at the time he submitted his application, engaged in any UTS work. He claimed he, therefore, saw no need to nominate Webster Wagner Engineering as the entity for which he intended to undertake work. He told the Commission that, if Webster Wagner Engineering had done UTS work in the future, he would have declared it as a potential conflict of interest then.

Mr Faysal knew that his professional association with Webster Wagner Engineering had been of significant concern to UTS. He had been told that the allegations that led to his suspension included that:

- he did not disclose that he had undertaken work for Webster Wagner Engineering
- his work for Webster Wagner Engineering presented multiple issues of conflict of interest under the code of conduct, arising from his senior management and decision-making role, his use of UTS resources (including staff), and use of time-in-lieu to do that work.

These were the issues that had led to his censure and counselling for breaches of UTS' policies. He was warned about his obligation to comply with UTS' policies in respect of conflicts of interest relating to his outside work and told that he could not work for UTS contractors. As a result, Mr Faysal was undoubtedly aware that UTS would scrutinise his subsequent outside work applications and would have concerns about his continuing to work for Webster Wagner Engineering, in particular.

The Commission is satisfied that Mr Faysal was aware that it was a conflict of interest, or potential conflict of interest, for him to work for Webster Wagner Engineering after 2010. He was aware, at least, that UTS would have concerns that it was a conflict of interest, or potential conflict of interest, for him to do so. He knew by then that

he was obliged to disclose that to UTS. The Commission is satisfied that he knowingly refrained from doing so.

The Commission is also satisfied that the approvals granted on the basis of Mr Faysal's outside work applications did not permit him to undertake the work he performed for Webster Wagner Engineering. The approvals were granted on the basis of applications where he knowingly omitted facts that were highly material to the grant of the approval and did not authorise Mr Faysal to work for Webster Wagner Engineering in circumstances where there was a conflict of interest.

Corrupt conduct

The Commission is satisfied to the requisite degree that the following facts have been established:

- Between August 2008 and December 2011, Mr Faysal undertook work for Webster Wagner Engineering. At all times, he was a UTS employee and bound by its code of conduct and outside work policies.
- Those policies required staff to disclose and avoid conflicts of interest, whether actual, apparent or potential, and to seek approval before undertaking outside work.
- In July 2010, Mr Faysal was specifically counselled about his obligations under these policies. He was also instructed that he could not work for UTS contractors or consultants.
- At no time did Mr Faysal disclose to UTS or his supervisor, Mr Rabbitt, that he was working, or intended to work, for Webster Wagner Engineering nor did he ever disclose a conflict of interest of any type in relation to his work for Webster Wagner Engineering.
- At all times, it was a conflict of interest, or potential conflict of interest, for Mr Faysal to undertake work for Webster Wagner Engineering and a breach of his obligations under UTS policy to do so without informed approval. That was because Webster Wagner Engineering had been a UTS contractor until 2010 and remained interested in UTS work during and after 2010.
- Mr Faysal was aware that it was a conflict of interest, or potential conflict of interest, for him to work for Webster Wagner Engineering, at least after the counselling meeting on 2 July 2010.

- Mr Faysal deliberately refrained from disclosing his work for, or his intention to work for, Webster Wagner Engineering because he knew UTS would not give him approval to do so.
- The approvals for outside work granted by UTS did not permit Mr Faysal to undertake work for Webster Wagner Engineering.

Mr Faysal's deliberate failure to disclose to UTS that he was undertaking work for Webster Wagner Engineering was corrupt conduct for the purposes of section 8(1)(a) of the ICAC Act. It was conduct of a person (whether or not a public official) that adversely affected, or that could have adversely affected, either directly or indirectly, the honest or impartial exercise of official functions by Mr Faysal. That was because Mr Faysal was undertaking work for Webster Wagner Engineering, who remained interested in work for UTS after 2010. Mr Faysal was in a position where he could exercise his official functions so as to improperly influence the procurement process in favour of Webster Wagner Engineering, such as by his providing advice to UTS staff involved in procurement that Webster Wagner Engineering should be engaged for particular projects.

Mr Faysal's conduct also comes within subsection 9(1)(c) of the ICAC Act. The Commission is satisfied that, if the facts it has found were to be proved on admissible evidence to the appropriate civil standard and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Faysal's conduct was reasonable grounds for dismissing, dispensing with or otherwise terminating Mr Faysal's services for breaches of the conflict of interest provisions of UTS' outside work policy as well as the conflict of interest provisions of UTS' code of conduct.

Section 74A(2) statement

For the purpose of this part of this chapter, Mr Faysal is an affected person.

UTS dismissed Mr Faysal from its employ in April 2012. Mr Faysal has since commenced proceedings in Fair Work Australia contesting his dismissal. In the event that Mr Faysal succeeds in being reinstated to the service of UTS, the Commission is of the opinion that UTS should give consideration to the taking of action against Mr Faysal as a public official in relation to the matters set out above, with a view to dismissing, dispensing with the services of or otherwise terminating the services of Mr Faysal.

Disclosure of confidential information

How the allegations involve corrupt conduct

The Commission investigated whether Mr Faysal disclosed confidential information to two UTS contractors, Gary Jurgeleit and Mr Franjeh, in order to assist them in winning contracts with UTS.

Mr Jurgeleit was the principal of Airin Services Pty Ltd, a private company offering air conditioning installation and maintenance services. He had worked at UTS since 2005 and knew Mr Faysal. Most, if not all, of his work was obtained through the FMU at UTS.

Mr Franjeh was the principal of Rega Controls Pty Ltd (as discussed in chapter 2).

Disclosure of confidential information is a breach of UTS' code of conduct and the procurement policy dealing with conflicts of interest and confidentiality of procurement information.

If proven, Mr Faysal's conduct could amount to corrupt conduct within section 8(1)(d) of the ICAC Act in that it was conduct of a public official involving the misuse of information or material that he or she 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.

It would also be conduct within section 9(1)(c) of the ICAC Act, being conduct that could constitute or involve reasonable grounds for dismissing, dispensing with the service of or otherwise terminating the services of Mr Faysal.

Policies

Mr Faysal was aware of UTS' procurement policy, entitled "Procurement policy and directives". He said he read only part of the policy because he was busy with projects for UTS, and did not read those parts of the policy relating to probity and ethical behaviour in the procurement process or the provisions relating to confidentiality of information.

It is worthwhile setting out the policy provisions relating to the confidentiality of information. They are brief and straightforward, and appear in a policy that was only 12 pages long. The policy states:

5.9 Confidentiality and other ethical considerations

Probity and ethical behaviour are essential at all stages of the quotation/tendering process including the receipt and processing of tenders. Subject to 5.12

below, no information should be divulged to another quotation provider/tenderer at any stage during the process or after it has concluded.

...

5.12 Feedback to Unsuccessful Parties

To ensure the transparency of UTS procurement processes and to encourage effective competition for future procurement, unsuccessful quotation providers/tenderers who seek feedback should be given a debriefing after the contract for procurement has been executed. The name of the successful contractor and the tendered price should be disclosed, as well as the details of the unsuccessful quotation provider's/tenderer's degree of compliance with the specific procurement requirements and evaluation criteria.

Despite claiming not to have read this part of the policy, Mr Faysal told the Commission that he knew that he was required to:

- act ethically and with probity in the procurement process
- maintain the confidentiality of sensitive procurement information and not disclose information provided by one quotation provider/tenderer to another
- deal fairly, impartially and consistently with all UTS suppliers.

Mr Faysal told the Commission that he had complied with these obligations whenever he was involved in any part of the procurement process, and had not disclosed any confidential information at any stage of a tender process or quotation process, or after such a process had concluded.

Disclosure of information to Mr Franjeh

At 5.26 pm on 12 March 2012, a telephone conversation between Mr Faysal and Mr Franjeh, conducted mostly in Arabic, was lawfully intercepted by the Commission.

During this conversation, Mr Faysal told Mr Franjeh that "TES" had bid \$5.8 million for a UTS project. They discussed what the "others" were bidding and whether it was within UTS' budget. "TES" was a reference to a company called Total Environment Solutions, then tendering for a contract with UTS, and one of five companies tendering for the contract. Mr Franjeh was tendering his control systems to those companies for use in the project.

Mr Franjeh told the Commission that Mr Faysal was "feeding me some information on this project, what are the prices of the subcontractor or the contractor that's

applied for the job". Mr Franjeh understood that this was done for the purpose of assisting him in his tender and that it was not public information. Mr Franjeh told the Commission that it was not the first time that Mr Faysal had assisted him by providing information about bids.

During the recorded conversation, Mr Faysal and Mr Franjeh also discussed whether a particular engineering firm might draw the specifications for another UTS project. Mr Faysal told Mr Franjeh that the firm would draw the specifications how Mr Faysal wanted, to which Mr Franjeh said, "Excellent, put us in and maybe you and I will make some money on this project". Mr Faysal then said, "... I don't want to put uh I don't to name Rega by name I want to play it like we played Broadway building very quietly and secretly. Because Ramsey as soon as they see your name the knives and the axe will come at your head".

This exchange shows that Mr Faysal was prepared to favour Rega Controls through controlling the project specifications, but wanted to conceal that preference by not specifying Rega Controls Pty Ltd as a supplier.

Mr Franjeh told the Commission that he understood Mr Faysal to mean that he could influence the project specifications so that Mr Franjeh's products would be used in the project, and confirmed that his products were in fact used.

Mr Faysal denied "feeding" confidential information to Mr Franjeh. He claimed that it was Mr Franjeh who had given him, Mr Faysal, the information about the bids of TES and others, and suggested the translation of the call was inaccurate to the extent it showed otherwise. He denied all knowledge of the tender in question, except for what Mr Franjeh had told him.

The Commission prefers Mr Franjeh's evidence about the meaning of his conversation with Mr Faysal, which was consistent with the translated text of the conversation and against Mr Franjeh's interests. The Commission is satisfied that the telephone conversation shows Mr Faysal assisting or intending to assist Mr Franjeh in his tender for a contract that related to a UTS project. Mr Faysal disclosed confidential information to Mr Franjeh concerning the prices quoted by UTS tenderers to whom Mr Franjeh was interested in selling his products and services.

The Commission is satisfied that Mr Faysal obtained the information in the course of his work at UTS and not from Mr Franjeh as he claimed. The Commission is also satisfied that Mr Faysal told Mr Franjeh that he was prepared to assist his tender by manipulating UTS' project specifications to favour the use of Mr Franjeh's products.

Disclosure of information to Mr Jurgeleit

At 10.49 am on 16 March 2012, the Commission lawfully intercepted a telephone call that Mr Faysal made to Mr Jurgeleit. The call concerned a bid for UTS work that Mr Jurgeleit had submitted the previous night.

Mr Jurgeleit asked Mr Faysal if his bid of \$155,000 would be “alright”, and Mr Faysal told him, “I think yep that should be right”. Mr Faysal referred to a “discount” that he “gave” Mr Jurgeleit, and told him that “you are the only one [you] know, [who] got that, that discount”. The “discount” from “Ramsey” referred to a discount on the price of air conditioning control panels, which were to be supplied by Mr Franjeh of Rega Controls Pty Ltd for use in the project. The cost of the control panels was a factor in the price submitted by Mr Jurgeleit and his competitors.

Mr Faysal then said to Mr Jurgeleit, “Yeah, look ah ... let’s win it, once you win it we will work out something, don’t worry about that”.

At 12.22 pm on 22 March 2012, the Commission lawfully intercepted another call about the bid from Mr Faysal to Mr Jurgeleit. Mr Faysal told Mr Jurgeleit the “good news” that “on the figures, you are 155... so the second is 165... and the third is 240”, thus informing Mr Jurgeleit that he was the leading bidder.

Mr Faysal said to Mr Jurgeleit, “you know this \$10,000 and the control made the difference”. Mr Jurgeleit told the Commission that this was a reference to the air conditioning controls for the project that were to be supplied by Rega Controls Pty Ltd at a discounted rate. It made the “difference” because it enabled Mr Jurgeleit to submit the lowest bid and win the contract.

Mr Faysal then said, “so that is the good news, but please pretend you don’t know anything because no one knows about it”. This comment reflected the fact that a decision had not yet been made by UTS and that Mr Faysal appreciated that the information he was providing about the tender prices was confidential. Mr Faysal told Mr Jurgeleit that, “they’ve already done the recommendation to go to you, but they are waiting for Glen to sign it” and “Glen” would call Mr Jurgeleit to sign a contract once that was done. “Glen” was Mr Rabbitt, the director of FMO and an authorised financial delegate for FMO contracts. Mr Jurgeleit agreed, saying, “Oh yeah, no I won’t I won’t know anything mate at all”.

When these calls were put to him, Mr Jurgeleit admitted that Mr Faysal had coached him about his bid and had told him about a discount that would help him win the UTS contract. He told the Commission that he was aware it was wrong for Mr Faysal, whom he knew had a role in, or input into, allocating UTS work, to give him hints or coach him about his bid in this way. Mr Jurgeleit was also aware that

what Mr Faysal told him about his competitors’ pricing was confidential information.

Mr Faysal admitted calling Mr Franjeh regarding Mr Jurgeleit’s bid, which resulted in Mr Jurgeleit being able to lodge a more competitive bid because of a discount that Mr Franjeh was to give only to Mr Jurgeleit. Mr Faysal nonetheless maintained that he had dealt fairly, impartially and consistently with all of the contractors, and that any disparity arose from Mr Franjeh himself favouring Mr Jurgeleit with a discount.

Mr Faysal claimed that when he said, “let’s win it, once you win it we will work out something”, he was speaking of working something out to help Mr Jurgeleit deliver if he won the project because Mr Jurgeleit had significant visual impairment. This explanation does not accord with what Mr Faysal actually said and there was nothing said in either conversation about Mr Jurgeleit’s visual impairment.

Mr Faysal also claimed that the information they discussed came from Mr Franjeh, and “wasn’t confidential from UTS, the information was from outside the UTS”. He said that it was not inappropriate to communicate that information because “it’s not my project, I have nothing to do with it”. He claimed to have had no knowledge of the project or whether a decision had then been made on it by UTS. Again, Mr Faysal’s evidence was inconsistent with what he said during the telephone conversations, particularly with what he told Mr Jurgeleit about the recommendation and “Glen” approving the contract, which was information that Mr Franjeh was highly unlikely to know. There was no suggestion at all in the conversation that Mr Franjeh was the source of Mr Faysal’s information.

The Commission is satisfied that the two telephone conversations outlined above show Mr Faysal assisting Mr Jurgeleit to win a UTS contract by:

- disclosing confidential information to Mr Jurgeleit concerning the prices quoted by Mr Jurgeleit’s competitors and UTS’ internal decision-making process
- contacting Mr Franjeh to secure a discount for Mr Jurgeleit that enabled Mr Jurgeleit to submit a more competitive bid.

The Commission is satisfied that the information Mr Faysal disclosed to Mr Jurgeleit was obtained in the course of his work at UTS and not from Mr Franjeh as he claimed. The Commission is also satisfied that Mr Faysal knew that his conduct was contrary to UTS policy, and that there would be serious repercussions for him if it were known that he had discussed such matters with Mr Jurgeleit. This is evidenced by the fact that Mr Faysal urged Mr Jurgeleit to feign ignorance of the information that Mr Faysal had disclosed if contacted by UTS.

Corrupt conduct

The Commission is satisfied to the requisite degree that the following facts have been established:

- Mr Faysal was privy to confidential information acquired in the course of his official UTS functions about UTS projects that he discussed with Mr Franjeh and Mr Jurgeleit in telephone calls on 12, 16 and 22 March 2012
- Mr Faysal provided confidential information about those projects to Mr Franjeh and Mr Jurgeleit in order to assist them to secure contracts for, or relating to, UTS projects in which they were interested
- Mr Faysal had previously provided other confidential information that he acquired in the course of his official UTS functions to Mr Franjeh to assist him in securing other contracts with UTS.

Such conduct is corrupt conduct for the purpose of section 8 of the ICAC Act. It is conduct of a 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, and therefore comes within section 8(1)(d) of the ICAC Act.

Mr Faysal's conduct also comes within subsection 9(1)(c) of the ICAC Act. The Commission is satisfied that, if the facts it has found were to be proved on admissible evidence to the appropriate civil standard and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Faysal's conduct amounted to reasonable grounds for dismissing, dispensing with the services of or otherwise terminating the services of Mr Faysal, on the basis that he had breached UTS' code of conduct and procurement policy, particularly those provisions relating to conflicts of interest and confidentiality of procurement information.

Section 74A(2) statement

For the purpose of this chapter, the Commission is satisfied that Mr Faysal is an affected person.

UTS dismissed Mr Faysal from its employ on 3 April 2012. Mr Faysal has since commenced proceedings in Fair Work Australia contesting his dismissal. In the event that Mr Faysal succeeds in being reinstated to the service of UTS, the Commission is of the opinion that UTS should give consideration to the taking of action against Mr Faysal as a public official in relation to the matters set out in this chapter, with a view to dismissing, dispensing with the services of or otherwise terminating the services of Mr Faysal.

Chapter 5: Corruption prevention

This chapter examines the decisions, systems, policies and practices at UTS that actually, or potentially, allowed Mr Faysal to engage in corruption. In an environment of significant change and with high-value projects that needed timely technical advice, Mr Faysal used his expertise and technical knowledge to influence UTS staff responsible for procurement. Confusion over his role amidst a recent restructure, the absence of an effective return-to-work strategy after his suspension, and ad hoc supplier arrangements all contributed to the opportunities exploited by Mr Faysal.

A changing environment

In 2009 and 2010, UTS' FMU was undergoing significant change. UTS had embarked on a billion-dollar works project known as the City Campus Master Plan Program of Work. The plan required project management capability beyond that available within the FMU. A decision was made to split the FMU into two units: the FMO and the PMO. The latter, which was responsible for the delivery of the city campus master plan, mainly employed new staff who relied on existing expertise to ensure projects integrated with the established infrastructure.

The FMO continued to manage ongoing maintenance as well as capital works outside the city campus master plan. The previous director of the FMU, Robert Kelly, left UTS around this time. One of his subordinates, Mr Rabbitt, became the new director for the FMO.

Around the same time, UTS began an extensive review of its procurement policies and procedures and engaged a strategic procurement manager to develop robust procurement processes to support the operation of its policy.

Mr Faysal's return to work

In 2008 and 2009, UTS received allegations about Mr Faysal's relationship with suppliers. A fact-finding investigation conducted by IAB Services for UTS found that there was evidence to support the allegations. In early 2010, UTS suspended Mr Faysal from duty and conducted a formal investigation. The formal investigation sustained a number of policy and code of conduct breaches and Mr Faysal was formally censured by the vice-chancellor. These breaches included secondary employment and relationships with suppliers where there was a potential conflict of interest.

At the time UTS decided to censure Mr Faysal, it was also determined that he should not be able to supervise staff, have a financial delegation or be involved in procurement. UTS believed returning Mr Faysal to his substantive engineering position would be the primary strategy in effecting these restrictions on him. Mr Wood, deputy vice-chancellor, and Mr Rabbitt formally counselled Mr Faysal. Both were late inclusions in the process due to Mr Kelly's departure and other absences. Mr Rabbitt told the Commission that he spoke from notes prepared by others when counselling Mr Faysal and knew little of the specific evidence or detailed allegations made against him.

Amidst the significant changes at UTS, Mr Faysal returned to work as the manager of engineering services within the FMO, reporting to Mr Rabbitt. In that role, he was expected to provide expert advice to the FMO and the PMO. Mr Rabbitt held the view that Mr Faysal spent most of his time advising the PMO on the city campus master plan. This assistance was valuable to project managers in the PMO who, as new staff, knew little of the existing campus systems with which their projects were to integrate.

There was confusion, however, about Mr Faysal's role between the FMO and the PMO. The evidence suggests that PMO staff overestimated Mr Faysal's authority as an

advisor. Mr Rabbitt and Nigel Oliver, the PMO's director, have also provided different information regarding Mr Faysal's advisory role to the PMO. Mr Oliver held the view that Mr Faysal's work mainly related to the FMO. Mr Oliver was new to UTS and had no knowledge of the investigations or findings about Mr Faysal, nor the restrictions sought on his duties.

In 2011, the PMO's operations manager became concerned about three PMO procurement activities involving Mr Faysal. Once detected, corrective action was taken to ensure these procurement activities complied with UTS policy. Despite the concerns being brought to the attention of Mr Rabbitt and Mr Oliver, there was no immediate link made to Mr Faysal, as the details of his previous conduct were unknown to them.

What can UTS learn?

In the Commission's experience, significant change can create an opportunity for corruption. The PMO was formed with new staff in mid-2010 and, although the basics were in place, the controls were embryonic. Mr Faysal exploited new staff within the PMO, who relied upon his experience and knowledge. The new staff did not have an appreciation of the scope of Mr Faysal's authority. While the PMO rapidly matured, its procurement controls and systems were still vulnerable. An awareness of these vulnerabilities at the start may have provided some protection against potential corrupt conduct. This is particularly important during a period when new staff are becoming familiar with procedures that would otherwise manage probity risks more effectively.

UTS was confronted with delivering a billion-dollar project, the split of FMU, new staff, and a review of its procurement systems. While the IAB Services fact-finding report provided evidence to warrant Mr Faysal's suspension, the findings from the formal investigation were not as significant. UTS contends that the Senior Staff

Group Collective Agreement restricted it from informing managers about the allegations and investigations into Mr Faysal's conduct. Also, the FMU's former director, who had a greater understanding of the allegations against Mr Faysal, had left UTS.

There was no plan to support the management of Mr Faysal's return to work. While Mr Faysal was not to be involved in procurement, the strategy of returning him to his substantive role did not take into account the fact that Mr Faysal's expert knowledge of existing campus infrastructure would allow him to influence and suggest suppliers to PMO staff.

UTS held the view that Mr Faysal's conduct warranted formal censure and restricted duties to prevent him from authorising, and being involved in, procurement. At the time of the public inquiry, there remained confusion amongst UTS managers as to who specified that Mr Faysal should not be involved in procurement and how that was to be managed. There was evidence that Mr Faysal continued to attend high-level meetings that related to procurement decisions.

The Commission believes that a properly constructed management plan to facilitate Mr Faysal's return to work could have assisted Mr Rabbitt. An effective management plan would list and monitor disciplinary outcomes or restrictions arising from the formal censures or disciplinary proceedings, and provide support to the appropriate manager in overseeing the return-to-work process.

Recommendation 1

That UTS employs strategies, such as return to work management plans, to address any residual risks associated with staff returning to duties and to ensure an appropriate level of support for line managers with regard to overseeing a plan and/or other strategies.

Procurement at UTS

The UTS procurement policy features controls that are to be expected from a public agency, such as requirements for quotes and tenders at set value thresholds. Despite this foundation, long-term procurement practices across UTS have incorporated ad hoc supplier arrangements. These arrangements have resulted in the engagement of suppliers following weak competitive processes and, in some instances, order-splitting.

Procurement risks within the FMU have previously been identified in a number of reports, including the FMU Quality Audit, the UTS Risk and Assurance Unit report, the Final Investigation Report Allegation of Corruption – FMU Procurement Practices, and the IAB Services reports. Risks identified in these reports included failures to obtain quotes and maintain records.

The use of informal and ad hoc supplier arrangements contributed to corruption opportunities for Mr Faysal.

There was also poor supplier engagement across UTS. During the public inquiry, five suppliers said that they had not received any information from UTS about its policies, procedures or probity standards. UTS' absence of formal communication left suppliers to act on informal communication by staff and on assumptions based on their past work arrangements with UTS. Three of the suppliers acknowledged that payments were made to Mr Faysal in order to maintain contracts, as they believed he was a gatekeeper to UTS work. This, in itself, indicates that these suppliers did not believe UTS' procurement and probity systems would detect the partial awarding of significant purchases. It is open to conclude that, if UTS suppliers are made aware of the university's probity and procurement policies and practices, they would be less likely to make payments to employees to gain an unfair advantage in supplying goods and services to UTS.

UTS has taken steps to address its procurement risks. In December 2010, UTS engaged a strategic procurement manager to develop robust procurement processes to support the operation of its policy. To date, the UTS Strategic Procurement Unit review has identified a number of preferred supplier arrangements without contracts or a compliant procurement process to engage the supplier. Many of these suppliers have been removed from supplier lists and a new selection process has commenced.

Large-scale procurement projects at UTS are undertaken via a range of controls, such as tender committees, probity advisors, project managers, quantity surveyors and executive approvals. UTS has informed the Commission that it intends to ensure that all of its supplier arrangements are conducted in accordance with policy. The Commission found evidence of robust procurement controls being utilised within the

PMO, which UTS intends to translate into practice for procurement in the FMO. The Commission recommends that UTS continues its procurement program, including developing a strategy to improve supplier engagement.

Recommendation 2

That UTS continues its program to identify and implement procurement best practice for supplier and contractor panels and other supplier agreements.

Recommendation 3

That UTS develops a strategy to engage and communicate with suppliers and contractors regarding UTS procurement and probity requirements.

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

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

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

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

Appendix 1: The role of the Commission

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

The Commission can also investigate the conduct of persons who are not public officials but whose conduct adversely affects or could adversely affect, either directly or indirectly, the honest or impartial exercise of official functions by any public official, any group or body of public officials or any public authority. The Commission may make findings of fact and form opinions based on those facts as to whether any particular person, even though not a public official, has engaged in corrupt conduct.

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

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

The role of the Commission is to act as an agent for changing the situation which has been revealed. Its work involves identifying and bringing to attention conduct which is corrupt. Having done so, or better still in the course of so doing, the Commission can prompt the relevant public authority to recognise the need for reform or change, and then assist that public authority (and others with similar vulnerabilities) to bring about the necessary changes or reforms in procedures and systems, and, importantly, promote an ethical culture, an ethos of probity.

The principal functions of the Commission, as specified in section 13 of the ICAC Act, include investigating any circumstances which in the Commission's opinion imply that corrupt conduct, or conduct liable to allow or encourage corrupt conduct, or conduct connected with corrupt conduct, may have occurred, and cooperating with public authorities and public officials in reviewing practices and procedures to reduce the likelihood of the occurrence of corrupt conduct.

The Commission may form and express an opinion as to whether consideration should or should not be given to obtaining the advice of the Director of Public Prosecutions with respect to the prosecution of a person for a specified criminal offence. It may also state whether it is of the opinion that consideration should be given to the taking of action against a person for a specified disciplinary offence or the taking of action against a public official on specified grounds with a view to dismissing, dispensing with the services of, or otherwise terminating the services of the public official.

Appendix 2: Making corrupt conduct findings

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

Section 8 defines the general nature of corrupt conduct. Subsection 8(1) provides that corrupt conduct is:

- a. *any conduct of any person (whether or not a public official) that adversely affects, or that could adversely affect, either directly or indirectly, the honest or impartial exercise of official functions by any public official, any group or body of public officials or any public authority, or*
- b. *any conduct of a public official that constitutes or involves the dishonest or partial exercise of any of his or her official functions, or*
- c. *any conduct of a public official or former public official that constitutes or involves a breach of public trust, or*
- d. *any conduct of a public official or former public official that involves the misuse of information or material that he or she has acquired in the course of his or her official functions, whether or not for his or her benefit or for the benefit of any other person.*

Subsection 8(2) specifies conduct, including the conduct of any person (whether or not a public official), that adversely affects, or that could adversely affect, either directly or indirectly, the exercise of official functions by any public official, any group or body of public officials or any public authority, and which, in addition, could involve a number of specific offences which are set out in that subsection.

Subsection 9(1) provides that, despite section 8, conduct does not amount to corrupt conduct unless it could constitute or involve:

- a. *a criminal offence, or*
- b. *a disciplinary offence, or*

- c. *reasonable grounds for dismissing, dispensing with the services of or otherwise terminating the services of a public official, or*
- d. *in the case of conduct of a Minister of the Crown or a Member of a House of Parliament – a substantial breach of an applicable code of conduct.*

Section 13(3A) of the ICAC Act provides that the Commission may make a finding that a person has engaged or is engaged in corrupt conduct of a kind described in paragraphs (a), (b), (c), or (d) of section 9(1) only if satisfied that a person has engaged or is engaging in conduct that constitutes or involves an offence or thing of the kind described in that paragraph.

Subsection 9(4) of the ICAC Act provides that, subject to subsection 9(5), the conduct of a Minister of the Crown or a member of a House of Parliament which falls within the description of corrupt conduct in section 8 is not excluded by section 9 from being corrupt if it is conduct that would cause a reasonable person to believe that it would bring the integrity of the office concerned or of Parliament into serious disrepute.

Subsection 9(5) of the ICAC Act provides that the Commission is not authorised to include in a report a finding or opinion that a specified person has, by engaging in conduct of a kind referred to in subsection 9(4), engaged in corrupt conduct, unless the Commission is satisfied that the conduct constitutes a breach of a law (apart from the ICAC Act) and the Commission identifies that law in the report.

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

First, the Commission makes findings of relevant facts on the balance of probabilities. The Commission then determines whether those facts come within the terms of sections 8(1) or 8(2) of the ICAC Act. If they do, the Commission then considers section 9 and the

jurisdictional requirements of section 13(3A) and, in the case of a Minister of the Crown or a member of a House of Parliament, the jurisdictional requirements of subsection 9(5). In the case of subsection 9(1)(a) and subsection 9(5) the Commission considers whether, if the facts as found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that the person has committed a particular criminal offence. In the case of subsections 9(1)(b), 9(1)(c) and 9(1)(d) the Commission considers whether, if the facts as found were to be proved on admissible evidence to the requisite standard of on the balance of probabilities and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that the person has engaged in conduct that constitutes or involves a thing of the kind described in those sections.

A finding of corrupt conduct against an individual is a serious matter. It may affect the individual personally, professionally or in employment, as well as in family and social relationships. In addition, there are limited instances where judicial review will be available. These are generally limited to grounds for prerogative relief based upon jurisdictional error, denial of procedural fairness, failing to take into account a relevant consideration or taking into account an irrelevant consideration and acting in breach of the ordinary principles governing the exercise of discretion. This situation highlights the need to exercise care in making findings of corrupt conduct.

In Australia there are only two standards of proof: one relating to criminal matters, the other to civil matters. Commission investigations, including hearings, are not criminal in their nature. Hearings are neither trials nor committals. Rather, the Commission is similar in standing to a Royal Commission and its investigations and hearings have most of the characteristics associated with a Royal Commission. The standard of proof in Royal Commissions is the civil standard, that is, on the balance of probabilities. This requires only reasonable satisfaction as opposed

to satisfaction beyond reasonable doubt, as is required in criminal matters. The civil standard is the standard which has been applied consistently in the Commission when making factual findings. However, because of the seriousness of the findings which may be made, it is important to bear in mind what was said by Dixon J in *Briginshaw v Briginshaw* (1938) 60 CLR 336 at 362:

...reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the fact or fact to be proved. The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal. In such matters 'reasonable satisfaction' should not be produced by inexact proofs, indefinite testimony, or indirect inferences.

This formulation is, as the High Court pointed out in *Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd* (1992) 67 ALJR 170 at 171, to be understood:

...as merely reflecting a conventional perception that members of our society do not ordinarily engage in fraudulent or criminal conduct and a judicial approach that a court should not lightly make a finding that, on the balance of probabilities, a party to civil litigation has been guilty of such conduct.

See also *Rejtek v McElroy* (1965) 112 CLR 517, the *Report of the Royal Commission of inquiry into matters in relation to electoral redistribution*, Queensland, 1977 (McGregor J) and the *Report of the Royal Commission into An Attempt to Bribe a Member of the House of Assembly, and Other Matters* (Hon W Carter QC, Tasmania, 1991).

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



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