

**I·C·A·C**

INDEPENDENT COMMISSION  
AGAINST CORRUPTION



**REPORT ON THE USE  
OF TAFE FUNDS TO PAY  
FOR WORK ON A DOG  
KENNEL COMPLEX**

**ICAC REPORT  
JUNE 2010**



Cover image: Interior of the dog kennel complex.

**ICAC**

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Sydney NSW 2000

The Hon Richard Torbay MP  
Speaker  
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Madam President  
Mr 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 use of TAFE funds to pay for work on a dog kennel complex.

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 faithfully



The Hon David Ipp AO QC  
Commissioner

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# Summary of investigation and outcomes

This investigation by the Independent Commission Against Corruption (“the Commission”) concerned the conduct of Garrie Cooper, who was employed by the Technical and Further Education (TAFE) division of the NSW Department of Education and Training (DET).

Mr Cooper, who resigned from TAFE following the Commission’s investigation, was employed as the head carpentry teacher at Miller College, one of the campuses that make up the TAFE South Western Sydney Institute (SWSI).

The Commission’s investigation was primarily concerned with arrangements made by Mr Cooper for three self-employed tradesmen, Anthony Fox, Keith Melia and Khai Van Tran, to be paid \$20,900 from TAFE funds for private work they did for Mr Cooper on a large dog kennel complex. Mark Wiseman, a TAFE employee who reported to Mr Cooper, was aware that Mr Fox falsely claimed payment from TAFE for work he did on the dog kennel complex but took no action to report this to TAFE management. He also authorised payment of invoices Mr Melia submitted to TAFE despite knowing they contained false claims as to the work performed.

The investigation also examined the obtaining of dummy work quotes by Mr Cooper and Mr Wiseman to circumvent TAFE requirements for at least three written quotes to be obtained for work estimated to cost over \$30,000. The dummy quotes were quotes prepared and submitted in the name of actual contractors, but without their knowledge or consent.

## Outcomes

The Commission has made findings that Mr Cooper, Mr Wiseman, Mr Fox, Mr Melia and Mr Tran engaged in corrupt conduct in relation to TAFE funds being used to fund private construction work. These findings are set out in Chapter 2 of this report. The Commission’s findings that Mr Cooper and Mr Wiseman engaged in corrupt conduct in relation to the obtaining of dummy quotes are set out in Chapter 3 of the report.

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

Chapter 2 of the report contains a statement, pursuant to section 74A(2) of the *Independent Commission Against Corruption Act 1988* (NSW) (“the ICAC Act”) that the Commission is of the opinion that the advice of the Director of Public Prosecutions should be obtained with respect to the prosecution of Mr Cooper for offences of concurring in the publishing of a false statement for the purpose of obtaining a benefit contrary to section 178BB of the *Crimes Act 1900* (NSW) and offences of giving false or misleading evidence to the Commission contrary to section 87(1) of the ICAC Act.

Mr Cooper resigned from TAFE during the Commission’s investigation. Mr Wiseman has been disciplined by TAFE in relation to his approval of Mr Melia’s invoices. The Commission therefore makes no recommendations in relation to disciplinary action.

In Chapter 4 the Commission analyses the DET systems, policies and procedures relevant to the conduct investigated. The Commission has made the following eight corruption prevention recommendations to DET to minimise or prevent similar conduct occurring in the future:

## Recommendation 1

That the South Western Sydney Institute, Technical and Further Education (SWSI TAFE) introduces a system whereby Finance Staff are required to record and report breaches of procurement policy to the Associate Director, Business and Services.

## Recommendation 2

That SWSI TAFE develops a protocol whereby staff members who breach financial policies on more than one occasion in a financial year have their financial delegation removed for 12 months.

## Recommendation 3

That TAFE conducts an audit of pre-apprenticeship programs operating in its other colleges and institutes to ensure the risks identified in this report are addressed.

## Recommendation 4

That SWSI TAFE produces financial reports at pre-determined milestones during each pre-apprenticeship project and provides these to the Faculty Director, Building and Construction.

## Recommendation 5

That TAFE benchmarks pre-apprenticeship projects between colleges and also between institutes to review performance and ensure value for money is being obtained.

## Recommendation 6

That SWSI TAFE ensures that the person performing the functions of the pre-apprenticeship coordinator receives training in procurement as soon as practicable after commencement.

## Recommendation 7

That TAFE undertakes an audit of all teaching positions involved in procurement and where appropriate ensures:

- a. that basic training in procurement is provided, and
- b. that duties are segregated so that teaching staff are not exercising end-to-end control, with approval being obtained outside their faculty.

## Recommendation 8

That SWSI TAFE provides information and training to frontline staff on the provisions of the *Protected Disclosures Act 1994* (NSW).

As part of the performance of its statutory functions, the Commission will monitor the implementation of these recommendations.

The recommendations will be communicated to DET with a request that an implementation plan for the recommendations be provided to the Commission. The Commission will also request progress reports and a final report on the implementation of the recommendations.

These reports will be posted on the Commission's website, [www.icac.nsw.gov.au](http://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 in relation to the investigation and the TAFE pre-apprenticeship scheme through which Mr Cooper was able to arrange corrupt payments to be made to three contractors. The roles of Mr Cooper and Mr Wiseman are also set out. Finally, some information is provided on the three contractors who worked on the dog kennel complex and were paid through TAFE.

## How the investigation came about

On 12 May 2009 the Commission received a report from the Director General of DET, made pursuant to section 11 of the ICAC Act. This section imposes a duty on the principal officer of a public authority to report any possible corrupt conduct to the Commission. The report concerned an allegation that Mr Cooper had undertaken private construction work using TAFE resources and had made payments to contractors for work that had either not been done or for which payment had previously been made. The DET investigation did not establish that Mr Cooper had engaged in misconduct but did identify a payment of \$6,900 to a contractor in circumstances where it was not clear that the work for which the claim was made had been done. When subsequently questioned by DET investigators about this, the contractor claimed that Mr Cooper instructed him to submit invoices for work he had not done.

## Why the Commission investigated

The allegations reported to the Commission were serious and would, if established, constitute corrupt conduct within the meaning of the ICAC Act. Given the limited powers of DET to investigate effectively the allegation made by the contractor, the Commission decided that it was in the public interest for it to conduct an investigation for the purpose of establishing whether corrupt conduct had occurred and whether there were any corruption prevention issues which needed to be addressed.

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

## Conduct of the investigation

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

Evidence was taken from Mr Cooper and four other witnesses at compulsory examinations.

## The public inquiry

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

- The seriousness of the alleged conduct involving the misuse of public resources for personal benefit by a senior public official.
- The desirability of publicly exposing the risks and systems failures that may have allowed the conduct to occur.
- The public interest in exposing the matter outweighed the public interest in preserving the privacy of the persons concerned in the matter.
- Public exposure of the matter might assist other agencies to review their own systems and encourage other persons aware of similar conduct to come forward.

The public inquiry took place on 1 and 2 March 2010. Assistant Commissioner Theresa Hamilton presided at the inquiry and Murugan Thangaraj acted as Counsel Assisting the Commission. Mr Cooper and eight other witnesses gave evidence.

At the conclusion of the public inquiry Counsel Assisting the Commission prepared submissions setting out the evidence and what findings and recommendations the Commission could make based on that evidence. These submissions were provided to Mr Cooper and other persons and submissions in response were invited. All submissions in response received by the Commission have been taken into account in preparing this report.

## South Western Sydney Institute of TAFE

The South Western Sydney Institute (SWSI) is one of Australia's largest TAFE institutes. It consists of nine colleges spread across the south-west region of Sydney and includes nine faculties.

The Building and Construction Faculty offers courses designed to address a perceived skill shortage in the building industry. Miller College is one of the five colleges within SWSI where these courses are offered.

## The pre-apprenticeship program

The purpose of the pre-apprenticeship program is to provide students with hands-on experience in the building and construction industry through construction of public housing accommodation. In essence, the program is a form of joint venture between the SWSI and Resitech, the NSW public sector agency responsible for building and maintaining public housing. The SWSI is allocated certain Resitech properties to build. Pre-apprenticeship program students, with the assistance of teachers and contractors, construct the property to the agreed specifications and budget. The pre-apprenticeship program operates from the Miller and Campbelltown colleges of the South Western Sydney Institute.

## Garrie Cooper

Mr Cooper was the head carpentry teacher at Miller College. He was responsible for teaching and overseeing the carpentry section. His functions included negotiating

with Resitech for properties to be built or renovated through the pre-apprenticeship program. His role included:

- identifying potential contractors from whom to obtain quotes;
- receiving and assessing quotes; and
- project managing and supervising contracted work.

## Mark Wiseman

Mr Wiseman commenced teaching bricklaying at Granville College of SWSI TAFE in early 1987. In 2006 he began teaching pre-apprenticeship students and managing pre-apprenticeship projects at Miller College. His functions in relation to the pre-apprenticeship projects included training students, ordering materials, organising subcontractors and approving invoices for payment. He was directly supervised by Mr Cooper.

## Anthony Fox

Mr Fox is a concreter and bricklayer and operates Fox Construction Group Pty Ltd. Mr Fox met Mr Wiseman through their respective wives and they worked together for a couple of years. Around 2005 Mr Wiseman introduced Mr Fox to Mr Cooper and Mr Fox was subsequently awarded work in relation to a number of pre-apprenticeship projects.

## Keith Melia

Mr Melia is a qualified fascia and gutter installer and operates Melia Gutters Pty Ltd. He met Mr Wiseman at a metal supply shop and was subsequently granted work in relation to a number of pre-apprenticeship projects.

## Khai Van Tran

Mr Tran is a tiler and runs a business called Khai's Artistic Tiling. Mr Tran met Mr Wiseman while he was studying at TAFE. Sometime after Mr Tran left TAFE, Mr Wiseman arranged for him to do tiling work for some pre-apprenticeship projects. He met Mr Cooper while doing this work at one of the project sites.

## Chapter 2: Paying for the dog kennel complex

This chapter sets out the circumstances through which \$21,900 of TAFE money was used to pay three contractors who did private work for Mr Cooper on a large dog kennel complex. Mr Cooper's use of other TAFE contractors to do work at his house is also examined. There was no evidence that these contractors were paid from TAFE funds.

### The arrangement for building the kennel

Mr Cooper wanted to breed greyhounds for racing. During 2006 he entered into an arrangement with Harry Sarkis, a former racing dog trainer, to build a dog kennel complex on Mr Sarkis' property in return for Mr Sarkis caring for and training Mr Cooper's greyhounds. The dog kennel complex was to be built over 12 months. It was built on a concrete slab measuring 20 metres by eight metres with brick walls, tiled floor and walls, tiled roof and fitted out with air conditioning. A picture of the dog kennel complex, demonstrating its substantial size, is reproduced on the next page.

Before construction of the kennel commenced Mr Cooper estimated his cost for the building work would be \$55,000 to \$60,000 over 12 months. In fact, Mr Cooper paid less than \$10,000, for bricks, sand, cement and doors.

Mr Cooper told the Commission that he did not have \$55,000 to \$60,000 at the time work commenced. He claimed that he intended to obtain it by saving his TAFE salary and living off his wife's income. Mr Cooper estimated his annual TAFE salary at \$90,000 but claimed he was not sure whether this was what he received before or after tax. Mr Cooper also received prize money from racing dogs. However, this would not have gone anywhere near covering the building cost. He estimated that in 2006 his income from prize money was about \$800. He told the Commission that he had no other sources of income.

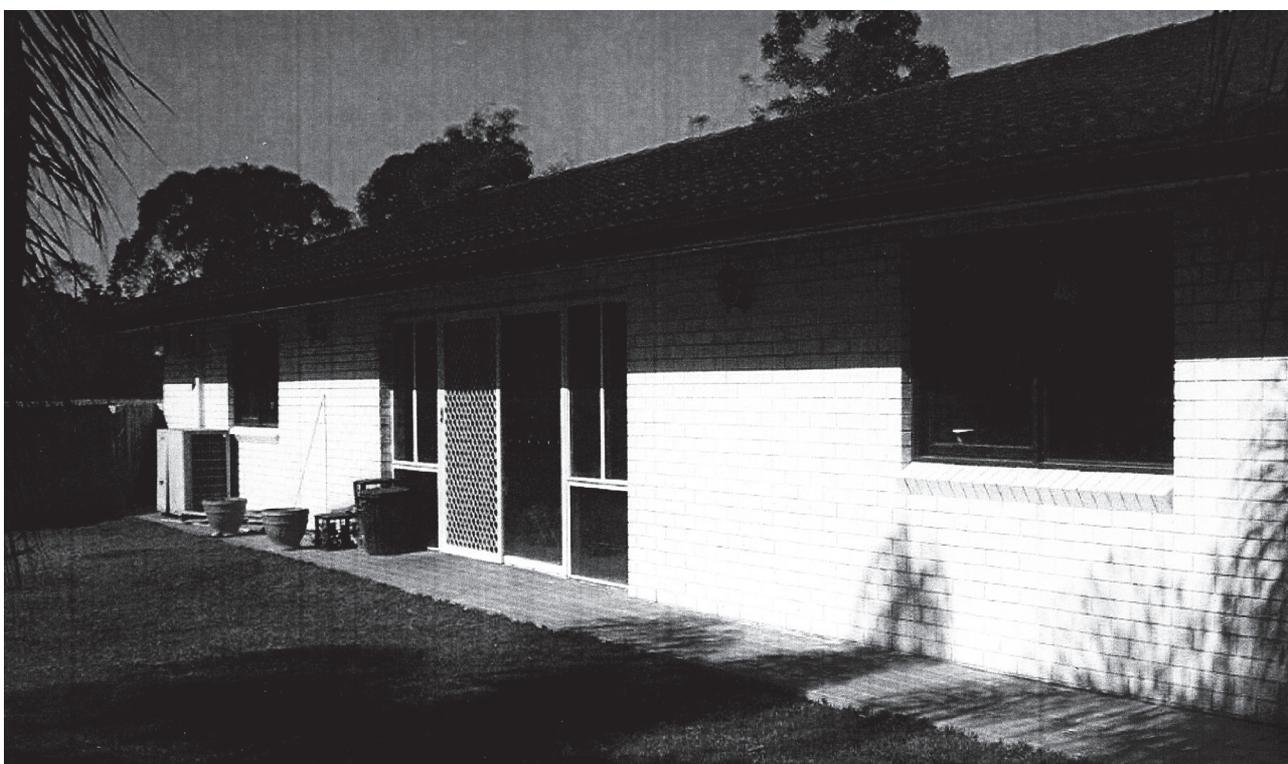
Apart from the expense of constructing the dog kennel complex, Mr and Mrs Cooper had to meet their day-to-day living expenses and meet the mortgage repayments on their home. Mr Cooper claimed his wife was responsible for the

mortgage payments and that he did not know the amount of the payments or the amount of the mortgage. Despite claiming that he could save up to \$60,000 from one year's salary, Mr Cooper admitted he would not have been able to pay Mr Sarkis to look after his dogs. Mr Cooper originally started with two or three greyhounds. However, due to an active breeding program the number eventually increased to 23. Mr Sarkis told the Commission that his commercial rate for looking after and training each dog would have been \$80 per week. This would represent a considerable sum over a period of time. Mr Cooper agreed that it was an expensive exercise to keep such a large number of dogs and considered that, if not for his arrangement with Mr Sarkis to build the dog kennel complex in return for Mr Sarkis looking after the dogs, he would not have been able to cover the expense of their upkeep.

Mr Cooper's evidence as to how he intended to pay for the dog kennel complex is not credible and is rejected by the Commission. His evidence on this point demonstrates a preparedness to make up answers in order to avoid making potentially damaging admissions.

Mr Cooper started work on the dog kennel complex in February 2007. He said he sought quotes for different parts of the work and if the quotes came within what he thought was a reasonable range he engaged the contractor. At the end of the work he expected the contractors would submit invoices to him for payment.

Apart from engaging contractors, Mr Cooper also used TAFE students to unload rubbish at the site. He said manual handling was one of the skills the students needed to demonstrate in order to pass their course but agreed that they were not supposed to do this on private jobs organised by him. In effect, Mr Cooper used TAFE students as free labour. He also took a window from TAFE for his own use. He claimed the window was "obsolete" and could be written off but agreed that he did not go through any approved TAFE procedure to get permission to take the window. Mr Cooper's use of TAFE students and the window indicates an unacceptable attitude to the use of public resources and a preparedness to use those resources for his own benefit.



Exterior of the dog kennel complex.

Mr Cooper arranged for Mr Fox, Mr Melia and Mr Tran to work on the dog kennel complex. Each was a contractor in the TAFE pre-apprenticeship program. Mr Cooper denied instructing Mr Fox, Mr Melia or Mr Tran to recover their costs for the work on the dog kennel complex by submitting false invoices to TAFE. However, there was evidence, which is set out below, that he did so.

## Mr Fox's work on the dog kennel complex

Mr Cooper arranged for Mr Fox to lay the concrete foundation slab. The slab was approximately 20 metres long by eight metres wide. Mr Cooper also asked Mr Fox to construct some brick walls for the dog kennel complex.

Mr Fox knew the work was of a private nature and had nothing to do with TAFE work.

When the concreting for the slab was finished Mr Fox told Mr Cooper that the cost was approximately \$8,000. He told the Commission that Mr Cooper responded by telling him to split the cost over his next two pre-apprenticeship projects. Mr Fox did so by first inflating quotations for work on two projects and subsequently submitting inflated invoices for those projects. Neither the quotations nor the invoices disclosed any work on the dog kennel complex.

Mr Fox said he submitted the false quotes and invoices as he did not want to challenge Mr Cooper and also knew that Mr Cooper was not able to pay personally for the work on the dog kennel complex. Mr Fox was duly paid by TAFE.

Mr Wiseman said that around the middle of July 2007 he had a conversation with Mr Fox, about the prices on some quotations that he thought were high. Mr Wiseman thought the conversation occurred after Mr Fox had been paid for the relevant work. In that conversation, Mr Fox said that Mr Cooper had told him to recover his costs for work on the dog kennel complex by claiming the money from the pre-apprenticeship projects. Mr Wiseman understood that Mr Fox was claiming \$8,000 against two TAFE jobs. Mr Wiseman agreed that he knew the dog kennel complex work was for Mr Cooper and had nothing to do with TAFE. He knew that charging the dog kennel complex costs to TAFE was wrong. He told the Commission he did not do anything to recover the overpayment as he wanted to avoid any confrontation with Mr Cooper, his supervisor.

Although Mr Fox admitted submitting two inflated invoices it was not clear, from the documentary evidence, which of the three pre-apprenticeship projects he was working on at the time. The details of invoices Mr Fox submitted to TAFE are set out below:

1. 105 Macquarie Street Greenacre - \$35,301 dated 28 May 2007 and \$29,512 dated 10 December 2007;
2. 26 Anderson Street Liverpool - \$23,252 dated 20 May 2007 and \$20,000 dated 20 September 2007; and
3. 15 Wianmatta Drive Cartwright - \$20,000 dated 15 February 2007 and \$15,301 dated 3 March 2007.

Mr Fox's invoices for these sites contain very little information. He was unable to identify with certainty the relevant invoices containing the inflated amounts. He said that he split the \$8,000 for the work he did on the dog kennel complex evenly between two invoices and was paid the inflated amounts by TAFE.

As, according to Mr Fox, the dog kennel complex work commenced sometime after 12 February 2007 and the conversation with Mr Wiseman about the quotations occurred around July 2007, when he had already been paid by TAFE, the Commission is satisfied that the \$8,000 was split up evenly and incorporated into the invoice dated 28 May 2007 in the amount of \$35,301 for the Macquarie Street work and the invoice in the amount of \$23,252 dated 20 May 2007 for the Anderson Street work. Although the invoices for the Wianmatta Drive project fall within the relevant period they are too close in time to the commencement of work on the kennel to include the cost of work on the kennel.

Mr Fox also said that around the same time as the concreting work was finished he organised a subcontractor to do the external brickwork for the dog kennel complex. He said he paid the subcontractor. The job was worth around \$9,000. Mr Fox said at the time the brickwork was

completed he heard through Mr Wiseman that Mr Cooper and Mr Sarkis had had a falling-out and he was informed that he probably would not get paid. He said that he did not want to recover the \$9,000 by inflating his TAFE invoices, as he had previously done, because he knew that doing so was wrong. He therefore took no action to recover the cost of the bricklaying. There is no evidence to indicate that the \$9,000 was charged to any TAFE projects.

Mr Cooper agreed that Mr Fox did concreting work on the dog kennel complex. At the public inquiry Mr Cooper said that after the completion of the concreting Mr Fox asked him for \$8,000 and that he did not pay Mr Fox as he did not receive an invoice. However, in his earlier evidence at his compulsory examination, Mr Cooper said that when Mr Fox gave him an invoice he told Mr Fox to seek payment from Mr Sarkis and claimed that the last information he had from Mr Fox was that he (Mr Fox) would pursue Mr Sarkis for the cost of the work he had done.

Although Mr Cooper denied telling Mr Fox or any other contractor who worked on the dog kennel complex to inflate their invoices for TAFE work to cover their costs, he did admit that he had asked TAFE contractors to inflate TAFE invoices to recover their costs for other TAFE work. He said he did this on two occasions. One was when he found out that Mr Fox had no work for his bricklayer. He arranged for the bricklayer to do some work, worth about \$2,000, at TAFE premises and told Mr Fox to charge it against a couple of TAFE pre-apprenticeship projects by inflating his invoices for those projects. Mr Fox said he legitimately billed TAFE for this work and did not charge it to any pre-apprenticeship projects. Mr Cooper said that on another occasion he arranged for Mr Tran to do some tiling in the lunch room and to charge it to a TAFE job.

## Mr Cooper's conversation with Mr Fox regarding the Commission's investigation

Mr Cooper said that Mr Wiseman told him that he (Mr Wiseman) was being investigated by the Commission and believed that Mr Fox was also being investigated. Mr Cooper said that he rang Mr Fox, who told him that he had inflated some of the TAFE invoices. Mr Cooper said that he told him not to admit anything.

Mr Fox agreed that Mr Cooper contacted him about the Commission's investigation and asked him what was happening. Mr Fox said he had spoken to Commission investigators but had not yet made a statement and did not want to speak to Mr Cooper. He said Mr Cooper then told him "don't say anything otherwise we could all end up in jail". The Commission accepts this evidence.

Mr Cooper's admission that he told Mr Fox not to admit anything is consistent with his trying to avoid any disclosure that TAFE invoices were inflated at his request to pay for work on the dog kennel complex. The Commission is satisfied that Mr Cooper contacted Mr Fox and asked him not to admit anything to Commission investigators as any admissions would have exposed Mr Cooper's role in using TAFE funds to pay for work on the dog kennel complex.

The Commission accepts Mr Fox's evidence that he inflated quotations and invoices he submitted to TAFE to cover the cost he incurred in laying the concrete slab for the dog kennel complex. There is no reason why he would make such an admission against his interest if it was not true. The Commission also accepts his evidence that he did so at Mr Cooper's suggestion. His evidence in this respect is supported to some extent by that of Mr Wiseman who said that Mr Fox told him that he had been directed by Mr Cooper to recover his costs for work on the dog kennel complex by claiming the money from the pre-apprenticeship projects.

## Mr Melia's work on the dog kennel complex

It is not disputed that Mr Cooper arranged for Mr Melia to do roof tiling, fascia and gutter work on the dog kennel complex.

Mr Melia told the Commission that Mr Cooper contacted him in July 2007 and asked him for a quote for fascia, gutter and roof work for the dog kennel complex. Mr Melia estimated the work would cost \$7,000. This included the cost of roof tiling that Mr Melia subcontracted to another business. Mr Melia paid the subcontractor for that work.

Mr Melia said that he was instructed by Mr Cooper to charge the cost for the work on the dog kennel complex to the Anderson Street, Liverpool and Macquarie Street, Greenacre projects on which he was working at the time. He said he prepared two quotations, both dated 9 July 2007, and both inflated by an amount of \$3,450. They were faxed to TAFE on 28 August 2007. On 18 September 2007, after completing the dog kennel complex work, Mr Melia submitted two invoices for "Supply & Installation of Fibro eaves and Framing" in the amount of \$3,450 each for the two projects. He was paid this amount by TAFE. In fact he did not supply or install fibro eaves and framing for either project. The amounts he received were his payment for the work he did on the dog kennel complex.

Mr Melia claimed that he did not know whether the dog kennel complex was a TAFE or a private job. However, at the time he prepared the false quotations and invoices he knew that the work on the dog kennel complex was not connected with the Anderson Street, Liverpool or

Macquarie Street, Greenacre projects. In a statement he made to the Commission Mr Melia said that part of the conversation with Mr Cooper was about splitting the dog kennel complex costs between two TAFE projects and that he asked Mr Cooper "Is this a TAFE job? It doesn't look like it." Mr Melia also said in his statement that he distinguished private work from TAFE work on his quotations and invoices. Private work was addressed to "owner/builder". The quotations and invoices he submitted to TAFE to recover his costs for the dog kennel complex were addressed to "owner/builder".

Mr Melia also gave evidence about visiting the kennel site with Mr Cooper. Mr Melia said that Mr Cooper told him that some of the dogs were his. This is consistent with the dog kennel complex being a private job for Mr Cooper, not a TAFE project.

The Commission is satisfied that Mr Melia knew the work he did on the dog kennel complex was private work for Mr Cooper and was not connected with any TAFE project.

Mr Wiseman gave evidence that in September 2007 he had a conversation with Mr Cooper in which Mr Cooper told him that Mr Melia was owed money and would send faxes with quotations relating to eaves at the Anderson Street and Macquarie Street projects. He said that at that stage he did not know Mr Melia was seeking to obtain payment for work he had done on the dog kennel complex and assumed he was seeking payment for work he had done on another TAFE project. He said that in early September 2007 he received two quotations and on or about 18 September he received the relevant invoices.

Mr Wiseman admitted he knew the quotations and associated invoices were false. Mr Wiseman said he told Mr Cooper that he, not Mr Melia, had done the work on the eaves and framing. Mr Cooper told him to write out the work order as stated in the invoice, which he did and approved it for payment. Mr Melia was subsequently paid. Mr Wiseman said he approved payment of the invoices because he did not want to get into an argument with Mr Cooper over not paying them. He did not consider raising the matter with Mr Cooper's superiors. He said it was only much later that he found out the inflated amounts were to cover work on the dog kennel complex, and there is no evidence to the contrary.

Mr Cooper denied that he told Mr Melia to split the money he was owed between the two projects. He said he could not recall the conversation with Mr Wiseman that Mr Wiseman said occurred in September 2007. At the public inquiry Mr Cooper initially said that he could not recall any conversation in which Mr Wiseman told him Mr Melia's invoice claimed for work that Mr Wiseman had done. When pressed about this he said that if such a conversation had occurred he would have recalled.

Mr Cooper agreed that he organised Mr Melia to do the roof work for the kennel, obtained a quote from him, and that he was responsible for paying for the work. He gave different versions as to how Mr Melia was paid for the work. Initially he said that he believed Mr Sarkis had paid Mr Melia as he wanted to accelerate the project. He was unable to explain how the project could be accelerated. Mr Cooper said he was not surprised that Mr Sarkis did not seek reimbursement from him because he fell out with Mr Sarkis and was told to remove his dogs from Mr Sarkis' property. Mr Sarkis said he had nothing to do with paying Mr Melia. This is consistent with Mr Melia's evidence and is accepted by the Commission.

Mr Cooper later gave evidence that he met Mr Melia at Londonderry, observed that the roof was finished and that Mr Melia told him that it would cost him about \$7,000. Mr Cooper said that he agreed to pay Mr Melia and was waiting for an invoice from Mr Melia. He said he tried to contact Mr Melia on a number of occasions, but Mr Melia did not get back to him. Mr Cooper's evidence on this point is not credible. Apart from being in conflict with that of Mr Melia, it is inherently unlikely that Mr Melia, having incurred expense, would have failed to seek recovery of that expense from Mr Cooper.

The Commission accepts Mr Melia's evidence that Mr Cooper told him to recover the cost of the work on the dog kennel complex by inflating his quotes and invoices for TAFE projects.

## Mr Tran's work on the dog kennel complex

It is not disputed that Mr Cooper arranged for Mr Tran to do floor and wall tiling on the dog kennel complex. The work included supply and transport of material and labour.

Mr Tran told the Commission that in October 2007 he quoted for work on the Anderson Street, Liverpool project. This included tiling for four bedrooms. Around this time he said he received a phone call from Mr Cooper asking him to tile the dog kennel complex. He said that he verbally agreed with Mr Cooper on a cost of around \$8,000 or \$9,000. He knew the work was for Mr Cooper and was not part of any TAFE project.

Mr Tran did some of the work with the assistance of labourers. He paid about \$4,000 to the labourers and for materials. After completing the dog kennel complex job he said he approached Mr Cooper for payment and Mr Cooper told him:

*... this job you are doing on Anderson Street, I have about \$6,000 set aside to cover all the extras. And the other, three, three and a bit thousand we'll sort it out later.*

Mr Tran said Mr Cooper told him to claim \$6,000 by submitting a variation for the Anderson Street project claiming extra tiling in the four bedrooms. Mr Tran said he told Mr Cooper the tiling for the bedrooms was included in the original quote for the project but Mr Cooper told him the only way he would get paid the \$6,000 was to claim a variation for the Anderson Street project. Mr Tran said that he submitted a false variation invoice, dated 23 November 2007, to TAFE in relation to the Anderson Street project in order to recover the \$6,000 for the dog kennel complex. He was paid the \$6,000 by TAFE. There is no evidence that he sought to recover the balance outstanding for the work he did on the dog kennel complex.

Mr Wiseman said he was suspicious of Mr Tran's variation for the Anderson Street project as Mr Tran's previous quotation had included tiling of the four bedrooms. He said he discussed the matter with Mr Cooper who told him to write out the work order and approve payment of Mr Tran's invoice. Mr Cooper said he asked Mr Wiseman whether Mr Tran had done the work and, when told that he had, told Mr Wiseman to pay the invoice.

Mr Cooper said Mr Tran gave him an invoice for the work on the dog kennel complex but he did not pay it because he believed that Mr Sarkis should pay Mr Tran because it was for additional work requested by Mr Sarkis. He denied telling Mr Tran to claim \$6,000 for work on the dog kennel complex by submitting a variation for the Anderson Street TAFE project.

Mr Sarkis said that he did not organise or have anything to do with any payment for Mr Tran in relation to the dog kennel complex work. He said that he retained Mr Tran to do a bit of tiling at the back of his house for which he gave Mr Cooper \$300 to pay Mr Tran. The Commission accepts that Mr Cooper was responsible for engaging Mr Tran to work on the dog kennel complex and was responsible for paying him for that work.

The Commission accepts Mr Tran's evidence that Mr Cooper told him to recover \$6,000 of the cost of his work on the dog kennel complex from TAFE. That evidence is consistent with the arrangements Mr Cooper made with Mr Fox and Mr Melia.

## Other private work

The Commission also examined Mr Cooper's use of two other TAFE contractors to do private work at his house. This work involved the removal of an old air-conditioning unit and the supply and installation of a replacement unit, work on a wardrobe and installing laundry cabinets. The two contractors involved and Mr Cooper gave evidence that the contractors were paid for their work by Mr Cooper. There was no evidence that TAFE funds were used to pay for any of this work.

## Findings of fact

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

1. Mr Cooper engaged Anthony Fox, Keith Melia and Khai Van Tran to work on the dog kennel complex. Each of Messrs Fox, Melia and Tran knew this work was of a private nature and not related to any TAFE projects on which they were working.
2. Mr Fox sought payment of approximately \$8,000 from Mr Cooper for work on the dog kennel complex. Mr Cooper instructed Mr Fox to obtain payment from TAFE by claiming the cost against two TAFE pre-apprenticeship projects.
3. Mr Fox submitted an invoice to TAFE for each of the Macquarie Street and Anderson Street pre-apprenticeship projects. He inflated each of these invoices by \$4,000 to cover the cost of the private work he did for Mr Cooper on the kennels and subsequently received payment of \$8,000 from TAFE.
4. In about July 2007 Mr Fox told Mr Wiseman that Mr Cooper had told him to recover his costs for work on the dog kennel complex by falsely claiming payment from TAFE pre-apprenticeship projects. Despite knowing this was wrong, Mr Wiseman took no action to report what he was told to TAFE management.
5. Mr Melia sought payment for work on the dog kennel complex from Mr Cooper. Mr Cooper instructed Mr Melia to obtain payment from TAFE by claiming the cost from the Anderson Street and Macquarie Street TAFE pre-apprenticeship projects.
6. Mr Melia submitted a quote and an invoice to TAFE for each of the Macquarie Street and Anderson Street pre-apprenticeship projects. He inflated each invoice by \$3,450 to cover the cost of the private work he did for Mr Cooper on the kennels, and subsequently received payment of \$6,900 from TAFE.
7. Despite being aware that the quotes and invoices submitted by Mr Melia for the Macquarie Street and Anderson Street pre-apprenticeship projects falsely claimed costs for the supply and installation of eaves and framing, Mr Wiseman authorised payment of the invoices.
8. Mr Tran sought payment for work on the dog kennel complex from Mr Cooper. Mr Cooper instructed Mr Tran to obtain payment of \$6,000 from TAFE by claiming the cost from the Anderson Street pre-apprenticeship project.
9. Mr Tran submitted a variation invoice to TAFE for the Anderson Street pre-apprenticeship project in which he falsely claimed \$6,000 for tiling of bedrooms and subsequently received payment of \$6,000 from TAFE.

## Corrupt conduct

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

As employees of TAFE NSW, Mr Cooper and Mr Wiseman are public officials as defined in the ICAC Act.

A corrupt conduct finding may also be made relating to 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 a public official or any public authority.

### Mr Cooper

Mr Cooper acted corruptly in instructing Messrs Fox, Melia, and Tran to recover their costs for private work they did for him on the dog kennel complex by submitting to TAFE false claims for payment.

This is because his conduct:

- could adversely affect, either directly or indirectly, the honest or impartial exercise of official functions by Mr Cooper and therefore comes within 8(1)(a) of the ICAC Act;
- could constitute or involve the dishonest or partial exercise by Mr Cooper of his official functions and therefore comes within 8(1)(b) of the ICAC Act; and
- could constitute or involve a breach of public trust on the part of Mr Cooper and therefore comes within section 8(1) (c) of the ICAC Act.

For the purposes of section 9(1)(a) of the ICAC Act such conduct could constitute or involve criminal offences of concurring in the publishing of a false statement for the purpose of obtaining a benefit contrary to section 178BB of the *Crimes Act 1900* (NSW).

This conduct also falls within section 9(1)(b) and 9(1)(c) of the ICAC Act on the basis that his conduct could constitute or involve:

- a disciplinary offence involving misconduct, or
- reasonable grounds for dismissal, dispensing with his services or otherwise terminating his services for misconduct.

### Mr Wiseman

Mr Wiseman acted corruptly in failing to take action to report Mr Fox for falsely claiming payment from TAFE for private work done on the dog kennel complex.

This is because his conduct adversely affected the honest and impartial exercise of his official functions and therefore comes within section 8(1)(a) of the ICAC Act. It is also conduct that constitutes or involves a breach of public trust on Mr Wiseman's part and therefore comes within section 8(1)(c) of the ICAC Act. It is also conduct that could constitute or involve a disciplinary offence of misconduct and therefore comes within section 9(1)(b) of the ICAC Act.

Mr Wiseman also acted corruptly in approving payment of Mr Melia's invoices for the Macquarie Street and Anderson Street pre-apprenticeship projects despite knowing that these falsely included costs for the supply and installation of eaves and framing.

This is because this conduct adversely affected the honest and impartial exercise of his official functions and therefore comes within section 8(1)(a) of the ICAC Act.

It is also conduct that constitutes or involves the dishonest or partial exercise of his official functions within the meaning of section 8(1)(b) of the ICAC Act and a breach of public trust within the meaning of section 8(1)(c) of the ICAC Act.

For the purposes of section 9(1)(a) of the ICAC Act such conduct could constitute or involve a criminal offence of concurring in the publishing of a false statement for the purpose of obtaining a benefit contrary to section 178BB of the *Crimes Act 1900* (NSW).

It is also conduct that could constitute or involve a disciplinary offence of misconduct and therefore comes within section 9(1)(b) of the ICAC Act.

### Mr Fox

Mr Fox acted corruptly in submitting two invoices, for the Macquarie Street and the Anderson Street pre-apprenticeship projects respectively, which he had inflated by \$4,000 in each instance to cover the cost of the private work he did for Mr Cooper on the kennel complex.

This is because his conduct could adversely affect, either directly or indirectly, the exercise of official functions by those TAFE officials responsible for paying his invoices and could involve fraud. His conduct therefore comes within 8(2)(e) of the ICAC Act.

For the purposes of section 9(1)(a) of the ICAC Act such conduct could constitute or involve criminal offences of publishing a false statement for the purpose of obtaining a benefit contrary to section 178BB of the *Crimes Act 1900* (NSW).

### Mr Melia

Mr Melia acted corruptly in submitting a quote and an invoice to TAFE for each of the Macquarie Street and Anderson Street pre-apprenticeship projects each of which he inflated by \$3,450 to cover the cost of the private work he did for Mr Cooper on the kennels. This is because his conduct could adversely affect, either directly or indirectly, the exercise of official functions by those TAFE officials responsible for paying his invoices and could involve fraud. His conduct therefore comes within 8(2)(e) of the ICAC Act.

For the purposes of section 9(1)(a) of the ICAC Act such conduct could constitute or involve criminal offences of publishing a false statement for the purpose of obtaining a benefit contrary to section 178BB of the *Crimes Act 1900* (NSW).

### Mr Tran

Mr Tran acted corruptly in submitting a variation invoice to TAFE for the Anderson Street pre-apprenticeship project in which he falsely claimed \$6,000 for tiling of bedrooms to cover the cost of the private work he did for Mr Cooper on the kennels.

This is because his conduct could adversely affect, either directly or indirectly, the exercise of official functions by those TAFE officials responsible for approving and paying his variation and could involve fraud. His conduct therefore comes within 8(2)(e) of the ICAC Act.

For the purposes of section 9(1)(a) of the ICAC Act such conduct could constitute or involve criminal offences of publishing a false statement for the purpose of obtaining a benefit contrary to section 178BB of the *Crimes Act 1900* (NSW).

## Section 74A(2) statement

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

- a) obtaining the advice of the Director of Public Prosecutions 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 an investigation.

The Commission is satisfied that Mr Cooper, Mr Wiseman, Mr Fox, Mr Melia and Mr Tran come within the definition of “affected person”.

### Mr Cooper

Mr Cooper gave his evidence following a declaration made pursuant to section 38 of the ICAC Act. The effect of that declaration is that his evidence cannot be used against him in any subsequent criminal prosecution, except a prosecution for an offence under the ICAC Act.

However, in the course of the investigation the Commission has obtained other evidence that would be admissible in the prosecution of Mr Cooper. In particular, the evidence of Mr Wiseman, Mr Fox, Mr Melia, Mr Tran and Mr Sarkis is admissible against Mr Cooper.

The Commission is of the opinion that consideration should be given to obtaining the advice of the Director of Public Prosecutions (DPP) with respect to the prosecution of Mr Cooper for offences of concurring in the publishing of a false statement for the purpose of obtaining a benefit contrary to section 178BB of the Crimes Act.

The Commission is also of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Cooper for offences under section 87 of the ICAC Act of giving false or misleading evidence in relation to:

- his evidence that he did not tell Messrs Fox, Melia or Tran to recover their costs for work on the dog kennel complex from TAFE funds, and
- his evidence that he never asked Mr Wiseman to sign off on false invoices.

As Mr Cooper resigned from TAFE during the Commission’s investigation the issue of disciplinary or dismissal action does not arise.

### Mr Wiseman

Mr Wiseman gave his evidence following a declaration made pursuant to section 38 of the ICAC Act.

Mr Wiseman, although belatedly, reported to TAFE that he had approved Mr Melia’s invoices knowing that they were false. His conduct was revealed by his own admissions. He did attempt, although unsuccessfully, to dissuade Mr Cooper from seeking payment through the false invoices. Mr Wiseman also eventually reported what he had been told by Mr Fox. He cooperated fully with the Commission’s investigation and made full and frank admissions. This led to the discovery of Mr Cooper’s conduct. Mr Wiseman’s evidence would be valuable for the prosecution of Mr Cooper whose conduct, in the Commission’s opinion, is far more serious.

In all the circumstances, the Commission is not of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Wiseman.

Mr Wiseman was disciplined by TAFE in relation to his conduct involving the approval of payment for Mr Melia’s invoices.

Mr Wiseman’s conduct in not taking any action concerning his knowledge of Mr Fox’s false invoices is conduct which could justify the taking of disciplinary action. However, Mr Wiseman eventually reported this matter, which led to the discovery of more serious conduct involving Mr Cooper and he was disciplined in relation to his involvement in the more serious conduct concerning Mr Melia’s invoices. In all the circumstances, the Commission is not of the opinion that consideration should be given to the taking of disciplinary or dismissal action against Mr Wiseman.

### Mr Fox

Mr Fox admitted that he submitted false quotations and invoices to TAFE and was paid for work which he had not done for TAFE. Mr Fox gave his evidence following a declaration made pursuant to section 38 of the ICAC Act.



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The Commission does not consider there is sufficient admissible evidence on which to prosecute Mr Fox for any criminal offence. In all the circumstances the Commission is not of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Fox.

### **Mr Melia**

Mr Melia admitted that he submitted false quotations and invoices to TAFE and was paid for work which he had not done for TAFE. Mr Melia gave his evidence following a declaration made pursuant to section 38 of the ICAC Act.

The Commission does not consider there is sufficient admissible evidence on which to prosecute Mr Melia for any criminal offence. In all the circumstances the Commission is not of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Melia.

### **Mr Tran**

Mr Tran admitted that he submitted a false invoice to TAFE and was paid for work which he had not done for TAFE. Mr Tran gave his evidence following a declaration made pursuant to section 38 of the ICAC Act.

The Commission does not consider there is sufficient admissible evidence on which to prosecute Mr Tran for any criminal offence. In all the circumstances the Commission is not of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Tran.

## Chapter 3: Use of dummy quotes

This chapter examines the use of dummy and duplicate quotes.

At the relevant times TAFE policies required at least one written quote to be obtained for work estimated to cost between \$1,000 and \$30,000. If the estimated cost was over \$30,000 then a minimum of three written quotes was required. Formal tenders were required if the estimated cost was likely to exceed \$150,000.

Many of the items procured for the pre-apprenticeship projects were under \$30,000 in value and therefore generally required only one written quote. However, some work, most usually that relating to concreting, was above the \$30,000 threshold. Both Mr Wiseman and Mr Cooper regularly circumvented the requirement to obtain three written quotes for projects estimated to be over \$30,000.

Quotations using the names and details of contractors who are not really quoting for the work, sometimes without their knowledge, are known as 'dummy quotes'. In this case, these were created and used to falsely represent compliance with TAFE policy requiring a minimum of three quotations for estimated expenditure of more than \$30,000. Mr Wiseman agreed that dummy quotes were priced in such a way as to justify using a particular contractor whose authentic quote would appear the lowest.

Mr Fox admitted providing dummy quotes for TAFE work so that there would be three quotes to satisfy TAFE's paperwork requirements. He said that he was asked by Mr Wiseman or Mr Cooper to submit dummy quotes for the Wianamatta Drive, Cartwright project and possibly for the Macquarie Street, Greenacre and Lyall Place, Cartwright projects. In relation to the Wianamatta Drive, Cartwright project he admitted that he organised two dummy quotes purporting to be from two businesses operated by contractors who were already working with Mr Fox on the projects, and submitted them to TAFE. He asked "a couple of guys that help me out" to sign the dummy quotes as he did not want his writing to be detected on the quotes.

Mr Wiseman agreed that he asked Mr Fox to provide dummy quotes for the Macquarie Street, Greenacre project. He said he was asked to do so by Mr Cooper. He said he was not aware of dummy quotes being sought for other projects.

Mr Cooper denied asking anyone to provide dummy quotes. The Commission rejects his denial. Mr Cooper admitted that at times he started TAFE jobs costing more than \$30,000 with just one quote and at times also commenced the work without the requisitions having been approved. He said that if the quote he received was below his estimate of the cost of the work he would accept the quote and not follow TAFE procedure to obtain additional quotes. He also said he preferred to use the same contractors rather than seek quotes from others as he knew the contractors he usually worked with were reliable. Occasionally he might obtain quotes from other contractors to check the competitiveness of his usual contractors. Clearly, there would have been a strong temptation to obtain dummy quotes to falsely represent compliance with TAFE policy. Mr Wiseman said Mr Cooper asked him to obtain dummy quotes from Mr Fox. Given that Mr Cooper was in charge of obtaining quotes there would be no reason for Mr Wiseman to obtain dummy quotes on his own initiative. Mr Wiseman was a credible witness and there is no reason to doubt his evidence on this point. The Commission is satisfied that Mr Cooper did ask Mr Wiseman to organise dummy quotes through Mr Fox.

There is no evidence to suggest that the dummy quotes were for any purpose other than to falsely represent compliance with TAFE's requirement to obtain three quotes for work costing over \$30,000.

During the course of the investigation the Commission located a number of quotes for the same job but in different amounts. The Commission examined the circumstances in which these came into existence in order to ascertain whether they were used for any improper purpose.

## Quotations for concreting and brickwork for 110 Old Hume Hwy, Camden

A pre-apprenticeship project was commenced at 110 Old Hume Highway, Camden by Mr Cooper. Management of this project was transferred from Miller College to Campbelltown College before any physical construction work was commenced. A number of duplicate quotations for prospective work were located in the TAFE file.

There were two sets of quotations from Mr Fox. The first set consisted of two quotes for concrete work both dated 20 August 2007. They were for identical work but one was in the amount of \$44,275 and the other was in the amount of \$48,702. The second set consisted of two quotes also dated 20th August 2007. They had an identical description for brickwork but one was in the amount of \$15,719 and the other was in the amount of \$17,148. Mr Fox said he did not remember why the amounts were changed but recalled that there were some discussions about the drainage works and brickwork pits which may have lead to the changed quotations. He had no explanation why any such changes were not reflected on the quotations.

Mr Cooper admitted that he still owed Mr Fox money for work done on the dog kennel complex but said he did not ask him to inflate these quotations to cover the money owing. He said that he may have asked Mr Fox to requote as he would have asked Mr Fox to do additional work. Mr Cooper was unable to specify the nature of additional work or explain why the work was identical but the amounts were different.

Neither Mr Fox nor Mr Cooper was able to provide a satisfactory explanation for the difference in the prices. However, the quotations were never acted on and there is insufficient evidence to conclude that they were submitted for a fraudulent purpose.

## Quotations for plumbing services for 110 Old Hume Hwy, Camden

The Commission located three quotations from Mark Janes of BMW Plumbing Services Pty Ltd to TAFE for plumbing work at Camden. They described identical work. Although the quotations are all dated 14 August 2007, they were faxed to TAFE on 30 August 2007, 17 September 2007 and 3 March 2008 respectively. The cost of the work changed from \$61,193 on the quote faxed on 30 August 2007 to \$79,640 on the quotes faxed on the other dates. Mr Janes said Mr Cooper asked him to quote for the Camden project. He said the quote faxed on 30 August 2007 was based on seeing the plans. After visiting he became aware that some further work was needed and

therefore requested for the work. He said he did not change the description of the work in the quotes he faxed on 17 September 2007 and 3 March 2008 as it was his usual practice to change only the prices when requoteing.

Mr Cooper said that Mr Janes originally quoted off the plans and the subsequent quote may have contained new work but he was unable to recall the particulars.

There is no evidence that the changes to the amount in the invoices faxed to TAFE on 17 September 2007 and 3 March 2008 were made for improper purposes.

## Quotations for tiling for 6 Lyall Place, Cartwright

Mr Tran submitted two quotations for tiling for the Lyall Place, Cartwright project. There were some minor differences in the description of work. He said that his second quote was lower as some work was taken out and that he also dropped the prices as there was more competition. Mr Tran denied any suggestion that the explanation for the first quote being higher was that he put in an extra amount to cover the money owed to him by Mr Cooper for work on the dog kennel complex.

Mr Wiseman said that Mr Tran spoke to him when he came to quote for the Lyall Place, Cartwright, project and that Mr Tran told him that he had \$3,000 owing from Mr Cooper and that was on the original quote. Mr Wiseman said he told Mr Tran to requote it and do it properly which he did. Mr Tran denies that this conversation occurred.

There is insufficient evidence to conclude that Mr Tran received any payment for this project that he was not entitled to receive.

## Finding of fact

The Commission is satisfied to the requisite degree that Mr Cooper asked Mr Wiseman to obtain dummy quotes in relation to the Macquarie Street, Greenacre pre-apprenticeship project in order to falsely represent compliance with TAFE policy which required a minimum of three quotes. Mr Wiseman did so through Mr Fox.

## Corrupt conduct

Mr Cooper and Mr Wiseman acted corruptly in requesting and obtaining dummy quotes in relation to the Macquarie Street, Greenacre pre-apprenticeship project in order to falsely represent compliance with TAFE policy requiring a minimum of three quotes.

This is because Mr Cooper's and Mr Wiseman's conduct:

- could adversely affect, either directly or indirectly, the honest or impartial exercise of official functions by Mr Cooper and Mr Wiseman and therefore comes within section 8(1)(a) of the ICAC Act;
- could constitute or involve the dishonest or partial exercise by Mr Cooper and Mr Wiseman of their official functions and therefore comes within section 8(1)(b) of the ICAC Act; and
- could constitute or involve a breach of public trust on the part of Mr Cooper and Mr Wiseman and therefore comes within section 8(1) (c) of the ICAC Act.

## Section 74A(2) statement

The Commission is not of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Cooper or Mr Wiseman for any criminal offence in relation to their conduct examined in this chapter.

As Mr Cooper resigned from TAFE following the Commission's investigation the issue of disciplinary or dismissal action does not arise.

Mr Wiseman's conduct is conduct that could involve a disciplinary offence. However, Mr Wiseman reported this matter, made full and frank admissions and fully cooperated with the investigation. Also, as set out in Chapter 3, he was disciplined in relation to approving Mr Melia's invoices which he knew were false. In all the circumstances, the Commission is not of the opinion that consideration should be given to the taking of disciplinary or dismissal action against Mr Wiseman.

## Chapter 4: Corruption prevention

The purpose of this chapter is to examine the factors that allowed, encouraged or caused Mr Cooper's conduct and describe how such conduct might be prevented; both in hindsight and in similar cases in the future.

### The pre-apprenticeship program – some preliminary comments

The purpose of the pre-apprenticeship program is to provide students with real, hands-on experience in the building and construction industry while also providing public housing stock for NSW. It seeks to provide training to enhance the employment prospects of unemployed youth. In essence, the program is a form of joint venture between the South Western Sydney Institute (SWSI) of TAFE and Resitech, the NSW agency responsible for building and maintaining public housing. Pre-apprenticeship program students, with the assistance of teachers and contractors, construct the property to the agreed specifications and budget. The pre-apprenticeship program tenders are priced at approximately \$350,000 each. The program commenced some decades ago and, following a hiatus, was re-introduced in its current form in 2003-04. The program operates from the Miller and Campbelltown colleges of SWSI TAFE. The Commission understands that the Western Sydney Institute of TAFE also operates a pre-apprenticeship program.

While the findings against Mr Cooper are obviously a negative reflection on the program, it is not the intention of the Commission to question the outcomes achieved by the pre-apprenticeship program to date or its ongoing merit.

### Background – procurement and the construction industry

Procurement has long been recognised as a high-risk activity vulnerable to corrupt behaviour. As a teacher, Mr Wiseman's skills were not in the area of procurement. While carpentry teachers have technical expertise relating to the building industry, they may not have sufficient knowledge of the relevant policies and procedures nor an understanding of the ethical and probity principles that need to be applied when spending public money. This was certainly the case with Mr Wiseman. The average house constructed under the scheme costs in the region of \$350,000, a significant sum. With at least four houses being constructed each year, this placed Mr Wiseman in the position of recommending subcontracting services up to a value of \$1.4 million per year.

In the case of the pre-apprenticeship program, there is also the nature of the building industry to consider. A 2003 report by the Royal Commission into the Building and Construction Industry found that:

*In all sectors of the economy parties are motivated by their own self interest and pursuit of their long term financial success. In the building and construction industry this focus on individualism is extreme. Although some businesses foster long term relationships with certain contractors and subcontractors, there are many other examples where the various parties demonstrate a culture of individualism, and take a short term opportunistic approach in their dealings with each other.<sup>1</sup>*

In the case of Mr Cooper, he did not have a long-term relationship with any of the contractors who subsequently submitted inflated invoices, yet they were willing to engage in corrupt conduct in order to be paid.

1. Royal Commission into the Building and Construction Industry, *Final Report, Vol. 3, National Perspective – Part 1*, February 2003, p. 207, accessed at <http://www.royalcombcgi.gov.au/hearings/reports.asp>

SWSI carpentry teachers are also encouraged to undertake secondary employment in order to maintain and update their skills. In these circumstances a strong governance framework is essential to address and minimise the associated risks. In Mr Cooper's case, he was a teacher operating in the building and construction industry and while his involvement in the dog kennel complex project did not strictly amount to secondary employment, it had many of the same characteristics. Through his involvement in the dog kennel complex project, he became motivated to engage in corrupt conduct.

This combination of the nature of the building industry and a lack of procurement expertise on behalf of the public sector placed the pre-apprenticeship scheme at a high risk of corruption. The faculty management at SWSI TAFE, with their particular knowledge of the building and construction industry, should have been alert to these particular risks and cautious of any changes that would reduce the level of oversight of the program.

## Procurement processes at SWSI TAFE

Mr Cooper and Mr Wiseman's roles in the pre-apprenticeship program required them to perform a number of tasks relating to procurement. Generally speaking, these included:

- preparing and pricing the tender to Resitech,
- identifying potential contractors from whom to seek quotes,
- receiving and analysing quotes,
- completing requisition paperwork,
- project managing and supervising the contracted work,
- approving variations to quoted work, and
- recommending the payment of invoices.

TAFE provided guidance to staff undertaking procurement through the development in 2000 of the TAFE Purchasing Procedure. New thresholds released by the State Contracts Control Board in 2002 replaced those limits set out in the TAFE purchasing procedure. While the TAFE purchasing procedure was not subsequently updated to reflect this change, the Commission has been advised that staff worked on the basis of these new thresholds. The thresholds that were in place therefore at the time of Mr Cooper and Mr Wiseman's involvement in the pre-apprenticeship program were as follows:

Estimated cost	Procurement method
Up to \$1,500	No quotes required.
Over \$1,500 to \$30,000	At least one written quotation.
Over \$30,000 to \$150,000	A minimum of three written quotes.
Over \$150,000 and all period contracts	Formal tenders required.

Many of the items procured for pre-apprenticeship houses fell under the \$30,000 threshold and thus required one written quote. However a number, in particular those related to concreting work, were above this threshold and consequently three written quotes were required. It was generally Mr Wiseman's responsibility to obtain these quotations; however, he acted at the direction of his line manager, Mr Cooper.

Before examining the weaknesses specific to the pre-apprenticeship program, it is important to note that Mr Wiseman and Mr Cooper regularly ignored the formal process for obtaining quotations from contractors. For instance, Mr Wiseman gave the following evidence to the Commission:

*Q: So if you had a new project and you had work that needed to be done, say concreting, would you go to two or three concreters or just use the one you already knew?*

A: Just use the one you already knew, yeah.

Q: So is it fair to say that even if there was work for 50 or \$60,000, the practice ended up being only one quote being obtained?

A: Yeah.

Work was directed to the same contractors for each pre-apprenticeship house. Mr Wiseman put forward the following explanation to the Commission:

*We didn't want to worry about getting other subcontractors in to – in case they made mistakes or whatever. I know [sic] Tony [Fox] could do the work properly.*

This explanation that the contractors involved did the jobs to a high quality may be a key consideration. However it left the pre-apprenticeship program vulnerable to corrupt conduct. There were further structural and process issues that increased this vulnerability and these will be discussed further below.

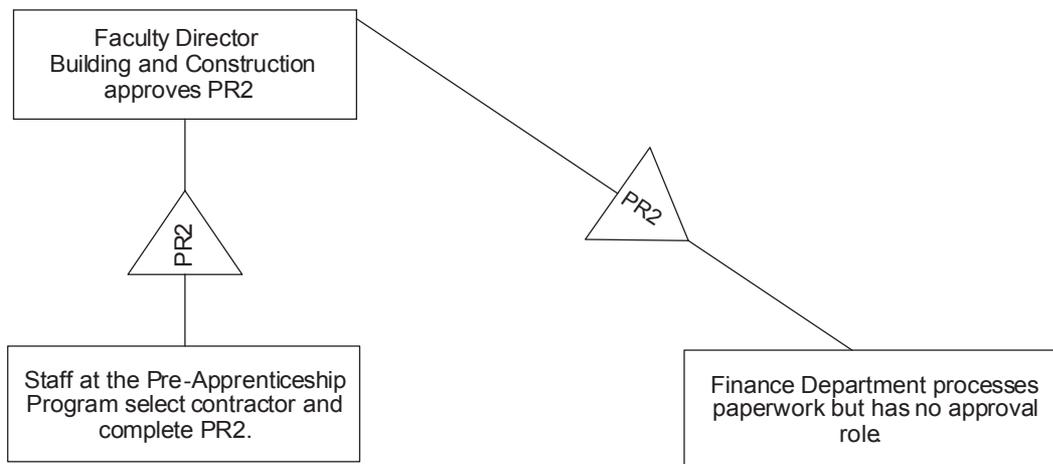
## Structural issues

Mr Wiseman reported to Mr Cooper in his capacity as Head Teacher. Mr Cooper's direct line manager was the Faculty Director, Building and Construction.

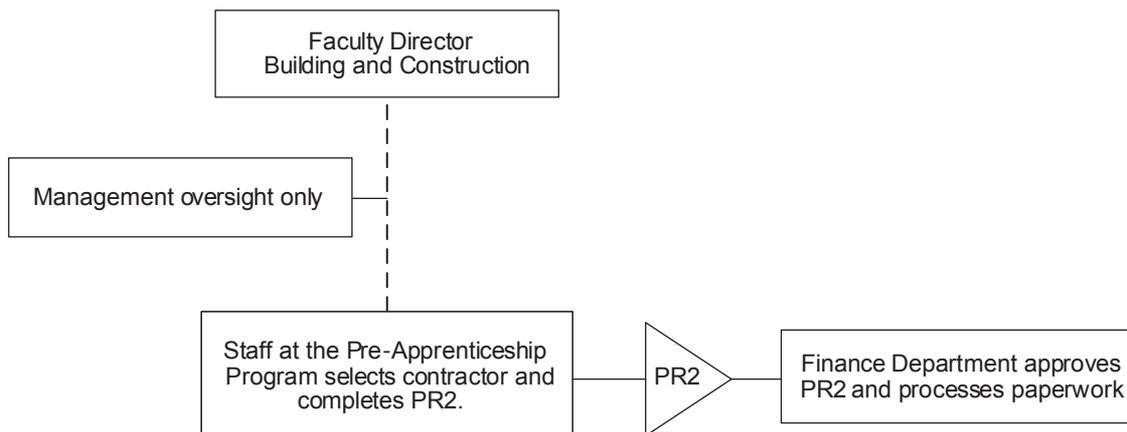
The TAFE purchasing procedure required that once the required number of quotations was obtained, a requisition form (PR2) had to be approved prior to the work being commenced. The usual process was that the person filling out the PR2 then forwarded it to an appropriate delegated officer for approval. In most instances this would be someone within their faculty with appropriate delegation, however, in the case of the pre-apprenticeship program, the process was different.

The Commission has been told that in the early days of the pre-apprenticeship program being reintroduced, a PR2 was completed, authorised by the Faculty Director and then forwarded to Finance for processing (see Figure 1 below). Following a series of delays and lost paperwork, this process changed so that the PR2 was completed by Mr Cooper (and subsequently Mr Wiseman) and then brought directly to Finance for approval of expenditure and processing. Figure 2 below displays this revised process.

**Figure 1: Original process (Director has a role in approval)**



**Figure 2: Revised process (Director has management oversight only but no role in approval)**



This structural change was significant in that it removed faculty management from any real involvement in the financial aspects of the pre-apprenticeship program and reduced its management oversight of the program to an almost token level. It also resulted in a process change that placed the Finance Department in the role of approving expenditure for building works, a subject in which they had little technical understanding or expertise. Phillip Martin, Acting Finance Manager, told the Commission that:

*As Finance Manager, I was not as well acquainted with the actual work being undertaken.*

The cumulative effect of these changes was to place Mr Cooper in a position whereby he had almost complete autonomy and expertise in relation to the pre-apprenticeship program. He had almost end-to-end control of the procurement process and very little oversight by management. Mr Cooper revealed his own attitude to the Faculty Director's position in the following evidence given to the Commission:

*Q: Before you gave approval to a contractor to start work, in circumstances where their fee had yet to be approved, did you go to one of your managers and ask if you can do it?*

*A: No, I did not.*

*Q: And why wouldn't you do that?*

*A: I didn't think it was relevant.*

While the Faculty Director retained overall responsibility for the pre-apprenticeship program, the position had, in effect, no relevant role in terms of the day-to-day running of the projects. Although the pre-apprenticeship program formed just a small component of the Faculty's overall workload, it was high-risk because each construction involved approximately \$350,000 worth of procurement, unlike other courses.

Managers are accountable for the actions and work of their staff in the workplace. They have a key role in preventing and detecting corruption. The Commission is of the view that this structural change should never have been permitted as it meant the Faculty Director could no longer oversee the pre-apprenticeship program or be held accountable for it.

In addition to this crucial structural weakness, there appears to be a number of specific circumstances that enabled Mr Cooper to continue to work around his line manager.

## Geographical difficulties

Mr Cooper and Mr Wiseman were based at the SWSI Miller College and the pre-apprenticeship program construction sites were located in the surrounding areas. The Faculty Director was based at Granville while the Regional Finance Department was located at Bankstown. The Commission is of the view that Mr Cooper took advantage of this geographical distance to bypass the Faculty Director.

While it is unclear whether Mr Cooper engineered the change which led to all procurement paperwork being approved by the Regional Finance and Administration Manager, it is clear that this change was in part made as a result of problems arising from the geographical spread of the campuses.

Physical separation of managers from their staff is a recognised corruption risk and while the Commission recognises that not every manager can be located alongside their staff, it is the Commission's experience that effective supervision and checking practices are essential strategies for detecting corruption. The Commission is of the view that this was lacking for much of the time when Mr Cooper engaged in corrupt conduct.

## Turn-over in management

Another factor that allowed this lack of oversight to continue was the high turn-over in the role of Faculty Director, Building and Construction. Between 2002 and 2009 Mr Cooper had seven different line managers, including a number in an acting capacity. Had one person held that position on a more permanent basis, it is likely that they would have begun to question their lack of oversight of the program and indeed this did occur when John Malcolm was appointed permanently to the position in 2007. While the Commission accepts that turn-over in management roles is inevitable in any organisation, it can lead to a lack of oversight while each manager takes time to orientate themselves to the position.

## Secretive and in control

It also appears from evidence put to the Commission, that Mr Cooper was secretive in relation to the scheme. Mark Libbesson, a Head Teacher at Campbelltown College who commenced managing pre-apprenticeship projects, told the Commission that:

*On occasions we would meet the representatives from these organisations [Housing NSW and Resitech] and I wouldn't have the necessary paperwork because Cooper had not passed it onto me.*

John Malcolm, Faculty Director from July 2007, whose actions are discussed further below, also found Mr Cooper secretive and told the Commission:

*It was my view that Cooper was obstructive and withheld information from Campbelltown College. Cooper gave the impression he did not want other people being involved in the pre-apprentice program.*

This characteristic of being secretive and resisting reasonable scrutiny can be an indicator of corrupt activity and should act as a red flag for managers.

## Process issues

Finance departments are a key point of control in any organisation. They should be alert to the possibility of fraud and corruption and in a position to flag irregularities with management. The structural change outlined above had placed Mr Cooper in a largely autonomous position, however he still had to ensure that the requisition and invoicing paperwork was approved by the regional Finance department. The Commission is of the view that there were a number of occasions where the regional Finance department should simply have refused to process the paperwork from the pre-apprenticeship program and alerted management to a number of irregularities.

Mr Cooper recognised these weak points of control and used specific tactics to ensure his corrupt conduct was not detected. These are discussed in this section.

## Work commenced prior to approval

Significantly Mr Cooper allowed contractors to start work on the pre-apprenticeship program prior to requisition paperwork being completed. Les Denning, Purchasing and Contracts Officer, told the Commission that:

*Garrie Cooper would regularly arrive in Finance with invoices for payment before a PR2 had been completed and approved. In these instances the requirement for three quotes was bypassed [...]. Sometimes I had contractors screaming at me on the phone demanding payment.*

This pressure, plus a legal obligation to pay the contractor for work done, placed the regional Finance department staff in a position whereby they had to make payment without the required three quotations. Jack Peters, who acted in the role of Regional Finance Manager, told the Commission that:

*It is inappropriate for work to be undertaken in this way, however, contractors have completed their work and are entitled to be paid, and there is no practical purpose in obtaining further quotes.*

Mr Cooper justified this practice by saying that he needed to have the project commenced to ensure students would

have work to do. Regardless, the fact that Mr Cooper was allowed to commit the organisation to expenditure without approval on numerous occasions without any consequence or censure was a factor that allowed his corrupt conduct to go undetected. It was compounded by the fact that any warning he received about this behaviour was given by Finance staff and not through his line manager. That is to say, although the Finance staff would upbraid Mr Cooper and Mr Wiseman about their breaches of policy, they did not escalate the problem to the point where it had any real consequence for either staff member. Mr Cooper's attitude to policy compliance is revealed in the following evidence to the Commission:

*Q: You decide when you'll follow TAFE policies or not?*

*A: Yeah.*

While the Commission accepts that occasional and accidental breaches of policy do occur, continued breach of policy by individual staff members is not acceptable and should be met with some form of penalty. It is this view that has led the Commission to make the following recommendations.

### Recommendation 1

**That SWSI TAFE introduces a system whereby Finance staff are required to record and report breaches of procurement policy to the Associate Director, Business and Services.**

### Recommendation 2

**That SWSI TAFE develops a protocol whereby staff members who breach financial policies on more than one occasion in a financial year have their financial delegation removed for 12 months.**

## Physical attendance at Finance

A further practice of Mr Cooper's was to physically attend the regional Finance department with paperwork for signature. All the Finance staff interviewed by the Commission gave evidence of Mr Cooper and Mr Wiseman physically attending the department with requisitions for approval. For instance, the Acting Regional Finance Manager, Phillip Martin, told the Commission that:

*For the requisitions I dealt with, Garrie Cooper or Mark Wiseman would often bring in a heap of orders at once. They generally wanted them approved in a hurry and sometimes waited by my desk while I approved them.*

In any organisation, it may be necessary to have paperwork signed quickly. However the ongoing practice of attending the department and waiting for approval may, in this instance, have led to less thorough checking of the paperwork and an unwarranted pressure to sign. This practice should not have been permitted and removed an important barrier between Finance staff and operational staff.

The Commission has been advised that since these allegations became known, the practice of pre-apprenticeship program staff physically attending the Finance department has ceased. Requisitions forms are now couriered to the department in a confidential green bag. In this circumstance, it is unnecessary for the Commission to make a recommendation in respect of this particular issue.

### Dummy quotes

At times the regional Finance department staff did refuse to approve paperwork due to a lack of sufficient quotations. While the Commission was unable to establish which particular orders were rejected, there is evidence, as outlined in Chapter 3, that both Mr Cooper and Mr Wiseman arranged for dummy quotes to be created. Mr Fox, a concreting subcontractor who admitted creating dummy quotes, gave the following evidence to the Commission:

Q: *Were you told why it was that you were being asked to do this?*

A: *That it was just a formality so they could have their three quotes to put in for tender.*

Q: *A way of getting through red tape?*

A: *Yeah.*

Dummy quotes created for this purpose are very difficult to detect and in the absence of any suspicion of Mr Cooper's conduct, a casual examination of these quotes would probably not arouse any suspicion. However, the very fact that corrupt individuals are forced to take such action does increase their risk of being detected. This may deter some but not all from taking this extra step. In the case of the pre-apprenticeship program, the changes introduced by TAFE since the allegations were made (outlined below) will, in the Commission's view, reduce the likelihood of dummy quotes being authorised. This is, however, contingent on the individuals in oversight positions being willing and able to actively perform checks to ensure procurement paperwork not only looks correct but is correct.

### Variations and leeway

As outlined in Chapter 2, Mr Cooper instructed Mr Tran to submit inflated invoices as variations to original quotations. The Commission accepts that variations were often necessary due to errors in original plans and that mistakes by students can lead to a higher number of variations than would normally be expected in a building project. However, it is the Commission's experience that negotiation and variation are particularly vulnerable to corruption. This regular acceptance of variations led to them being processed with very little scrutiny. This situation was only exacerbated by the variations being approved by the Regional Finance Manager who had insufficient technical understanding of why they might be necessary and therefore had to rely on the advice of Mr Cooper and Mr Wiseman.

The regional Finance department did recognise that there were a high number of variations but its solution to this was to allow for a leeway on requisitions whereby a PR2 form would be made out for an amount higher than the quote attached to it. Les Denning, Purchasing and Contracts Officer, told the Commission that:

*Due to the difficulty in predicting the cost of concreting and excavation, we permitted requisition orders for these types of jobs to allow for some variation. For this reason, the requisition would sometimes be made out for slightly higher than the attached preferred quote. The actual supplier never saw the requisition so they were not supposed to know that this leeway existed.*

While this may have reduced the paperwork involved, the leeway enabled a variation from the original quote without any details being provided of what they may be. It also did not prevent additional variations being submitted, approved and paid. The Commission is of the view that leeway of this sort should not be permitted.

Together these process weaknesses enabled Mr Cooper's corrupt conduct. While SWSI TAFE has made the changes outlined below since these allegations arose, the Commission is of the view that TAFE as a statewide organisation should review the operations of all its pre-apprenticeship programs in light of the risks identified in this report.

### Recommendation 3

**That TAFE conducts an audit of pre-apprenticeship programs operating in its other colleges and institutes to ensure the risks identified in this report are addressed.**

## The impact of proactive management

As stated above, managers are accountable for the actions and work of their staff in the workplace. However, in order to do so, they need to actively supervise their staff and have measures in place which inform them about what their staff are doing and how they are doing it.

From this perspective, it is worth noting the changes that occurred when a permanent Faculty Director was appointed. John Malcolm was appointed to the position in July 2007. He told the Commission that:

*I found Garrie Cooper was quite secretive about the tendering and service procurement aspects of the program and insisted on doing pre-apprentice tasks himself. [...] Garrie was in possession of plans and tender documents and said to me words to the effect that “you don’t want me to show you these do you, because you would not know what you were looking at”. I made it clear that I was responsible for the program as Faculty Director and would be involved in the program’s running.*

Mr Malcolm proceeded to challenge Mr Cooper’s autonomy over the program, particularly as he became concerned at the lack of involvement of the Faculty Director’s position in the preparation of tender documentation, the procurement of subcontractors and the financial viability of the program. He requested a financial report from the regional Finance department and told the Commission that:

*These reports showed that the pre-apprenticeship program was running at a significant loss despite Garrie’s claim that it was making money “hand over fist”.*

The Commission notes that Mr Malcolm had to request this financial report and that none were regularly provided to previous Faculty Directors by the regional Finance department. Review of financial information and simple data analysis can enable management to extract information that may indicate fraudulent activity. As such, the Commission makes the following recommendation to ensure financial oversight of the pre-apprenticeship program at a Faculty level.

### Recommendation 4

**That SWSI TAFE produces financial reports at pre-determined milestones during each pre-apprenticeship project and provides these to the Faculty Director, Building and Construction.**

An analysis tool that can be of assistance for managers is the use of benchmarking. Benchmarking allows business units to evaluate their operations in comparison with other similar units and to identify ways of improving their performance.

In the case of TAFE, the Commission is of the view that it would be beneficial for the various pre-apprenticeship programs operating at different colleges (e.g. Miller and Campbelltown) and across institutes (e.g. South Western Sydney Institute and Western Sydney Institute) to be benchmarked against each other. This would allow TAFE management to review performance and financial expenditure and establish best practice. It should also reveal any anomalies between projects. This view has led the Commission to making the following recommendation.

### Recommendation 5

**That TAFE benchmarks pre-apprenticeship projects between colleges and also between institutes to review performance and ensure value for money is being obtained.**

By the end of 2007 (within six months of assuming his position), Mr Malcolm had introduced a series of changes to the way subcontractor services were procured including:

- a requirement that the Faculty Director review and recommend the tender documentation prior to its approval by the Institute,
- a requirement that three quotes were obtained for all subcontractor services regardless of the dollar value, and
- a requirement that all purchase requisitions be approved by the Faculty Director prior to processing by Finance.

These changes reduced Mr Cooper’s autonomy over the program and placed the Faculty Director in a central oversight capacity. By increasing his level of oversight, Mr Malcolm could see the lack of detailed descriptions on invoices and quotations and the high number of variations. Mr Malcolm escalated these concerns and requested the Associate Director, Business and Services to undertake a full audit of the pre-apprenticeship program. While this audit was not subsequently undertaken due to the allegations which were the subject of this investigation coming to light, the Commission recognises the actions taken by Mr Malcolm and commends his approach to his management responsibilities.

## Changes since the allegations were made

Since these allegations were made, SWSI TAFE has appointed a pre-apprenticeship coordinator whose role is to coordinate all pre-apprenticeship projects across the Institute. It is the Commission's view that this is a key governance position. However, in its current form, the coordinator still has teaching responsibilities which does not allow for sole focus on the procurement and governance functions. As stated above, teaching and procurement require fundamentally different skill sets.

In itself a coordinator position is not the solution to avoiding corrupt conduct and indeed had Mr Cooper been in such a role, he could have engaged in similar or greater corrupt conduct. However, removing the teaching responsibility from the coordinator position places a distance between the position with responsibility for procurement and the teachers who work alongside the subcontractors. It thereby reduces the conflict of interest for teachers with close ties to the building and construction industry.

SWSI TAFE has advised the Commission that consideration is being given to restructuring the role so as to create a Senior Education Officer-grade position without any face-to-face teaching responsibilities. The new position would have responsibility for co-ordinating all pre-apprenticeship projects across the Institute, including the preparation of tender documents for submission to Resitech. The position would be accountable for ensuring the required number of quotations were obtained for each subcontract and would perform an important checking and oversight function.

The Commission supports this proposal and is of the view that it will reduce the risks associated with frontline teaching staff undertaking procurement. It will also lessen the conflict of interest that arises when

carpentry staff undertake secondary employment in the building and construction industry. Given these changes, it is unnecessary for the Commission to make a recommendation in respect of this particular issue. However, the Commission is of the view that any person in the role should receive training in procurement.

### Recommendation 6

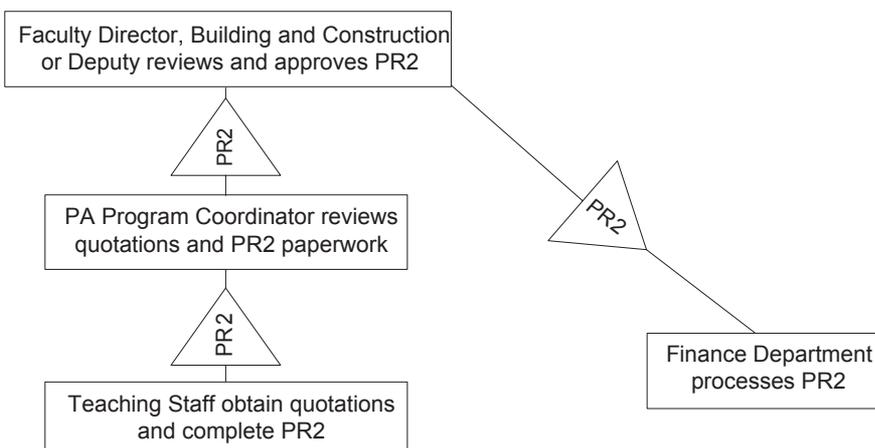
**That SWSI TAFE ensures that the person performing the functions of the pre-apprenticeship coordinator receives training in procurement as soon as practicable after commencement.**

In addition, SWSI TAFE has advised the Commission of a number of further changes that have been made since the allegations involving Mr Cooper arose. These are as follows:

- The Head Teacher's financial delegations for the pre-apprenticeship program were completely removed.
- These delegations have been transferred to the Faculty Director and the Assistant Faculty Director. All PR2s must be approved by one or the other of these positions.
- Requisition forms are now sent to Finance in a confidential green bag. They are no longer hand-delivered by a teacher or head teacher.
- The market has been retested for a range of different building industry subcontractors to ensure a broader range of suppliers.

It is the Commission's view that these changes, along with a senior officer without teaching responsibilities performing the functions of the pre-apprenticeship coordinator role, will strengthen the governance framework for the program and reduce the risk of corruption. This amended governance structure is displayed in Figure 3 below.

**Figure 3: Amended review and approval process**



The Commission is of the view that TAFE (and in particular SWSI TAFE) should conduct an audit of all procurement activity undertaken by teachers to ensure that the oversight structures and control processes are adequate.

### Recommendation 7

**That TAFE undertakes an audit of all teaching positions involved in procurement and where appropriate ensures:**

- that basic training in procurement is provided, and
- that duties are segregated so that teaching staff are not exercising end-to-end control with approval being obtained outside their faculty.

### Mr Wiseman's situation

As outlined in Chapter 2, Mr Wiseman commenced as a carpentry teacher in 2006 and from that time onwards reported to Mr Cooper. Up until 2006, Mr Cooper had completed all the requisitioning paperwork. Upon Mr Wiseman's commencement in the position, he took over this responsibility.

Mr Cooper's involving of Mr Wiseman in his corrupt conduct was a high-risk strategy as he had no guarantee that Mr Wiseman would comply or would not blow the whistle. It was an unenviable position that Mr Wiseman had been placed in by his line manager. He could either accommodate Mr Cooper's conduct or take action to stop it. Mr Wiseman gave the following evidence to the Commission:

*Q: [...] Why did you decide not to do anything at that point?*

*A: Didn't have the courage I suppose.*

*Q: What were you concerned about?*

*A: Well, this, argument, confrontation.*

*Q: With whom?*

*A: Garrie.*

The Commission recognises the difficult position that Mr Wiseman was placed in by Mr Cooper's actions. Mr Wiseman told the Commission that he had never had any information provided to him about the procedure for making a confidential complaint or blowing the whistle. Nevertheless, Mr Wiseman did come forward and cooperate with the Commission's investigation. To assist any other individuals found in a similar position to Mr Wiseman, the Commission makes the following recommendation.

### Recommendation 8

**That SWSI TAFE provides information and training to frontline staff on the provisions of the *Protected Disclosures Act 1994 (NSW)*.**

## Appendix: The role of the Commission

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

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

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

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

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

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

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



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