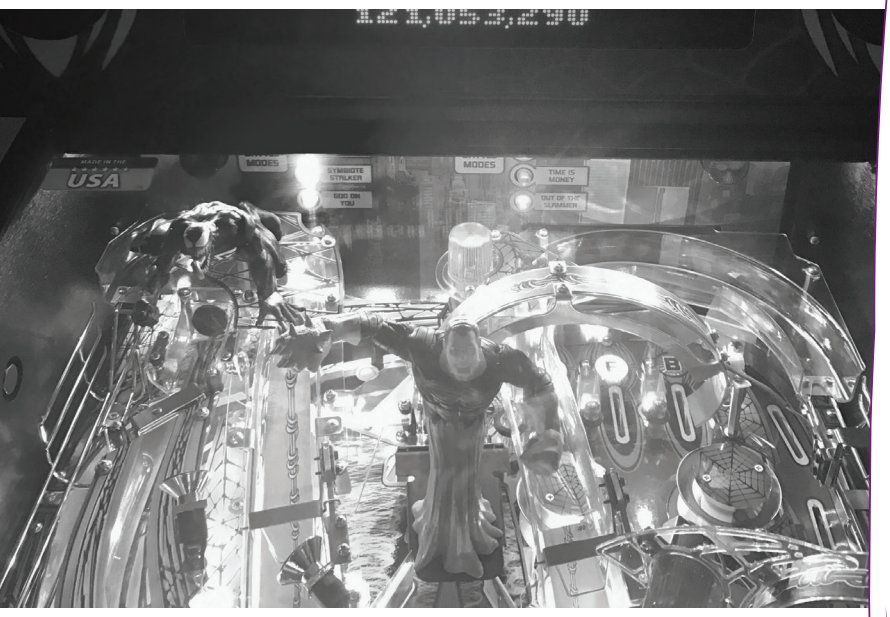
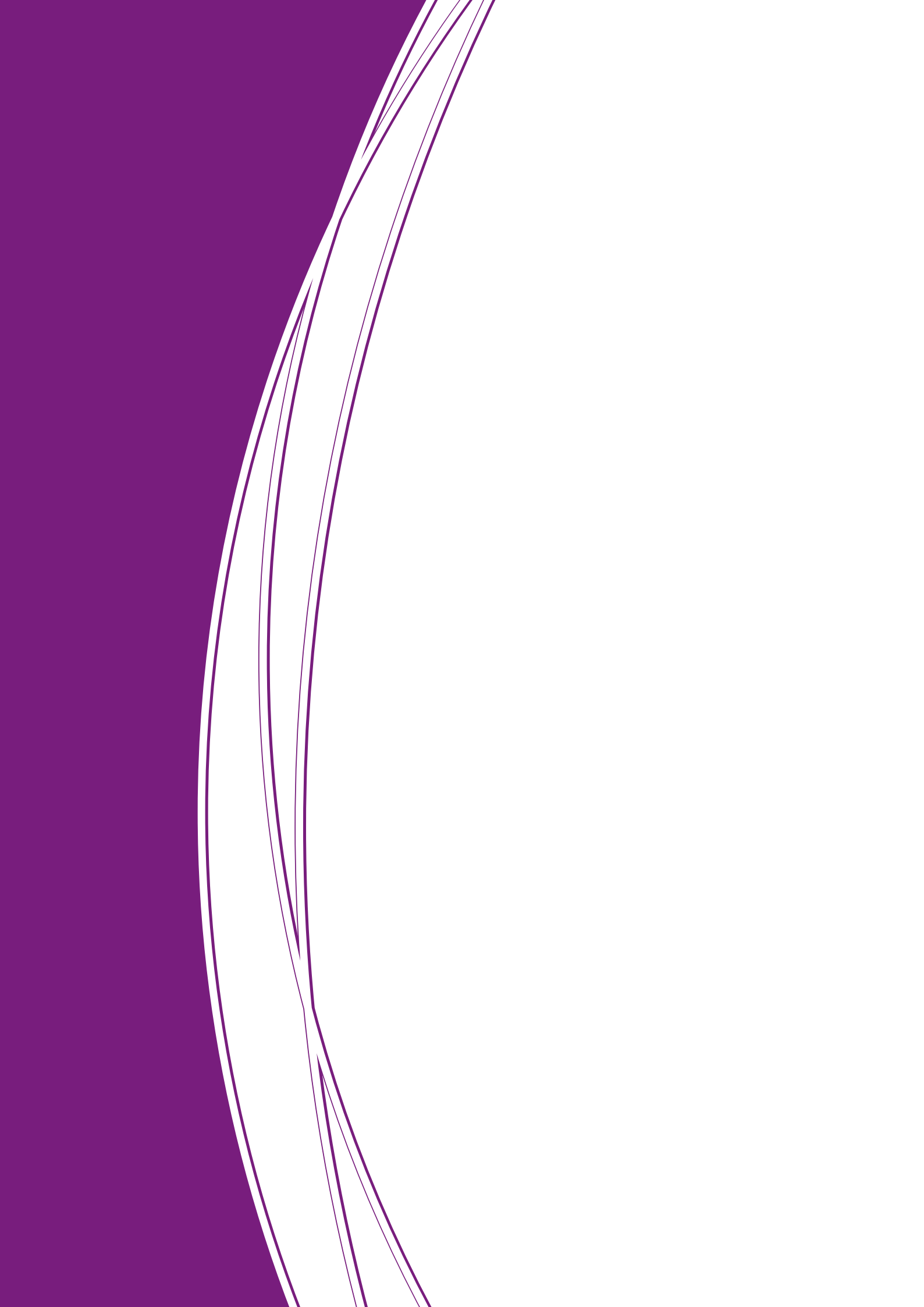


INVESTIGATION INTO THE OVER-PAYMENT OF PUBLIC FUNDS BY THE UNIVERSITY OF SYDNEY FOR SECURITY SERVICES

ICAC
INDEPENDENT COMMISSION AGAINST CORRUPTION
NEW SOUTH WALES

ICAC REPORT
MAY 2020



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This publication is available on the Commission's website www.icac.nsw.gov.au and is available in other formats for the vision-impaired upon request. Please advise of format needed, for example large print or as an ASCII file.

ISBN 978-1-921688-88-1

I·C·A·C

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Mr President
Mr Speaker

In accordance with s 74 of the *Independent Commission Against Corruption Act 1988* I am pleased to present the Commission's report on its investigation into the over-payment of public funds by the University of Sydney for security services.

I presided at the public inquiry held in aid of the investigation.

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

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

Yours sincerely

Stephen Rushton SC
Commissioner

Contents

Summary of investigation and outcomes

This investigation by the NSW Independent Commission Against Corruption ("the Commission") concerned whether:

- from January 2009 to February 2019, staff of Sydney Night Patrol & Inquiry Co Pty Ltd ("SNP") and/or SNP's subcontractor S International Group Pty Ltd (SIG) had dishonestly obtained a financial benefit from the University of Sydney ("the University"), a public authority with which SNP had a contract to provide security services, by creating false entries on daily timesheets and submitting these for payment to the University
- any employee of the University dishonestly obtained a financial benefit from, or acted partially in, exercising their public official functions for the benefit of SNP and/or SIG and/or any of their employees
- SNP and/or SIG and/or any of their employees engaged in conduct that adversely affected or could have adversely affected the exercise of official functions by the University and/or any employee of the University in the exercise of their official functions and which could have involved bribery and/or fraud
- any employee of the University and/or SNP and/or SIG engaged in conduct that impaired or could impair public confidence in public administration in that it involved dishonestly obtaining or assisting in obtaining, or dishonestly benefiting from, the payment or application of public funds for private advantage.

Outcomes

The Commission is satisfied that Emir Balicevac, an SNP employee, engaged in serious corrupt conduct in that his conduct impaired or could impair public confidence in public administration and could also involve obtaining or assisting in obtaining, or dishonestly benefiting from, payment of public funds for private advantage. Between December 2015 and April 2018, Mr Balicevac dishonestly obtained approximately $222,905 from SNP by submitting timesheets in which he made false representations as to the identities of guards who provided or purported to provide ad hoc security services to the University knowing that the funds to pay those claims would ultimately come from the University.

The Commission is also satisfied that Mr Balicevac engaged in serious corrupt conduct in that his conduct involved conduct that adversely affects, or could adversely affect, either directly or indirectly, the honest or impartial exercise of official functions by a public official. In late 2016, he provided a pinball machine at a cost of $10,650 to the University's security operations manager, Dennis Smith, for which he ultimately contributed $4,650 and arranged for another SNP employee, Frank Lu, to contribute $6,000, for the purpose of inducing or rewarding Mr Smith to show favour to Mr Balicevac and SIG in relation to the provision of security guarding services to the University.

The Commission is satisfied that Daryl McCreadie, also an SNP employee, engaged in serious corrupt conduct in that his conduct impaired or could impair public confidence in public administration and could also involve obtaining or assisting in obtaining, or dishonestly benefiting from, payment of public funds for private advantage. Between December 2015 and April 2018, Mr McCreadie dishonestly obtained approximately $27,283 from SNP by submitting timesheets in which he made false representations as to the identities of the persons who provided or purported to provide ad hoc security guarding services to the University knowing that the funds to pay those claims would ultimately come from the University.

The Commission is satisfied that Mr Lu engaged in serious corrupt conduct in that his conduct impaired or could impair public confidence in public administration and could also involve obtaining or assisting in obtaining, or dishonestly benefiting from, payment of public funds for private advantage. Between December 2015 and April 2018, Mr Lu dishonestly obtained approximately $244,091 from SNP by submitting timesheets in which he made false representations as to the identities of the persons who provided or purported to provide ad hoc security guarding services to the University knowing that the funds to pay those claims would ultimately come from the University.

The Commission is satisfied that George Boutros, an SIG security guard, engaged in serious corrupt conduct in that his conduct impaired or could impair public confidence in public administration and could also involve obtaining or assisting in obtaining, or dishonestly benefiting from, payment of public funds for private advantage. Between October 2016 and April 2018, George Boutros dishonestly obtained payment from SNP by submitting timesheets in which he made false representations as to the identities of the persons who provided or purported to provide ad hoc security guarding services to the University knowing that the funds to pay those claims would ultimately come from the University. The precise amount dishonestly obtained by George Boutros is unknown because, as an SIG employee, it is difficult to differentiate between the rostered shifts he legitimately claimed and the ghosting shifts he illegitimately claimed.

The Commission is satisfied that Taher Sirour, the director and CEO of SIG, engaged in serious corrupt conduct in that his conduct impaired or could impair public confidence in public administration and could also involve obtaining or assisting in obtaining, or dishonestly benefiting from, payment of public funds for private advantage. Through facilitating payments to Mr Balicevac, Mr McCreadie, Mr Lu, and George Boutros on the basis of false timesheets, he knowingly assisted them to obtain a financial advantage from SNP at the cost of the University. In the case of Mr Balicevac and Mr Lu, Mr Sirour was aware that they were falsely claiming payments in respect of ad hoc services that had not been provided.

The Commission is also satisfied that Mr Sirour engaged in serious corrupt conduct in that his conduct involved conduct that adversely affects, or could adversely affect, either directly or indirectly, the honest or impartial exercise of official functions by a public official. Mr Sirour gave or offered to provide the following to Mr Smith as an inducement or reward for using his position at the University to favour the interests of SIG and Mr Sirour or to influence him to show such favour:

- payment for accommodation for Mr Smith and his wife at the Shangri-La Hotel, Sydney, between 4 and 6 October 2015 in the amount of $850, a meal at Wolfies restaurant on 5 October 2015 in the amount of $369.50, and transport costs of a car and driver to and from the hotel in the amount of $250
- payment for a further stay at the Shangri-La Hotel, Sydney, for Mr Smith and his wife between 17 and 19 March 2017 in the amount of $1,368 (although the booking was subsequently cancelled due to Mr Smith's family circumstances)
- tickets for an overseas trip in April 2018.

The Commission is satisfied that Mr Smith engaged in serious corrupt conduct in that his conduct involved conduct that adversely affects, or could adversely affect, either directly or indirectly, the honest or impartial exercise of his official functions. Mr Smith accepted, or agreed to accept, the following gifts as an inducement or reward to use his position at the University to favour the interests of SIG:

- payment by Mr Sirour for accommodation for himself and his wife at the Shangri-La Hotel,

Sydney, between 4 and 6 October 2015 in the amount of $850, a meal at Wolfies restaurant on 5 October 2015 in the amount of $369.50 and transport costs of a car and driver to and from the hotel in the amount of $250

- payment by Mr Sirour for a further stay at the Shangri-La Hotel, Sydney, between 17 and 19 March 2017 in the amount of $1,368 (although the booking was subsequently cancelled due to his family's circumstances)
- a pinball machine worth $10,650 paid for by Mr Balicevac and Mr Lu
- tickets for an overseas trip from Mr Sirour in April 2018.

Statements are made pursuant to s 74A(2) of the *Independent Commission Against Corruption Act 1988* ("the ICAC Act") that the Commission is of the opinion that consideration should be given to obtaining the advice of the Director of Public Prosecutions (DPP) with respect to the prosecution of the following persons:

- Mr Balicevac for offences against s 192E, s 192G, s 249B(1)(a), s 249B(2)(a), and s 249B(2)(b) of the *Crimes Act 1900* ("the Crimes Act"), regulation 42 of the Security Industry Regulation 2016, regulation 44 of the Security Industry Regulation 2007 and s 87(1) of the ICAC Act
- Mr McCreadie for offences against s 192E, s 192G, and s 249B(1)(a) of the Crimes Act, regulation 42 of the Security Industry Regulation 2016 and regulation 44 of the Security Industry Regulation 2007
- Mr Lu for offences against s 192E and s 192G of the Crimes Act , regulation 42 of the Security Industry Regulation 2016 and regulation 44 of the Security Industry Regulation 2007
- George Boutros for offences against s 192E and s 192G of the Crimes Act, regulation 42 of the Security Industry Regulation 2016 and regulation 44 of the Security Industry Regulation 2007
- Mr Sirour for offences against s 192E, s 192G, and s 249B(2)(a) or s 249B(2)(b), of the Crimes Act and s 135.1 of the *Criminal Code Act 1995* (Commonwealth)
- Mr Smith for offences against s 249B(1)(a) or 249B(1)(b) of the Crimes Act and s 87(1) of the ICAC Act.

Security licences are governed by the *Security Industry Act 1997*. The Commission intends to provide a copy of this report to the Security Licensing & Enforcement Directorate of NSW Police, which assists the Commissioner of Police to administer the Act. The Commissioner of Police is empowered to assess whether any one or more of the affected persons who are currently licensed are fit and proper persons to hold a security licence.

Chapter 9 of this report sets out the Commission's review of the corruption risks present at the time the relevant conduct occurred. The Commission has made the following recommendations.

Recommendation 1

That the University ensures that key tender documentation, such as procurement strategies, tender evaluation plans and tender evaluation committee (TEC) reports, include a realistic and detailed assessment of procurement and contract risks. This assessment should be conducted in a manner that incorporates operational risks and complies with the risk management principles in the International Standard on Risk Management ISO 31000:2018.

Recommendation 2

That the University amends its *Guidelines for using the risk assessment tool* to provide more detailed guidance on major contract risks.

Recommendation 3

That the University assesses contract assurance frameworks that cover key risks involved in the provision of services, such as a reliance on subcontracting, when assessing the capability and capacity of tenderers.

Recommendation 4

That the chief procurement officer formally reviews requests for tender (RFTs) for high-risk tenders and tender evaluation plans for significant procurement undertakings.

Recommendation 5

That the University should review its tender assessment criteria and weightings to avoid perceptions that unwarranted advantages are provided to a particular tenderer.

Recommendation 6

That probity walls and/or other safeguards should be established where there is a risk that someone connected to a tenderer could access confidential information about a tender process and tenderers' submissions.

Recommendation 7

That the University should ensure consistency across its tender documentation concerning how tenders will be evaluated.

Recommendation 8

That the University should continue to assess all tenderers and, where relevant, their supply chains to ensure compliance with Awards.

Recommendation 9

That all TEC chairs and/or appointed probity advisers should ensure that tender scoring methodologies are clear to evaluators and that the tender assessment criteria have been followed.

Recommendation 10

That tender reports to the Finance and Audit Committee (FAC) and the tender board should contain adequate information to enable key issues to be understood. The information should include:

- tenders' assessment criteria scores
- key contract risks and their mitigation
- key assumptions
- any significant probity concerns and the manner in which they were resolved.

Recommendation 11

That the University should ensure all future contracts for the provision of security services include adequate provisions covering:

- subcontracting terms
- contractor assurance frameworks
- right-to-audit clauses
- timesheet access
- technology requirements.

Recommendation 12

That security contractors should be required to provide evidence that they have properly implemented internal controls to ensure that security staff (including subcontractors) have completed their duties in accordance with the contract and work orders.

Recommendation 13

That the University should document its internal contractor controls. A report of the conduct of the controls, exceptions to the controls and the resolution of those exceptions should be given to relevant managers in CIS.

Recommendation 14

That the University should perform random checks that security guards are on duty. These could include GPS monitoring, reviewing CCTV and access records, and surprise visits to certain locations.

Recommendation 15

That there should be a regular rotation between at least two University employees who undertake contractor checks to ensure that security services are provided.

Recommendation 16

That the University should have access to guard timesheets. The University should also inspect the timesheets to ensure compliance with legislative requirements and the contract, and to help confirm charges on invoices.

Recommendation 17

That security contractors should be required to provide specimen signatures against which the signatures of guards should be checked.

Recommendation 18

That the University should have key performance indicators (KPIs) in place that cover the essential requirements for the provision of security services. It should also ensure KPI monitoring for security contracts is based on data that is trustworthy, measurable and relevant, and that reliance on contractor self-reporting is minimalised.

Recommendation 19

That the University should develop controls to identify when contract variations exceed 10% of the original contract amount. It should also clarify that a sufficiently senior delegate is required to scrutinise and approve cumulative ad hoc contract payments that exceed 10% of the contract value.

Recommendation 20

That the University considers sharing some contract management duties between internal staff, who are co-located with security contractors, and staff, who do not have day-to-day contact with security contractors.

Recommendation 21

That the University should develop a code of business practice or similar document and contractually bind major suppliers to comply with it. The document should include:

- a prohibition on suppliers or potential suppliers offering gifts and benefits
- a prohibition on actions that place University staff or other individuals in the supply chain in conflict of interest situations
- a requirement for suppliers to have comparable provisions in contracts with subcontractors or other companies in the supply chain
- details of where people can make reports (including anonymous reports) of breaches of the code of business practice.

Recommendation 22

That the University should establish a clear mechanism, and one that is clearly communicated, for the staff of suppliers and subcontractors to report corrupt conduct.

Recommendation 23

That the University adopts a fraud and corruption control plan that appropriately addresses the risks of fraud and corruption. Among other things, the plan should reflect the findings made in previous Commission investigation reports concerning universities and ensure that the corruption prevention issues are not dealt with in isolation, but that the cumulative implications are properly considered.

Recommendation 24

That all internal audit reports should be given to the director of internal audit and reported to the FAC. The internal audits should be reviewed by an internal audit manager to assess the implications of the report and whether there are red flags of possible fraud and corruption. If necessary, internal auditors' working papers should also be obtained.

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

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

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

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

Recommendation this report be made public

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

Chapter 1: Background

This chapter sets out some background information concerning the investigation by the NSW Independent Commission Against Corruption ("the Commission") and the principal persons of interest.

How the investigation came about

By letter dated 27 March 2017, Dr Michael Spence, Vice-Chancellor of the University of Sydney ("the University"), reported to the Commission possible corruption in the supply of security services to the University. Section 11 of the *Independent Commission Against Corruption Act 1988* ("the ICAC Act") requires the principal officer of a public authority to report to the Commission any matter that the person suspects, on reasonable grounds, concerns, or may concern, corrupt conduct.

Dr Spence's report stated that the University had received an allegation that S International Group Pty Ltd (SIG) was billing Sydney Night Patrol & Inquiry Co Pty Ltd ("SNP") for work that SIG had not performed and this cost was being invoiced to, and paid by, the University. It was alleged that daily timesheets were being falsified to show names and signatures of security guards who were not rostered on, who did not attend the shift to perform the work, and, in some cases, had ceased employment at the University. The allegation related to additional security work requested by the University rather than the standard daily security services agreed under the contract between the University and SNP. The internal audit unit of the University had conducted an initial review of available documentation.

On 10 April 2017, the Commission determined that a preliminary investigation ought to take place. That investigation suggested the likelihood that serious corrupt conduct had occurred, and accordingly the matter was escalated to a full investigation on 11 July 2017.

Why the Commission investigated

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

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

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

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

The Commission has jurisdiction to investigate allegations concerning any conduct of any person, whether or not a public official, that adversely affects, or could adversely affect, either directly or indirectly, the honest or impartial exercise of public official functions by any public official, any group or body of public officials or any public authority.

The Commission also has jurisdiction to investigate allegations concerning the conduct of public officials that constitutes or involves the dishonest or partial exercise of their official functions.

In addition, the Commission has jurisdiction to investigate allegations concerning any conduct of any person (whether or not a public official) that impairs, or that could impair, public confidence in public administration and which involves dishonestly obtaining or assisting in

obtaining, or dishonestly benefiting from, the payment of public funds for private advantage.

For the purposes of the ICAC Act, the University is a public authority. It is subject to the powers of the Auditor-General of NSW to inspect, examine or audit its accounts pursuant to s 35 of the *Public Finance and Audit Act 1983*.

In deciding to investigate, the Commission took into account the seriousness of the allegations, the possibility that the University may have paid a significant amount of public funds in connection with hours falsely claimed for the purported performance of ad hoc security services, and that the alleged misconduct had the capacity to create appreciable security risks at the University in terms of student and campus safety.

The Commission decided that it was in the public interest to conduct a full investigation to establish whether corrupt conduct had occurred, the identity of those involved and whether there were any corruption prevention issues that needed to be addressed.

During the course of the investigation, information came to light that suggested that Dennis Smith, manager of University Security Operations, may have dishonestly or partially exercised his official functions. A person is a public official where they are employed or otherwise engaged by a public authority. Mr Smith was a public official as he was, at all relevant times, directly employed by the University.

Conduct of the investigation

During the course of the investigation, the Commission:

- obtained documents from various sources by issuing 59 notices under s 22 of the ICAC Act requiring the production of documents and one notice under s 21 of the ICAC Act
- interviewed and/or took statements from numerous persons
- conducted 18 compulsory examinations following the service of summonses pursuant to s 35 of the ICAC Act
- executed three search warrants.

The public inquiry

After taking into account each of the matters set out in s 31(2) of the ICAC Act, the Commission determined that it was in the public interest to hold a public inquiry to further its investigation. In making that determination, the Commission had regard to the following considerations:

- members of the public are entitled to have a legitimate expectation that public authorities entrusted with the power to expend public funds will do so within an administrative framework that ensures controls are in place to limit the opportunity for corruption and, in particular, fraud
- a public inquiry would educate the public and public authorities about the risk of corruption where inadequate controls are in place in relation to the procurement of services and the administration of contracts in relation to those services
- a public inquiry would educate the public and public authorities about the consequences of corruption including, in this case, putting at risk the health and safety of staff and students at the University
- the conduct was serious, as it allegedly involved:
  - defrauding the University of substantial public funds over a number of years
  - the falsification of records
  - the receipt of benefits by at least one employee of the University who was charged with a responsibility for the administration of the University's security services contract
  - a failure by the University to have in place any, or any adequate, systems and/or procedures to detect corrupt conduct and, in particular, fraud.

The public inquiry was conducted over 14 days, from 11 to 28 February 2019. Commissioner Stephen Rushton SC presided at the public inquiry and Phillip English acted as Counsel Assisting the Commission. Evidence was taken from 19 witnesses.

At the conclusion of the public inquiry, Counsel Assisting prepared submissions setting out the evidence and identifying findings and recommendations that the Commission could make based on that evidence. The Commission's Corruption Prevention Division also prepared submissions. These submissions were provided to all relevant parties.

In May 2019, supplementary submissions were prepared by Counsel Assisting, which dealt with further evidence that came to light following SNP's submissions in response to the submissions of Counsel Assisting.

During the course of preparing this report, further potential adverse findings were identified affecting certain parties. Further submissions were provided to those parties, who were given an opportunity to respond by way

of further submissions. The last submission was received on 26 March 2020.

All submissions were considered prior to the publication of this report.

The Commission's approach to submissions of affected persons is set out in Appendix 3 to this report.

The University of Sydney

Security services contracts with SNP

In 2009, the University contracted with SNP to provide security services on its campuses in NSW. On 10 September 2015, the University and SNP commenced a new five-year contract, with a further two-year option period, for the provision of security services ("the 2015 contract"). The value of the 2015 contract, including the two-year option period, was $26,248,800.03 (excluding GST) over six years, with indicative pricing for year seven to be confirmed dependent on the contract being extended. The scope of work to be provided under the contract included:

- guarding services
- security electronic maintenance
- parking machines, including cash in transit services
- line-marking for pedestrian crossings and parking bays.

The 2015 contract imposed on SNP obligations to perform the work with due skill and care, in accordance with the relevant industry standards, best practice guidelines, and the University's by-laws, rules and policies.

Subcontracting pursuant to the contract

Clause 4.5(a) of the 2015 contract required SNP to obtain the prior written consent of the University in order to subcontract any of its obligations under the contract. Where subcontracting occurred, SNP was to remain liable to carry out the services and to ensure that all subcontractors complied with the terms of the contract.

While there was no evidence before the Commission that SNP obtained the written consent of the University, it was common ground that SNP subcontracted security services obligations under the 2015 contract to SIG. SIG had provided subcontracting services to SNP at the University since approximately 2013.

Campus Security Unit

The University Campus Security Unit (CSU) is made up of University staff and SNP employees. The CSU's secure office area is located on the bottom floor of the Campus Infrastructure Services Building at the University's main campus in Camperdown/Darlington.

Swipe-card access was required for entry. The CSU's secure office area comprised a number of rooms, including the CCTV camera "Control Room" and an open-plan office space for senior staff. The office space accommodated:

- Mr Smith
- Morgan Andrews, manager of the University's campus security, (and, later, his replacement, Simon Hardman, head of the University's campus and emergency management)
- Daryl McCreadie, SNP's site manager
- Emir Balicevac, SNP's second-in-charge ("2IC").

The CSU was responsible for security services at four of the University's campuses. Guarding was provided at the main campus (approximately 70 hectares) and the Cumberland and Camden campuses 24 hours per day, and patrol guarding was supplied at the Sydney College of the Arts (SCA) campus in Rozelle.

The CSU administered the 2015 contract and requests for ad hoc guarding services. The provision of these services to the University was central to the Commission's investigation.

Dennis Smith

Mr Smith was the manager of University Security Operations between November 2012 and his resignation on 8 February 2019. One of Mr Smith's nine accountabilities included building:

> *the security team's capacity to protect university operations, including providing leadership and direction to all security coordinators, team leaders and officers to conduct operations, while ensuring the unit maintains the highest ethical standards in respect of the law, rules, university policy and the operational duties of the Campus Security Unit*

Mr Smith's role also included providing leadership and direction to some SNP employees known as team leaders.

Mr Smith had very limited interaction with the SNP head office. If an issue arose that concerned SNP, his first point of contact was SNP's on-site manager, Mr McCreadie.

Before working at the University, Mr Smith had been a police officer for 26 years, attaining the rank of superintendent in charge of the Redfern Local Area Command. In 2005, Mr Smith was discharged from NSW Police on medical grounds.

Mr Smith's line manager was Morgan Andrews, who was manager of campus security. Mr Andrews resigned from this role on 21 July 2016. Prior to the appointment of his successor (Mr Hardman, in approximately July 2017), Mr Smith also filled the position for some time.

Mr Andrews' line manager (and, later, Mr Hardman's) was Steve Sullivan, who held the title of divisional manager; a role that was made redundant in January 2018. Ben Hoyle was appointed to the subsequent position of deputy director, campus services, of Campus Infrastructure Services (CIS).

Greg Robinson

In 2012, Greg Robinson was appointed CIS director, and made responsible for many different services that fell within the University's infrastructure services framework. This included facilities management and protective services. He reported directly to Stephen Phillips, vice-principal of operations.

In a statement tendered during the Commission's public inquiry, Mr Robinson informed the Commission that, when he arrived at the University in March 2012, he formed the opinion that the CSU was operated by capable and competent people. He stated that, if an incident occurred that required the assistance of the CSU, he frequently received feedback about the CSU's professionalism. Initially he had little cause for concern. However, from around 2016, this began to change following a number of incidents within the CSU that are unrelated to this investigation.

There is no evidence that, prior to 14 March 2018, Mr Robinson knew about the matters that were the subject of the Commission's investigation. On that date, Mr Robinson travelled in an Uber and the driver identified himself as a former security guard at the University. The Uber driver disclosed that guards would sleep while on shift at Fisher Library and that often there was only one guard working at the library when in fact there should have been three guards on duty. The Uber driver mentioned that Mr Smith was aware of the situation. The following day, Mr Robinson reported this disclosure to the University's internal audit unit. The unit undertook an investigation into the supply of security services to the University. Its investigation was inconclusive. The internal audit unit notified the Commission of the allegations on 22 March 2018.

Five months earlier, on 31 October 2017, the internal audit unit notified the Commission that a different University employee, also travelling in an Uber, was told by the driver that several people within the University's security unit were embezzling funds by "creating fake contractors". The driver claimed to be a former security guard. He specifically mentioned a man named "Amir" who reported to a man named "Denis" [sic] who was "in on" the arrangement.

Sydney Night Patrol & Inquiry Co Pty Ltd

SNP is one of Australia's leading security services providers, with operations in excess of $300 million and over 2,200 employees nationwide. In 2009, the University contracted with SNP in relation to the provision of security services on its campuses in NSW.

Thomas Roche

In approximately April 2018, SNP was purchased by a Singaporean company, Certis CISCO Security Pte Ltd. Prior to that time, Thomas Roche was the managing director of SNP. SNP had been in the Roche family since 1923. It was started by Mr Roche's great-grandfather, and grew from a small, family business into a large business providing security services to major institutions.

Daryl McCreadie

Mr McCreadie worked for SNP between 2005 and May 2018. He resigned after the Commission executed search warrants at the University on 18 April 2018. The Commission heard evidence that Mr McCreadie was a well-respected and trusted employee of SNP.

Between 2005 and July 2015, Mr McCreadie worked as an account manager at SNP's head office. In approximately July 2015, SNP stationed Mr McCreadie at the University's main campus on a full-time basis. After the 2015 contract commenced in September 2015, he was appointed SNP's site manager at the main campus and was supported by a 2IC, Mr Balicevac. Mr McCreadie was responsible for, among other things, oversight of SNP's 2015 contract delivery and the day-to-day supervision of employees performing functions required under the contract, including team leaders, control room operators and patrol officers.

Mr McCreadie reported to the SNP branch manager and the SNP national operations manager at the company's head office in West Ryde. He told the Commission that head office exercised little oversight of his day-to-day work because operations at the University appeared to be "tracking along just nicely".

Mr McCreadie's line managers at the University were Mr Smith and Mr Andrews. Sometimes he reported to Mr Hardman.

Emir Balicevac

At the University, Mr Balicevac was SNP's 2IC to Mr McCreadie. He commenced working for SNP on 15 December 2015 and resigned on 4 November 2018. Prior to working for SNP, between approximately 2010 and 2013, Mr Balicevac worked as a security guard at the University for SNP's previous subcontractor, IPS Security, and later with SIG, between approximately 2013 and December 2015.

Mr Balicevac was the main point of contact for SNP and SIG security guards at the University. He was responsible for coordinating and organising security personnel on campus.

The evidence before the Commission was that Mr Smith and Mr Balicevac had a close relationship. During the public inquiry, Mr Balicevac described Mr Smith as being like a father to him and that he tried to impress Mr Smith with his hard work ethic.

Frank Lu

Frank Lu worked for SNP between December 2008 and December 2018, when he resigned. He was an SNP team leader at the University from approximately 2012. Team leaders were responsible for ensuring that the daily security work on campus was performed.

In August 2016, SIG appointed Mr Lu as the person responsible for managing SIG's security guard roster at the University. This was despite the fact he was an SNP employee.

S International Group Pty Ltd

Taher (Tommy) Sirour

Taher Sirour, known by all as Tommy Sirour, is the sole director and CEO of SIG, a security services company that was registered in 2009. Mr Sirour is presently residing in Egypt. He departed Australia in approximately March 2018, and has not returned. He was invited to return to Australia to assist the Commission with its investigation but he declined. He was issued with a summons to appear at the public inquiry. He did not appear.

He was, however, represented by counsel during the public inquiry and provided his counsel with instructions throughout. His counsel cross-examined witnesses during the public inquiry. The transcript of the public inquiry and the exhibits tendered during it were publicly available on the Commission's website. The public inquiry was also live streamed and accessible via the Commission's website.

Mr Sirour was provided with a copy of Counsel Assisting's written submissions at the conclusion of the public inquiry. His counsel provided the Commission with submissions in response to the submissions of Counsel Assisting. On 13 March 2020, Mr Sirour was given the opportunity to make submissions on a limited number of issues in relation to potential adverse findings. His counsel subsequently provided the Commission with submissions in response on 26 March 2020.

While he lived in Australia, Mr Sirour was the director of other companies. For example, he was the sole director of Australian United Security Professional Pty Ltd (AUSP), a security services company that was registered in August 2007. AUSP was placed into external administration on 26 July 2017. Prior to external administration, SIG employees were paid from the business account of AUSP.

Pharaohs Group Pty Ltd

In approximately 2014, Mr Sirour encouraged his friend, Taymour Elredi, to establish a security company. As such, Pharaohs Group Pty Ltd was established with Mr Elredi as the sole director.

Mr Elredi told the Commission that, in 2014, Mr Sirour offered to pay for the company registration, master security licence and accountants' fees. While Pharaohs Group purportedly provided security guard services to Mr Sirour's companies (AUSP and later SIG), in truth, the company had no employees, no clients and no contracts.

The evidence before the Commission revealed that Pharaohs Group was used as a vehicle through which SIG would pay up to 80% of its workforce in cash and avoid paying liabilities, such as GST, payroll tax, workers compensation premiums and employee entitlements, such as annual leave, sick leave and superannuation.

Qin (Lynn) Li

Qin Li, known as Lynn Li, was SIG's administration and accounts manager between approximately 2016 and April 2018. She performed the same role for AUSP between 2009 and 2016. She ceased working for SIG after the Commission executed search warrants on 18 April 2018.

Ms Li was responsible for training junior casual staff at SIG, including Liansu Dai (known as Sue Dai) and Xiang Liu (known as Maggie Liu).

Chapter 2: "Ghosting" at the University

This chapter examines the practice of "ghosting" and the involvement of Mr McCreadie, Mr Balicevac and Mr Lu in that practice at the University.

Ghosting involves the unauthorised use of the name and security licence details of a security guard who is not working a shift to secure a financial benefit. The specifics of the practice, as it operated at the University, are addressed below.

SNP's core roster, subcontracting and ad hoc jobs

The 2015 contract required SNP to provide personnel to fill various positions; namely, the "site coordinator" (also known as the site manager), filled by Mr McCreadie, and a 2IC, filled by Mr Balicevac. Their employer was SNP. Both positions were salaried. Mr McCreadie and Mr Balicevac were required to work 40 hours per week, from Monday to Friday.

The 2015 contract also required that one qualified team leader, one qualified control room operator and three patrol officers were to be stationed at the main campus 24 hours per day throughout the year. These positions comprised the core roster at the University's main campus. A team of guards was rostered to fill the team leader, control room operator and patrol officer positions during either a 12-hour dayshift (from 6 am to 6 pm or a 12-hour nightshift (from 6 pm to 6 am). There were four, rotating, core-roster teams who worked two dayshifts, followed by two nightshifts, followed by four days off.

The 2015 contract also required SNP to provide one officer at SCA in Rozelle, from 6 pm to 6 am, Monday to Friday, and one officer for 24 hours per day on weekends and public holidays.

Notwithstanding the terms of the 2015 contract, SIG staff performed in positions that were required to be filled by SNP employees. For example, SIG employee Ben Pfitzner performed duties as a team leader, while SIG employees, Mina Boutros and George Boutros, performed duties as control room operators. The Commission heard that SIG guards at the University were indistinguishable from SNP employees. That there were both SIG and SNP guards onsite at any time would not have been obvious to University staff members, other than Mr Smith.

If SNP guards were unavailable or the University requested additional ad hoc security services, SNP relied on a subcontractor to provide services. The risks involved in subcontracting services are discussed in chapter 9.

From approximately 2013, SIG was SNP's subcontractor at the University. Surge support – more commonly referred to as ad hoc guarding or out-of-contract work – arose daily in response to requests from entities within the University to supply security guarding for a service not included in the contract. For example, ad hoc guarding was requested from time-to-time for student or faculty events, protests or emergencies, to secure buildings during power shutdowns, or unlocking and locking certain buildings every weekday.

Demand for ad hoc guarding services fluctuated depending on factors such as whether the University was in semester, or the number of events or contractors on campus. SNP did not have guards at the University on standby waiting for ad hoc services to be requested by the University. Rather, SNP relied on the availability of guards to be supplied by its subcontractor. After the contract was executed in 2015, SNP primarily used SIG for ad hoc jobs.

Subcontracting ad hoc jobs was profitable for SNP. SNP subcontracted ad hoc work to SIG for approximately $26 per hour in 2016 (excluding GST), rising to $28 per hour (excluding GST) by 2018. It charged the University approximately $33.55 per hour in 2016 (excluding GST), rising to $34.56 per hour (excluding GST) by 2018.

SNP staff at the University, including Mr McCreadie, told the Commission that SNP had a practice of not paying

overtime to its employees at the University. This practice was allegedly introduced at the University in 2010. Mr McCreadie told the Commission that, to reduce the financial burden of overtime while still running a profitable business, SNP staff at the University were permitted to have secondary employment with SIG. SIG was responsible for paying SNP staff who performed overtime shifts through SIG. According to Mr McCreadie, this arrangement benefited both SNP staff and SNP. SNP staff could work overtime shifts, while SNP could reduce its costs.

As discussed in chapter 4, in relation to regulation 35(1) of the Security Industry Regulation 2016 (and equivalent provisions of predecessor regulations), SNP was required to keep a "sign-on register" at the University to record, with respect to each class 1 licensee who provided security services, the name, signature and licence number of the licensee and the times when that person commenced and ceased carrying out the security services. This document, known as the site timesheet, was required to be completed daily by all security guards on campus, regardless of whether they performed core roster duties or ad hoc guarding.

Mr McCreadie also told the Commission that SNP employees working overtime shifts for SIG initially used their own name on site timesheets. This meant that the names of SNP staff appeared on SIG invoices submitted to SNP. SNP's rostering software, Microster, did not detect fatigue breaches by SNP guards working as both contractors and subcontractors.

SIG business records show that, from the beginning of 2016, SNP staff began ghosting more frequently when working additional shifts for SIG. The earliest false entries on site timesheets for ad hoc services were identified in Mr Balicevac's personal timesheets from May 2014.

A personal timesheet was an SIG administrative document maintained by all SIG staff and most SNP staff at the University for recording the ad hoc shifts that they had purportedly performed each week and for which they intended to claim payment from SIG. For SIG staff, a personal timesheet recorded both their rostered ad hoc shifts and any additional ghosting shifts for which they intended to claim payment. For SNP staff, a personal timesheet only recorded the ghosting shifts they purportedly performed in any given week for SIG. At the end of each week, the staff from SIG and SNP would email their personal timesheets to the SIG office with the intention of being paid for the shifts claimed.

By the time Mr Lu became SIG roster manager in August 2016, ghosting occurred daily and continued until the Commission executed search warrants on 18 April 2018. There was limited, and conflicting, evidence available to the Commission about whether ghosting was introduced by Mr Balicevac or Mr Sirour. It is unnecessary to resolve that conflict. The Commission is satisfied that, regardless of who introduced the practice, its existence was well known to both Mr Balicevac and Mr Sirour.

Ghosting

The fact that ghosting occurred at the University is not in dispute.

A number of SNP and SIG staff working at the University admitted to inserting false details into timesheets as to the identity of guards on duty. The effect was to misrepresent that particular guards had performed duties onsite when they had never attended. SIG business records show that, between August 2016 and April 2018, false details were entered daily onto site timesheets. By their own admission, SNP staff, principally Mr Balicevac and Mr Lu, and to a lesser degree Mr McCreadie, made opportunistic shift and payment claims using false details in that period. SIG and SNP business records show that false entries in the site timesheets were used by SIG for rendering weekly invoices to SNP, for which SNP subsequently invoiced the University.

Mr McCreadie told the Commission that the best ghosting jobs were low-risk, low-impact shifts, or ones that could be easily hidden. For example, weekends were generally lucrative because the University typically requested more ad hoc work to cover, for example, weddings or service contractors, who generally worked on weekends to reduce campus disturbance. Weekends and nightshifts were also useful for the ghosting of shifts because there were less University supervisors on campus during those times. Consequently, there was less risk that the practice of ghosting would be discovered by the University. Other ad hoc services that were frequently ghosted included approximately 40 hours every weekday of unlocking and locking buildings, and ad hoc services arising out of the increased requirement for guarding Fisher Library when the facility commenced 24-hour operations in around 2016.

The details falsely used by those involved in ghosting shifts belonged to actual or former SIG guards who worked at sites, excluding the University, where SIG was engaged as a subcontractor. Using offsite SIG guards was advantageous because their security licence number was valid, the risk of a rostering clash was minimal, and they did not know their names were being used.

Mr McCreadie, Mr Balicevac and Mr Lu acknowledged that ghosting posed risks to campus and student safety.

There were several permutations of the ghosting of security services at the University.

The first involved SNP or SIG staff entering the names and security licence numbers of guards onto timesheets. The guard's signature was also forged. The work was, in all likelihood, performed by someone but not the guard whose name appeared on the timesheet. On these occasions, the use of another guard's name and licence number was used to circumvent fatigue-prevention limits under the Security Services Industry Award 2010 ("the Award") or for SNP staff to maximise the amount of overtime they could claim for any work performed outside of their ordinary, rostered shifts.

Mr McCreadie and Mr Balicevac, who held salaried positions, also used ghost-guard details to conceal from SNP that they were performing shift work. Mr McCreadie, Mr Balicevac, Mr Lu and Amyna Huda each admitted to being paid for shifts using ghost-guard details. SIG guards Mina Boutros and George Boutros also admitted to using the details of other guards on timesheets for the purpose of avoiding the fatigue-prevention limits.

The second permutation involved SNP or SIG staff entering guard details onto the site timesheet when never actually attending the shift or performing the ad hoc work. Mr McCreadie and Mr Lu each told the Commission that they learned in approximately mid-2016 that guards were being paid for shifts that were not performed by anyone.

Mr McCreadie, Mr Balicevac and Mr Lu each admitted to claiming (and subsequently receiving) payment for shifts between August 2016 and April 2018 that were not performed.

The third permutation involved occasions where SNP or SIG staff, while performing their contracted or rostered position, used the details of other guards to undertake further chargeable ad hoc security jobs requested by the University. On these occasions, ghost-guard details were used to conceal that concurrent shifts were being performed. Mr McCreadie, Mr Balicevac, Mr Lu, George Boutros and Ms Huda each admitted to claiming concurrent shifts using ghost-guard details.

Payment for ghosted shifts

In their evidence to the Commission, Mr McCreadie, Mr Balicevac and Mr Lu acknowledged that, between August 2016 and April 2018, they provided their personal timesheets to the SIG office with the intention of being paid for the shifts claimed using the details of other guards and that this practice was dishonest.

While the personal timesheets would usually correspond with the false entries recorded in the site timesheets, SIG administrative staff would conduct a reconciliation of this information. This was to ensure that there were no roster clashes or fatigue-limit breaches, which would be detected by Microster.

Ms Dai was an SIG administration staff member between approximately mid-2016 and February 2017. She told the Commission she left SIG because she thought the practice of ghosting was "immoral". Ms Dai said that, after the timesheet reconciliation was completed, the required information on the site timesheet (namely the security guard's name, the shift date, the shift sign-on and sign-off time, and the shift location) was copied into an Excel spreadsheet that recorded all weekly ad hoc guarding claimed by SIG. At the end of the week, the Excel spreadsheet was attached as a schedule to SIG's weekly ad hoc guarding invoice issued for payment by SNP. All SIG invoices for ad hoc guarding were paid.

Mr Balicevac, Mr McCreadie and Mr Lu also acknowledged that the claims made by them, based on the details of other guards in their weekly personal timesheets, were provided in a schedule to the weekly SIG invoices sent to SNP for payment, and that they were paid because SNP was deceived into believing that the person they falsely nominated in their personal timesheets had actually performed the work.

SNP subsequently issued monthly invoices to the University for non-standard services, which largely comprised ad hoc work subcontracted to SIG. University payment advices show that all SNP monthly invoices for ad hoc services were paid.

It is difficult to estimate the precise value of the dishonest conduct perpetrated against the University. Between December 2015 and March 2018, the University paid $10,769,015.96 (excluding GST) to SNP under the 2015 contract. No ghosting claims should have been included in these payments because, as they related to the core roster, the invoices were automatically generated by SNP each month and issued to the University. Over the same period, the University paid a further $2,650,266.58 (excluding GST) to SNP in relation to non-standard services, the majority of which related to requests for the provision of ad hoc security services. The Commission is satisfied that, of the $2,650,266.58 (excluding GST), many hundreds of thousands of dollars comprising public funds were paid by the University in relation to hours falsely claimed in respect of ad hoc services.

Amount received by Mr McCreadie, Mr Balicevac and Mr Lu

SIG business records show that, for the period between December 2015 and April 2018, Mr McCreadie was paid $68,183 by SIG and Mr Balicevac was paid $266,265 by SIG. These respective amounts comprised payments for falsely claimed ghosted shifts for ad hoc services, together with a weekly cash commission from SIG. Of the $68,183 received by Mr McCreadie from SIG, approximately $27,283 was paid in respect of falsely claimed ghosted shifts for ad hoc services and approximately $40,900 was paid in respect of the weekly cash commission. Of the $266,265 Mr Balicevac received from SIG, approximately $222,905 was paid in respect of falsely claimed ghosted shifts for ad hoc services and approximately $43,360 was paid in respect of the weekly cash commission.

During the same period, Mr Lu was paid $281,547 by SIG. Of this sum, approximately $244,091 was paid in respect of falsely claimed ghosted shifts for ad hoc services and approximately $37,456 was paid in respect of weekly cash payments received from SIG. The weekly cash payments received by Mr Lu were not commissions. They were payments made to him by SIG for performing the role of roster manager.

Mr Balicevac and Mr Lu both told the Commission that they thought the total amount of money they received from SIG was less than that which had been calculated by the Commission. The Commission rejects the evidence of Mr Balicevac and Mr Lu. The Commission is satisfied that its calculations, based on SIG payroll records, are correct.

Mr McCreadie told the Commission that he used the money he was paid by SIG on car repayments, family holidays, and everyday consumer items. Mr Balicevac said he used the money he was paid by SIG for mortgage repayments, home improvements, motor vehicles, camping equipment and holidays. Mr Lu told the Commission he gambled the money he received from SIG.

Peak periods of ghosting at the University

In light of the evidence that ghosting occurred daily between August 2016 and April 2018 and the fluctuating demand for ad hoc guarding at the University, the Commission's investigation focused on four distinct weeks during which the University requested a significant amount of ad hoc services. However, it is important to note that the evidence showed weekly fluctuations in invoiced amounts for these services. Demand for ad hoc guarding was variable and the four peak periods selected by the Commission are not indicative of the weekly claims between August 2016 and April 2018.

The first period was the week-ending 28 August 2016, during which there was an occupation protest taking place at SCA in Rozelle, and an open day at the main campus. During this period, Mr McCreadie, Mr Balicevac and Mr Lu were paid by SIG for the purported performance of, respectively, 93, 218.5 and 206 hours of ad hoc work, in addition to their standard weekly wage based on 40 hours of work for SNP. There are 168 hours in a week. It was physically impossible for Mr McCreadie, Mr Balicevac and Mr Lu to have worked the hours claimed by them.

During that week, the University paid SNP $31,512 for shifts claimed using the names and licence details of other guards; equating to 854 hours or 32.7% of the total invoice in respect of ad hoc hours claimed for the week. Of the $31,512, the sum of $12,454 was paid by the University to SNP in respect of hours claimed using ghost-guard names and licence details, while the person paid for those hours by SIG purportedly performed one or more concurrent shifts. This too was physically impossible. The sum paid equates to 337.5 hours or 12.9% of the total invoice for ad hoc work for that week.

The second period examined in detail by the Commission was the week-ending 30 October 2016. With the assistance of NSW Police, protesters were evicted that week from SCA after 62 days of occupation. A power shutdown at the University's main Camperdown campus also took place over the course of that week. During this period, Mr McCreadie, Mr Balicevac and Mr Lu were paid by SIG for the purported performance of, respectively, 75, 503 and 161 hours of ad hoc work, in addition to their weekly wage paid by SNP.

The University paid SNP $41,918 for shifts claimed using ghost-guard names and licence details; equating to 1,136 hours or 33.8% of the total invoice in respect of ad hoc hours claimed for the week. Of the $41,918, the sum of $19,040 was paid by the University to SNP in respect of hours claimed using ghost-guard names and licence details while the person paid for those hours by SIG purportedly performed one or more concurrent shifts. This equates to 516 hours or 15.3% of the total invoice for ad hoc work for that week.

The third period examined in detail by the Commission was the week-ending 17 December 2017, during which there were, among other events, an open day and graduation ceremonies. During this period, Mr McCreadie, Mr Balicevac and Mr Lu claimed payment from SIG for the purported performance of, respectively, 10, 123.25, and 246.25 hours of ad hoc work in addition to their weekly wage paid by SNP.

The University paid SNP $27,360 for shifts claimed using ghost-guard names and licence details; equating to 720 hours or 35.9% of the total invoice in respect of ad hoc hours claimed for the week. Of the $27,360, the sum of $9,747 was paid by the University to SNP in respect of hours claimed using ghost-guard names and licence numbers details while the person paid for those hours by SIG purportedly performed one or more concurrent shifts. This equates to 256.5 hours or 12.7% of the total invoice for ad hoc work for that week.

The final period examined in detail by the Commission was the week-ending 15 April 2018. During this period, Mr McCreadie, Mr Balicevac and Mr Lu were paid by SIG for the purported performance of, respectively, 10, 53 and 147 hours of ad hoc work, in addition to their weekly wage paid by SNP.

During this week, the University paid SNP $20,449 for shifts claimed using ghost-guard names and licence details; equating to 523 hours or 35.4% of the total invoice in respect of ad hoc hours claimed for the week. Of the $20,449, the sum of $5,924 was paid by the University to SNP in respect of hours claimed using ghost-guard names and licence details while the person paid for those hours by SIG purportedly performed one or more concurrent shifts. This equates to 151.5 hours or 10.2% of the total invoice for ad hoc work for that week.

Over these four weeks alone, approximately $121,239 was paid by the University to SNP for ad hoc shifts falsely claimed using ghost-guard details. However, as noted above, this is not representative of all false claims made between August 2016 and April 2018. The four periods examined in detail by the Commission were periods of high demand for ad hoc services. Nevertheless, the Commission is satisfied that ghosting occurred throughout the period of time investigated by it. This was common ground.

The Commission is satisfied that claims for concurrent shifts were common; that is, that the same person was recorded as working two shifts simultaneously. Between 10.2% and 15.3% of the invoices paid by the University to SNP during the four periods were in respect of concurrent shifts.

The Commission is unable to make a precise finding as to the full extent to which shifts purportedly performed in the name of a ghost guard were not performed by anyone. As previously noted, some shifts were performed by guards in the name of other guards who were not onsite to avoid disclosure that they were working hours beyond those permitted by the Award. Mr Smith, Mr McCreadie, Mr Balicevac and Mr Lu told the Commission that, between August 2016 and April 2018, the CSU received very few complaints concerning the quality of the services provided to the University. Mr Smith said that University students and staff would promptly complain if guards failed to lock or unlock a building or failed to drive the courtesy bus from main campus to the train station. The effect of Mr Balicevac's evidence was that the low level of complaints supported his assertion that at least one guard covered every shift, even if that guard were covering for other guards who did not attend. Mr Robinson's evidence confirmed that complaints were low. In fact, Mr Robinson told the Commission that he received emails from University staff and executives praising the guarding services, while the number of complaints about security decreased and security guard responsiveness times were quicker than at the beginning of the 2015 contract.

That complaints on campus may have been low may be probative of little more than ghosted shifts were opportunistically selected. Mr Balicevac, Mr McCreadie and Mr Lu used, to great effect, the requirement under the Award that ad hoc services were charged at a minimum of four-hour blocks, no matter how long the ad hoc job actually took to perform. Mr Balicevac and Mr McCreadie provided some examples: a bus run might take 50 minutes, while a graduation ceremony or a wedding might only require 15 minutes of guarding. For each of these tasks, a four-hour minimum charge was applied. Short ad hoc shifts like these could be performed concurrently with SNP core roster duties.

Mr Balicevac said he could claim an additional 40 hours of work between Monday and Friday by claiming a four-hour shift unlocking buildings in a precinct during the morning, followed by a four-hour shift locking buildings in a precinct during the evening. He said that it would take up to 45 minutes to unlock or lock the buildings in a precinct. He said that there were five precincts on main campus,

which he estimated could take up to 2.5 hours to lock each evening, and could potentially amount to 20 hours of shift work for one night.

Examples of ghosting at the University

Mr McCreadie, Mr Balicevac and Mr Lu gave evidence about how they, and other SNP and SIG staff, used the different permutations of ghosting for their own financial benefit.

Guards claiming shifts using the name of another guard

Isaac Yanni worked as a security guard for SIG between approximately 2014 and 2015. During this period, Mr Yanni mostly worked at the University's main campus. He was also asked to assist SIG with a few shifts in April 2018.

However, between approximately August 2016 and February 2018, Mr Yanni's name, purported signature and security licence number appeared regularly on site timesheets. He provided a statement to the Commission in which he confirmed he was not aware that people were using his name to claim additional shifts. Annexed to his statement was a selection of site timesheets, dated between August 2016 and February 2018, where his name had been used. He said that, with the exception of the shifts he agreed to perform for SIG in April 2018, the handwriting and signature were not his own and he did not complete the timesheets.

Lincoln Nock worked as a security guard for SIG between approximately December 2015 and May 2016. During this period, Mr Nock performed casual shifts at the University until he resigned. Mr Nock was also asked by SIG to assist with a few shifts in October 2016 at SCA in Rozelle during the student occupation of buildings.

However, between approximately July 2016 and April 2018, Mr Nock's name, purported signature and security licence number regularly appeared on site timesheets. He also provided a statement to the Commission. He said that, with the exception of at least two shifts at SCA in October 2016, on occasions where his name appeared on timesheets between July 2016 and April 2018, he believed that he had not worked the shift, that the handwriting was not his own and that it was not his signature. He said that, on the site timesheets he reviewed between July 2016 and April 2018 he observed instances where his name was misspelt, the security licence number identified was incorrect or information was missing (such as the security licence number or his signature), which was inconsistent with his usual practice of entering that information on site timesheets.

The Commission is satisfied that, save for the limited exceptions identified above, Mr Yanni and Mr Nock had not performed ad hoc shifts at the University between July 2016 and April 2018.

Personal timesheets emailed to SIG by Mr McCreadie, Mr Balicevac and Mr Lu showed that they sometimes used Mr Nock's name on site timesheets to claim ad hoc shifts during the weeks ending 28 August 2016, 30 October 2016, 17 December 2017 and 15 April 2018.

Personal timesheets emailed to SIG by Mr Balicevac, Mr Lu and George Boutros showed that they also sometimes used Mr Yanni's name on site timesheets to claim ad hoc shifts during the same periods. There is insufficient evidence available to the Commission to be satisfied, one way or another, whether ghosted shifts claimed using Mr Nock's or Mr Yanni's name were actually performed.

Concurrent shifts and guards claiming shifts not actually performed

By their own admission, Mr McCreadie, Mr Balicevac and Mr Lu used ghost-guard details to claim concurrent shifts, sometimes on different campuses. Mr McCreadie, Mr Balicevac and Mr Lu also admitted to making claims for shifts that they did not attend.

On 24 August 2016, Mr Lu was rostered to perform a 12-hour SNP team leader nightshift at main campus. However, in his evidence to the Commission, he accepted he claimed payment for both a concurrent 12-hour ad hoc nightshift on main campus and a 12-hour ad hoc nightshift at SCA in Rozelle. He agreed that he could not be in two places at once. He said he probably vacated his team leader shift on main campus to attended SCA and, if nothing happened at SCA, he probably vacated SCA to return to main campus for the team leader shift. In his evidence to the Commission, Mr Lu accepted that, for concurrent shifts, the University paid for two guards but only one guard was supplied. He agreed that his conduct was dishonest.

On 24 August 2016, Mr McCreadie claimed three nightshifts (totalling nine hours) at the main campus and three nightshifts (totalling 30 hours) at SCA in Rozelle. On 25 August 2016, he claimed two concurrent nightshifts (totalling seven hours). He accepted he did not actually work any ad hoc shifts on 24 and 25 August 2016, and agreed this was dishonest. He conceded that, as a consequence of him not working, the University was under staffed.

On 27 August 2016, Mr McCreadie claimed four concurrent dayshifts (totalling 29.5 hours) during an open day at main campus. In his evidence to the Commission,

he conceded that, while he probably attended one of these shifts, the University was at least three guards down on 27 August 2016. He conceded that SIG invoices showed SNP were billed for these shifts.

In his evidence to the Commission, Mr Balicevac admitted he pretended to be "Lincoln Nock" and "Yahya Alabdulla" on the site timesheets dated 22 and 27 August 2016 so that he could be paid for additional shifts, which he accepted was dishonest. He conceded that, on 27 August 2016, he forged the signatures of "Yahya Alabdulla" and "Ashlee Parker". He accepted he was paid by SIG for these ghosted shifts. He also accepted that the names he used on 27 August 2016 were included on an invoice SIG sent to SNP, and that he had been paid because SNP was deceived into believing that the people he had nominated actually performed the work.

On 27 August 2016 alone, Mr Balicevac claimed 85 hours of ad hoc shifts. Between 7 am and 5 pm, he claimed 34 hours of guarding across five concurrent dayshifts at main campus plus one 12-hour dayshift at SCA in Rozelle. He conceded he never attended SCA. Between 5 pm, on 27 August, and 6 am, on 28 August 2016, he claimed 35 hours of guarding across three concurrent nightshifts at SCA and two concurrent four-hour nightshifts on main campus. He also conceded that he never attended those nightshifts and accepted he had been paid for 100 hours during the week of 28 August 2016, in respect of shifts that overlapped with another shift. Mr Balicevac agreed that these represented occasions where the University was not getting the services for which it paid.

Sometimes Mr McCreadie, Mr Balicevac and Mr Lu split the proceeds obtained in respect of ghosted shifts equally amongst themselves. On other occasions, they split shifts with other SNP and SIG staff. For example, on 27 August 2016, Mr Balicevac split a shift with SNP team leader Ms Huda. Mr Balicevac conceded he did not attend the shift and Ms Huda performed all the work. He said Ms Huda did not have any problems with sharing payment for work she performed.

The Commission does not accept that explanation. Ms Huda's evidence in her compulsory examination was that, if she complained about splitting shifts with Mr Balicevac in circumstances where he did not actually perform any work, Mr Balicevac would give the shift to someone else. The Commission accepts Ms Huda's evidence. Ms Huda was subordinate to Mr Balicevac in both the core roster and as a ghosting participant. For example, during the week-ending 28 August 2016, Ms Huda claimed three ghosting shifts, whereas Mr Balicevac claimed 25.

Mr McCreadie and Mr Lu also told the Commission that they sometimes tasked SNP and SIG staff to perform ad hoc jobs, but subsequently claimed payment for themselves. In light of Mr Robinson's evidence, that there were very few complaints about guards not attending shifts, it is likely that SNP and SIG staff were used to cover the shifts that Mr McCreadie, Mr Balicevac and Mr Lu did not attend but for which they nevertheless claimed and received payment.

In the week-ending 28 August 2016, Mr Lu sent his personal timesheet to SIG claiming a total of 210 hours of work performed using the names of other guards. He told the Commission that "most" of the 210 hours he claimed that week concerned shifts for which no one turned up to perform the work. Mr Lu agreed this was dishonest.

For the week-ending 30 October 2016, Mr Lu claimed 155 hours of ghosted shifts on his personal timesheet submitted to SIG. Between 25 and 27 October 2016, Mr Lu purportedly took a one-hour break during a 72-hour period, in respect of which he falsely claimed 119 hours for ad hoc guarding services that were not performed. He also admitted to forging signatures on the site timesheet dated 27 October 2016. Mr Lu claimed that, in circumstances where he had claimed excessive consecutive shifts, he would have left his shift to sleep for a few hours.

Between 28 and 30 October 2016, Mr McCreadie claimed five consecutive shifts, totalling approximately 64 hours, for a power shut down at the University. At the public inquiry, he conceded he had not attended any of these shifts and that a significant number of guards were missing during the power shutdown. He accepted his conduct was "completely fraudulent".

Between 11 and 15 December 2017, Mr Balicevac claimed five nightshifts at SCA, totalling 54 hours, using the details of other guards. Mr Balicevac told the Commission that, if he had actually attended any of these shifts, he would have only attended the start of the shift for a few hours. He would then have gone home because they were nightshifts. He was not sure if he had left SCA completely unattended by departing.

During the week-ending 15 April 2018, Mr McCreadie was paid for, across three shifts, 10-hours of ad hoc guarding services. During the public inquiry, he acknowledged he had not attended those three shifts.

Finally, Mr Lu, Mr Balicevac and Mr McCreadie admitted that, while on annual leave from SNP and overseas or interstate, they claimed, and were subsequently paid, for ad hoc shifts by SIG. The SIG payments included both the weekly amounts of $300 to $500 and payment for ad hoc shifts claimed using the details of other guards. For example, between 21 December 2016 and 6 January 2017, Mr Lu was on annual leave from SNP and travelled to China. During this period, he was paid

$600 (two weekly payments) plus 107 hours for shift work. Mr Lu agreed he could not have performed shifts while overseas.

Mr McCreadie told the Commission that, when he returned to the University after taking SNP annual leave and travelling to Queensland in January 2017 and New Zealand in February 2018, there was an envelope of cash from SIG waiting for him relating to the pay periods while he was on leave.

Mr Balicevac admitted that, between January 2017 and February 2018, he travelled to New Zealand, Tasmania, Queensland and the NSW Snowy Mountains and received cash payments from SIG during these periods of annual leave.

Mr McCreadie's knowledge of the extent of ghosting

Mr McCreadie told the Commission that, with limited exceptions (including the week-ending 28 August 2016), Mr Balicevac would email SIG a personal timesheet each week, setting out the hours that both he and Mr Balicevac falsely claimed. His understanding was that he and Mr Balicevac split the hours claimed 50:50 and that payments received by him reflected this ratio. He said that, when Mr Balicevac submitted a personal timesheet on his behalf to SIG, it was unlikely that he actually attended those shifts. He said he reached this arrangement with Mr Balicevac because he got greedy and it involved him in less administration and communication with SIG.

It is sometimes said there is no honour among thieves. As matters transpired, Mr McCreadie was misled by Mr Balicevac.

SIG business records show that Mr Balicevac concealed from Mr McCreadie the true number of hours he claimed by sending SIG a second personal timesheet that Mr McCreadie did not see. For example, on 27 August 2016, Mr McCreadie emailed Ms Li, copying Mr Balicevac, with a personal timesheet falsely claiming 186 hours of ad hoc guarding services allegedly performed between 22 and 28 August 2016 (which was a future date at the time the email was sent). The personal timesheet did not identify who had worked particular shifts because, on his evidence, he expected they would each be paid 93 hours. However, on 29 August 2016, Mr Balicevac separately emailed SIG another personal timesheet where he falsely claimed 220.5 hours for himself. After SIG administrative staff completed their reconciliation of all personal timesheets and payroll for that week, he was subsequently paid by SIG for 193.5 hours.

At 9.22 am, on 31 October 2016, Mr Balicevac emailed his personal timesheet to SIG for the week-ending 30 October 2016. He falsely claimed 505 hours for ad hoc guarding services shifts. Mr Balicevac accepted he did not actually work 505 hours. For the week-ending 30 October 2016, Mr McCreadie had falsely claimed 77 hours for ad hoc guarding services. Mr MrCreadie accepted that his claim for 77 hours of work was "fraudulent".

At 10.05 am, on 31 October 2016, Mr Balicevac sent another email to SIG, this time copying in Mr McCreadie, stating both he and Mr McCreadie claimed 77 hours for the week-ending 30 October 2016.

During a compulsory examination, Mr Balicevac told the Commission that he concealed the true number of hours he was claiming from Mr McCreadie because he thought Mr McCreadie would "want a cut". During the public inquiry, however, Mr Balicevac said the true number of hours he was claiming was concealed from Mr McCreadie because Mr Sirour told him not to discuss his "deals" with anyone and also because Mr Sirour infrequently asked for a 50% cut of the total hours he claimed, so he "had to" claim 505 hours to accommodate Mr Sirour's cut.

The 505 hours claimed by Mr Balicevac

Mr Balicevac was paid by SIG for the 505 hours of work he claimed during the week-ending 30 October 2016. The breakdown of the claim is addressed below.

Between 25 and 27 October 2016, Mr Balicevac falsely claimed nine nightshifts (totalling 95 hours) of guarding services allegedly performed at SCA during the eviction of protesters. Mr Balicevac told the Commission that, for some shifts, he may have attended SCA for a few hours, while, for other shifts, he would not have attended SCA at all. He admitted to forging signatures on the site timesheet dated 27 October 2016.

Between 4 pm, on 28 October and 10am, on 31 October 2016, Mr Balicevac falsely claimed 24 guarding shifts (totalling 306 hours) during a power shutdown at main campus. During the power shutdown, security guards were required to monitor buildings, as their power supply was cut.

Mr Balicevac said that he would have been present for a couple of hours during the four nightshifts (totalling 56 hours of purported work) on 28 October 2016. He said that, in relation to 29 October 2016, he would not have attended any of the five dayshifts (totalling 60 hours), but he may have attended some (but not all) of the five nightshifts (totalling 60 hours). He said he did not attended the nightshift (totalling 14 hours) he claimed at SCA for 29 October 2016. In relation to 30 October 2016, Mr Balicevac said he probably did not attend any of

the five dayshifts (totalling 70 hours), nor any of the five nightshifts (totalling 60 hours); albeit, he may have been present in the morning on Monday, 31 October 2016 for his 2IC duties. He admitted to forging signatures on the site timesheet dated 29 October 2016.

George Boutros

George Boutros is a former SIG security guard at the University. He commenced working for SIG at the University in approximately 2012 and resigned on about 20 April 2018. He held the positions of patrol officer, control room operator and, from time-to-time, covered the position of team leader. On 23 April 2018, George Boutros accepted a position with SNP as a security guard at the University, and resigned from this position in August 2018.

George Boutros was not present on campus during the week-ending 28 August 2016. During the week-ending 30 October 2016, he was paid by SIG for the purported performance of 122 hours of work, including his standard equivalent of 40 hours for SIG. During the week-ending 17 December 2017, he was paid by SIG for the purported performance of 110 hours of work, including his standard equivalent of 40 hours of work for SIG. During the week-ending 15 April 2018, he was paid by SIG for the purported performance of 102 hours of work, including his standard equivalent of 40 hours of work for SIG.

In his evidence to the Commission, George Boutros admitted to claiming some shifts at the University in the names of other guards. He said he first engaged in this practice towards the end of 2015. He claimed he used the details of other guards to circumvent fatigue-prevention limits. An analysis of his timesheets during the peak periods shows that, when he claimed shifts in the name of others on weekdays, he usually claimed the shift before or after his SIG rostered shift. He said that, in general terms, if he was onsite for more than 24 hours, he would have a break and sleep.

However, Mr Boutros also gave evidence that, on weekends, he used the names of other guards to claim concurrent shifts. For example, he said he often claimed concurrent shifts for working at Fisher Library on Saturday or Sunday and sometimes he split the money for some of these shifts with Mr Lu. He admitted that, on occasion, he dishonestly claimed payment for concurrent shifts. However, he maintained that, in general terms, he always worked, or covered, both shifts. While this may be true, the Commission is satisfied he vacated one shift in order to attend the other, even in circumstances where both shifts were performed in the same general location, such as Fisher Library.

He said that, while he "ha[d] to do the [secondary] job anyway" he had two options: either do the job and not get paid for doing the work or do the job and be paid for half of the shift. He accepted that, in circumstances where he was paid for performing concurrent shifts using the names of other guards, it was a deception practised against SNP and the University. He also accepted that, in circumstances where one guard covered the shifts of multiple people, the University did not get the guarding services for which it paid.

George Boutros told the Commission that he emailed a personal timesheet to SIG at the end of each week that identified the shifts and the names of other guards he had used during the week and for which he claimed an entitlement to be paid. He said he was supplied with the names of other guards he could use by Mr Lu or Ms Li.

It was submitted on behalf of George Boutros that the evidence did not establish that covering shifts under the names of other guards, or covering concurrent shifts, was dishonest. In addition, it was put that there was no evidence that George Boutros knew his conduct was dishonest. The Commission does not accept these submissions. The relevant timesheets submitted by him contained, to his knowledge, false representations. At the time of making those representations, he intended to secure a financial benefit. The submission is also inconsistent with George Boutros' evidence. He told the Commission that he "did something wrong". He said, "I'm not trying to defend myself but if you look at that whole situation … I've got nothing else I can do. I have to do the job anyway".

The Commission is satisfied that George Boutros dishonestly obtained payment for ad hoc security shifts by submitting timesheets to SIG in which he falsely represented that ad hoc security services had been performed by another guard and knew that the cost of the services claimed would ultimately be borne by the University.

The Commission is not satisfied to the required standard that George Boutros claimed payment for shifts that were not covered at all by him or some other guard on his behalf. However, as noted above, there were occasions on which he claimed for concurrent shifts. The effect of his conduct was that the University did not obtain the services of the number of guards for which it had contracted. He also told the Commission that, during a two-week period in June 2017 when his wife gave birth to their child, he asked someone to cover shifts that he did not attend and subsequently claimed payment for those shifts. He claimed that he did this because he had no other income and "if you don't work you don't get paid". He told the Commission that he claimed extra guarding shifts because, as he was only receiving a flat rate of between

$20 and $22 per hour, and that he was being underpaid by SIG when compared to what he should have been receiving pursuant to the Award.

Until December 2017, George Boutros was not on the books of SIG. He was paid in cash. He did not accrue holiday pay or leave entitlements. He did not receive the benefit of employer superannuation contributions or sick leave. However, it appears from SIG's records that, from the week-ending 17 December 2017, he was to receive "38 hours on [the] book from now on".

In his evidence to the Commission he said that, following a "big argument" with Mr Sirour, he started receiving 38 hours of pay per week "on [the] book". He said that he had "no choice to refuse" extra guarding shifts because, if he said no, he thought he would be "fired". He told the Commission that, even if he did not claim the extra shift for himself, he would still have to cover the extra shift for somebody who did not turn up. While the matters raised by George Boutros provide an explanation for his conduct, they do not excuse his participation in the practice of ghosting at the University.

Mina Boutros

Mina Boutros worked as an SIG security guard at the University. He commenced working for SIG towards the end of 2015 or in the beginning of 2016. Sometime after the Commission executed search warrants for this investigation on 18 April 2018, he transferred from SIG to SNP and continued working as a security guard at the University. He left SNP at some point prior to the Commission's public inquiry. Mina Boutros is the brother of George Boutros. He held the positions of patrol officer and control room operator at the University.

In addition to his weekly shift work for SIG of approximately 40 hours, Mina Boutros was paid by SIG for the purported performance of:

- 113 hours (week-ending 28 August 2016)
- 121 hours (week-ending 30 October 2016)
- 90.5 hours (week-ending 17 December 2017)
- 80 hours (week-ending 15 April 2018).

On a number of occasions during the periods referred to above, Mina Boutros claimed payment in the names of other guards. In his evidence to the Commission, Mina Boutros claimed that, although he used the names of other guards to claim for certain shifts, he did not perform concurrent shifts. The personal timesheets he sent to SIG suggest that, when he did claim for shifts in the names of other guards, the shifts were performed by him on his rostered day off or were performed by him at the beginning or conclusion of his SIG rostered shift. Mina Boutros agreed that, in performing shifts in the names of other guards, he was acting in breach of fatigue-limit requirements.

The Commission is satisfied that, between August 2016 and April 2018, Mina Boutros was not paid by SIG in respect of shifts that were not performed by him. The Commission is further satisfied that he did not engage in the practice of performing, or claiming payment for, concurrent shifts that were supposed to be performed by other guards.

Amyna Huda

Ms Huda gave evidence to the Commission during a compulsory examination. The transcript of her compulsory examination was tendered during the public inquiry. The Commission invited interested parties to consider whether they would like Ms Huda summonsed to appear and give evidence during the public inquiry. The Commission received no application from any of the interested parties.

Like George Boutros, Ms Huda admitted to claiming in the names of other guards in respect of concurrent shifts. She described this conduct as "doubling" or "double timing". Ms Huda informed the Commission that she would share the additional payments made to her with Mr Balicevac. She acknowledged that her conduct was "wrong" but claimed she "needed extra money".

The evidence available to the Commission showed that Ms Huda claimed payment for shifts in which she made false representations as to the identity of the persons who provided, or purported to provide, ad hoc security guarding services to the University. For example, during the week-ending:

- 28 August 2016, she claimed three ghosting shifts (totalling approximately 14.5 hours), of which 8.5 hours were in respect of concurrent shifts
- 30 October 2016, she claimed four ghosting shifts (totalling approximately 41 hours), of which 16 hours were in respect of concurrent shifts
- 17 December 2017, she claimed three ghosting shifts (totalling approximately 14 hours), all of which were in respect of concurrent shifts.

Although neither Counsel Assisting nor any interested party contended any findings should be made in relation to Ms Huda, the Commission considered that certain adverse findings might be open on the evidence. Accordingly, on 3 February 2020, Ms Huda was given the opportunity to make submissions in relation to potential adverse findings. Submissions were provided to the Commission on 13 March 2020. At the request

of the Commission, a supplementary submission was provided on 19 March 2020. The substance of Ms Huda's submissions is addressed later in this chapter.

Notwithstanding Ms Huda's submissions, the Commission is satisfied that it is appropriate to make findings in respect of Ms Huda's conduct. It is satisfied she engaged in the practice of ghosting. As was the case with George Boutros, the effect of claiming for concurrent shifts led to deceiving SNP and the University. The University did not receive the guarding services for which it paid. Nevertheless, the Commission does not make any finding of serious corrupt conduct in relation to Ms Huda. Further, the Commission does not propose to seek the advice of the DPP in relation to the prosecution of Ms Huda for any criminal offence. The Commission's reasons appear later in this chapter.

The processes used to facilitate the practice of ghosting

When a request for ad hoc security services was received by the CSU from the University, the following processes were employed to facilitate the practice of ghosting.

Ad hoc guarding service requests were submitted via the University's internal system, Archibus. Service requests always contained a description of the job and an account code identifying the faculty or department to be billed for the job. The duration of ad hoc shifts was a minimum of 4 hours and a maximum of 14 hours.

Service requests were received on Archibus by some staff in the CSU, including Mr Smith, Mr McCreadie and Mr Balicevac. SNP was responsible for organising ad hoc jobs. This was usually carried out by Mr McCreadie and Mr Balicevac. Once the job was organised, Mr McCreadie or Mr Balicevac populated an SNP pro forma "Request for Service" (RFS) document, based on the information supplied in the Archibus service request. Mr Smith's name appeared on the SNP RFS as the University's authorising authority. The SNP RFS was then scanned to SNP's roster team at head office, who copied the information into SNP's roster management system, Microster, for the purpose of generating monthly invoices for ad hoc services.

After Mr Lu became SIG roster manager in August 2016, he was notified of ad hoc jobs, as Mr Balicevac would usually send the SNP RFS to him. According to Mr Lu, Mr Balicevac decided whether the shift would be performed with legitimate security guards or ghost guards. If ghost guards were used to cover shifts, Mr Lu, Mr Balicevac or any other security guard assigned the shift, and entered the false information into the site timesheets. At the end of the week, SNP and SIG staff, who used ghost names, emailed the SIG administrative staff their personal timesheet, which recorded their weekly ghost-guard hours for which they were claiming payment. SIG administrative staff then performed a reconciliation of the personal timesheets to ensure the false entries on the site timesheets did not create roster clashes or breaches of fatigue-prevention limits, which would be detected by the Microster system. If SIG administrative staff identified issues, they telephoned or emailed Mr Balicevac or Mr Lu and suggested an alternative name to be used. White-out was commonly used on the site timesheets to amend entries as a consequence of the reconciliation process.

The Cumberland and Camden campuses

The 2015 contract also required SNP to supply guards 24/7 at the University's Cumberland and Camden campuses. SNP rarely subcontracted work to SIG at the Cumberland campus. SIG business records show that ghosting occurred infrequently at the Cumberland campus. Mr Balicevac admitted to using ghost-guard details on bus-runs at the Camden campus while fatigued (having worked 97.5 hours during the week-ending 18 May 2014). He accepted he put his own financial interests ahead of students and the safety of other road users.

Mr Sirour's knowledge of ghosting

Mr Sirour was in Egypt during the public inquiry. Although aware that the Commission was conducting its public inquiry, he chose not to return to Australia to give evidence. Mr Sirour was, however, represented by counsel during the public inquiry and provided instructions to him. His counsel cross-examined witnesses.

The transcript of the public inquiry and the exhibits tendered during it were publicly available on the Commission's website. The public inquiry was also live streamed and accessible via the Commission's website. Mr Sirour was provided with a copy of Counsel Assisting's written submissions. In those submissions, Counsel Assisting submitted that Mr Sirour had knowledge of, and supervision over, the timesheet fraud.

Mr Sirour submitted that, while he probably had "constructive knowledge" of the timesheet fraud, the evidence did not establish that he supervised or was involved in it.

The Commission does not accept that submission for the following reasons.

On 20 February 2018, the Commission lawfully intercepted a telephone call between Mr Sirour and

Mr Lu. Counsel for Mr Sirour cross-examined Mr Lu on this call.

During the conversation, Mr Sirour told Mr Lu "we've got a big major problem". Mr Sirour explained that, at that moment, he was reviewing SIG payroll documents with SIG administrative staff and he noticed that guards he did not know were "collecting hours". Mr Sirour then named the guards, who were claiming extra shifts, while telling Mr Lu that he was:

> *not worried about Mina Boutros and George Boutros* [collecting extra shifts]. *They – they our people … Frank* [Lu], *as you know I don't care, you do whatever you want to do brother. I don't have any problem for here but when I see other guys like Kawser Alam, Atif Ali, Medhat trying to collect the hours –*

Mr Lu assured Mr Sirour that the guards that Mr Sirour mentioned actually attended the shifts, and that, "they just worked under another name, that's it". Mr Sirour then said, "we need to fix [this]".

The Commission is satisfied that Mr Sirour knew that a number of guards, including Mr Lu, George Boutros and Mina Boutros, were "collecting" additional shifts at the University. From time-to-time, Mr Sirour supervised SIG administrative staff who performed payroll duties, during which time he reviewed documents identifying which guards were "collecting" additional shifts. By telling Mr Lu to "do whatever you want brother", Mr Sirour acquiesced in Mr Lu doing so. He was prepared to have his administrative staff facilitate the "collection" of hours by Mr Lu.

That part of the conversation referred to above might, in isolation, suggest that Mr Sirour knew no more than that certain guards were claiming shifts in the names of other guards to circumvent fatigue requirements. However, during the public inquiry, counsel for Mr Sirour put to Mr Lu that Mr Sirour was concerned that there were actually security guards physically on the premises. Mr Lu responded that Mr Sirour "knows that they [security guards] are not [on the premises]".

During the conversation, Mr Sirour also told Mr Lu that, following an email he had recently received from SNP, "SNP thinks we're doing frauds". Mr Sirour said, "Daryl [McCreadie] fixed it before" and they discussed an email sent by "Troy". In his evidence to the Commission, Mr Lu said that this was a reference to an email sent by Troy Swadling, a former SNP national operations centre team leader, in relation to the use of white-out on timesheets. This is addressed in more detail in chapter 4.

Mr Sirour then told Mr Lu, "[y]ou do whatever you like", and:

> *If you* [Mr Lu] *and Emir* [Mr Balicevac] *collecting* [sic] *all the hours at Sydney University at least I'm in peace because I know you guys can cover it…*

Mr Sirour then told Mr Lu about an incident at Macquarie University where a security guard photocopied the site timesheets and threatened to reveal an alleged "fraud". Mr Sirour said:

> *So we don't want to see someone and said* [sic] *'oh Frank* [Mr Lu] *was lying to you guys and you know there was no guard and then all of a sudden Frank was collecting the hours for himself'.*

Mr Sirour went on to say that, "I've got full confidence of [sic] you Frank but please we need to make sure that nothing going to be escaped." Mr Sirour then raised the prospect of a hypothetical person alerting someone to what was happening, and said:

> *They may going to say … oh there was no guard and Frank have* [for] *example or Emir* [Mr Balicevac] *or Amyna* [Ms Huda] *have put their names.*

Mr Lu asked, "How are they going to prove it Tommy?". Mr Sirour replied:

> *Well I don't know … You know the only problem is this guy, I'm not worried if they go to SNP. Fuck SNP, I'm worried about if they going to … Simon* [Hardman] *or Dennis* [Smith].

Mr Lu responded, "No, don't worry, if they go there that's all good, okay".

The Commission is satisfied that Mr Sirour knew Mr Balicevac and Ms Huda were involved in "collecting" additional hours and that Mr McCreadie was involved too. The Commission is also satisfied Mr Sirour knew Mr Lu and Mr Balicevac were falsely claiming for hours not worked. Mr Sirour was prepared to facilitate their fraudulent conduct because it was financially in his own interests and because he trusted their ability to cover for shifts if necessary. He facilitated their fraudulent conduct by paying for guarding services that were not performed. The cost was passed on by Mr Sirour to SNP and, ultimately, the University. The Commission is satisfied Mr Sirour's reference to "collecting hours" was, at least in relation to Mr Lu and Mr Balicevac, synonymous with ghosting shifts.

The Commission is also satisfied Mr Sirour was concerned that "collecting" additional hours at the University would be discovered. This is evidenced by his:

- reference to the incident involving alleged "fraud" at Macquarie University
- comment concerning making "sure that nothing going to be escaped"

- comment that he was "worried" someone would alert Mr Hardman or Mr Smith.

During the telephone conversation, Mr Sirour went on to express a concern about "losing work". Mr Lu replied, "We're not going to lose nothing. The thing's all sorted. Tommy you worry too much…".

Finally, Mr Sirour re-stated that he noticed a guard "collecting hours. I didn't know that he'd [sic] doing the double shift…". Mr Lu said, "No he's got to work for it". Mr Sirour replied, "You're a champion, alright". Mr Lu said that, "if they [the guard] are there they've got to do the job".

The Commission is satisfied that Mr Sirour knew that Mr Balicevac, Mr Lu, Mr McCreadie, George Boutros, Mina Boutros and Ms Huda were involved in ghosting shifts at the University. In relation to Mr Lu, Mr Balicevac and Mr McCreadie, this included claiming for shifts in the names of various guards in circumstances where no guard had been in attendance.

On 7 March 2018, the Commission lawfully intercepted another telephone call between Mr Sirour and Mr Lu. An extract of that conversation was tendered during the public inquiry. Mr Sirour told Mr Lu, "We talk, we make sure that everything is running smooth for your own benefit, for my own benefit, for Emir's benefit. The three of us is [sic] benefit".

SIG financially benefited from the additional hours that guards claimed. SIG kept the margin between the SNP subcontracted rate – which was approximately $26 per hour (excluding GST) in 2016, rising to $28 per hour (excluding GST) by 2018 – and the rate it paid to guards in cash (between $20 and $23 per hour, depending on their seniority). It was profitable for SIG when guards claimed more hours.

The Commission is satisfied that this is the "benefit" to SIG that Mr Sirour referred to in his 7 March 2018 conversation with Mr Lu. The Commission is satisfied that Mr Sirour, as the owner of SIG, financially benefited from the additional shifts claimed by SNP and SIG staff at the University, which he knew would ultimately be paid for by the University.

Mr Smith's knowledge of ghosting

There is insufficient evidence before the Commission to conclude that anyone from the University, including Mr Smith, had actual knowledge of the practice of ghosting.

That said, an inspection of the site timesheets should have raised the possibility ghosting was occurring. Mr Smith told the Commission that he reviewed site timesheets once or twice per day. That is unlikely. When shown site timesheets during the public inquiry, Mr Smith acknowledged signatures, licence numbers and sign-on and sign-off times were missing.

Mr Smith also acknowledged that some signatures on site timesheets looked similar. He said that he had not noticed that at the time he had inspected them. He claimed to have had no concerns that guards were not turning up for shifts. He monitored complaints the CSU received to assist in determining whether guards were onsite and performing their duties. He said there were very few complaints about guards not attending shifts. He sometimes raised missing information on site timesheets with team leaders, which he attributed to human error. He said he never noticed white-out on site timesheets, despite timesheets in evidence showing white-out usage was common. He rejected the proposition that, if he were acting competently, he would have detected ghosting by examining the site timesheets.

Mr Smith told the Commission he did not know ghosting was occurring at the University. This is consistent with the evidence of Mr McCreadie and Mr Balicevac. Both said that Mr Smith would not have known and they never told him what they were doing.

Corrupt conduct

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

First, the Commission makes findings of relevant facts based on the balance of probabilities. The Commission then determines whether those facts come within the terms of s 8(1), s 8(2) or s 8(2A) of the *Independent Commission Against Corruption Act 1988* ("the ICAC Act") . If they do, the Commission then considers s 9 of the ICAC Act and the jurisdictional requirements of s 13(3A) of the ICAC Act. In the case of subsection 9(1)(a), the Commission considers whether, if the facts as found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that the person has committed a criminal offence.

The Commission then considers whether, for the purpose of s 74BA of the ICAC Act, the conduct is sufficiently serious to warrant a finding of corrupt conduct.

Daryl McCreadie

Between December 2015 and April 2018, Mr McCreadie dishonestly obtained approximately $27,283 from SNP by submitting timesheets in which he made false representations as to the identities of the persons who

provided, or purported to provide, ad hoc security guarding services to the University knowing that the funds to pay those claims would ultimately come from the University.

Mr McCreadie's conduct was corrupt conduct for the purposes of s 8(2A) of the ICAC Act. This is because his conduct impaired or could impair public confidence in public administration and which involved dishonestly obtaining or assisting in obtaining, or dishonestly benefiting from, the payment of public funds for private advantage.

For the purpose of s 9(1)(a) of the ICAC Act, it is relevant to consider s 192E and s 192G of the *Crimes Act 1900* ("the Crimes Act"). Section 192E of the Crimes Act provides:

> ***192E Fraud***
>
> *(1) A person who, by any deception, dishonestly—*
>
> *(a) obtains property belonging to another, or*
>
> *(b) obtains any financial advantage or causes any financial disadvantage,*
>
> *is guilty of the offence of fraud.*

The term "deception" is defined in s 192B of the Crimes Act:

> *(1) In this Part,*
>
> *"deception" means any deception, by words or other conduct, as to fact or as to law, including:*
>
> *(a) a deception as to the intentions of the person using the deception or any other person, or*
>
> *(b) conduct by a person that causes a computer, a machine or any electronic device to make a response that the person is not authorised to cause it to make.*
>
> *(2) A person does not commit an offence under this Part by a deception unless the deception was intentional or reckless.*

"Dishonesty" is generally defined in s 4B of the Crimes Act as:

> *…dishonest according to the standards of ordinary people and known by the defendant to be dishonest according to the standards of ordinary people.*

Whether conduct is dishonest will depend on all of the circumstances (*Krecichwost v R* [2012] NSWCCA 101).

Obtaining a financial advantage or causing a financial disadvantage is defined in s 192D of the Crimes Act to include inducing a third person to do something that results in oneself or another person obtaining a financial advantage, irrespective of whether the financial advantage is permanent or temporary. The financial advantage must be obtained by the deception; that is, it is necessary for a causal connection to be established between the deception and the obtaining of money (see *Ho and Szeto v R* (1989) 39 A Crim R 145).

Section 4A of the Crimes Act also provides that, if an element of an offence is recklessness, that element may also be established by proof of intention or knowledge.

Section 192G of the Crimes Act provides:

> ***192G Intention to defraud by false or misleading statement***
>
> *A person who dishonestly makes or publishes, or concurs in making or publishing, any statement (whether or not in writing) that is false or misleading in a material particular with the intention of—*
>
> *(a) obtaining property belonging to another, or*
>
> *(b) obtaining a financial advantage or causing a financial disadvantage,*
>
> *is guilty of an offence.*

For the purpose of s 9(1)(a) of the ICAC Act, it is also relevant to consider regulation 42 of the Security Industry Regulation 2016 or regulation 44 of the Security Industry Regulation 2007. Regulation 42 of the Security Industry Regulation 2016 provides:

> ***42 Offence of impersonating a licensee***
>
> *A person must not impersonate, or falsely represent that the person is, a licensee. Maximum penalty: 50 penalty units.*

Regulation 44 of the Security Industry Regulation 2007 provides:

> ***44 Offence of impersonating a licensee***
>
> *A person must not impersonate, or falsely represent that the person is, a licensee. Maximum penalty: 50 penalty units.*

As discussed above, Mr McCreadie admitted to creating false entries on daily timesheets by using the names of guards to claim payments for ad hoc security services to which he was not entitled. Mr McCreadie accepted that, when the guard details he claimed in his personal timesheets were provided in a schedule to an SIG invoice for payment by SNP, he was paid because SNP was deceived into believing that the person he had falsely nominated in his personal timesheets had actually performed the work.

The Commission is satisfied, for the purpose of s 9(1)(a) of the ICAC Act, that, if the facts it has found were proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr McCreadie had committed criminal offences of fraud contrary to s 192E and s 192G of the Crimes Act and offences of impersonating a licensee contrary to regulation 42 of the Security Industry Regulation 2016 or regulation 44 of the Security Industry Regulation 2007.

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

The Commission is also satisfied, for the purpose of s 74BA of the ICAC Act, that the conduct is serious corrupt conduct because the conduct took place over a significant period of time, between December 2015 and April 2018, and that Mr McCreadie secured himself a sizeable financial benefit in the order of tens of thousands of dollars. Mr McCreadie admitted he was motivated by greed. Mr McCreadie admitted that the conduct was dishonest. The conduct was premeditated and involved a significant amount of planning. Mr McCreadie was a senior and trusted employee of SNP engaged to provide security services to the University and his conduct breached that trust. It could involve offences pursuant to s 192E or s 192G of the Crimes Act, which carry a maximum penalty of 10 years imprisonment, meaning they are serious indictable offences.

Emir Balicevac

Between December 2015 and April 2018, Mr Balicevac dishonestly obtained approximately $222,905 from SNP by submitting timesheets in which he made false representations as to the identities of guards who provided, or purported to provide, ad hoc security services to the University knowing that the funds to pay those claims would ultimately come from the University.

Mr Balicevac's conduct was corrupt conduct for the purposes of s 8(2A) of the ICAC Act. His conduct impaired or could impair public confidence in public administration and could also involve dishonestly obtaining or assisting in obtaining, or dishonestly benefiting from, the payment of public funds for private advantage.

As noted above, Mr Balicevac admitted to creating false entries on daily timesheets by using the names of ghost guards. He also accepted that, when his personal timesheets were provided in a schedule to an SIG invoice for payment by SNP, he was paid because SNP was deceived into believing that the person he had falsely nominated in his personal timesheets had actually performed the work.

The Commission is satisfied, for the purpose of s 9(1)(a) of the ICAC Act, that, if the facts it has found were proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Balicevac had committed criminal offences of fraud contrary to s 192E and s 192G of the Crimes Act and offences of impersonating a licensee under regulation 42 of the Security Industry Regulation 2016 or regulation 44 of the Security Industry Regulation 2007.

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

The Commission is also satisfied, for the purpose of s 74BA of the ICAC Act, that the conduct is serious corrupt conduct because the conduct took place over a significant period of time, between December 2015 and April 2018, and Mr Balicevac secured himself a financial benefit in the order of hundreds of thousands of dollars. Mr Balicevac admitted that the conduct was dishonest. It was premeditated and involved a significant amount of planning. Given that Mr Balicevac was a senior employee of SNP engaged to provide security services to the University, his conduct could have impaired public confidence in public administration. It could also involve offences pursuant to s 192E or s 192G of the Crimes Act, which carry a maximum penalty of 10 years imprisonment, meaning they are serious indictable offences.

Frank Lu

Between December 2015 and April 2018, Mr Lu dishonestly obtained approximately $244,091 from SNP by submitting timesheets in which he made false representations as to the identities of the persons who provided or purported to provide ad hoc security guarding services to the University knowing that the funds to pay those claims would ultimately come from the University.

Mr Lu's conduct was corrupt conduct for the purposes of s 8(2A) of the ICAC Act. His conduct impaired or could impair public confidence in public administration. It involved dishonestly obtaining or assisting in obtaining, or dishonestly benefiting from, the payment of public funds for private advantage.

As noted above, Mr Lu admitted to creating false entries on daily timesheets by using the names of ghost guards. Mr Lu accepted that, when his personal timesheets were provided in a schedule to an SIG invoice for payment by SNP, he was paid because SNP was deceived into believing that the person he had falsely nominated in his personal timesheets had actually performed the work.

The Commission is satisfied, for the purpose of s 9(1)(a) of the ICAC Act, that, if the facts it has found were proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Lu had committed criminal offences of fraud contrary to s 192E and s 192G of the Crimes Act and offences of impersonating a licensee under regulation 42 of the Security Industry Regulation 2016 or regulation 44 of the Security Industry Regulation 2007.

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

The Commission is also satisfied, for the purpose of s 74BA of the ICAC Act, that the conduct is serious corrupt conduct because the conduct took place over a significant period of time, between December 2015 and April 2018, and Mr Lu secured himself a financial benefit in the order of hundreds of thousands of dollars. Mr Lu admitted that the conduct was dishonest. The conduct was premeditated and involved a significant amount of planning. Given that Mr Lu was a senior employee of SNP engaged to provide security services to the University, his conduct could have impaired public confidence in public administration. It could involve offences pursuant to s 192E and s 192G of the Crimes Act, which carry a maximum penalty of 10 years imprisonment, meaning they are serious indictable offences.

Taher (Tommy) Sirour

The Commission is satisfied that Mr Sirour was aware that a number of SIG and SNP employees were "collecting" hours. This included Mr McCreadie, Mr Balicevac, Mr Lu, Ms Huda, George Boutros and Mina Boutros. Through facilitating payments to them on the basis of false timesheets, he assisted them to obtain a financial advantage from SNP at the cost of the University. In the cases of Mr Balicevac and Mr Lu, he was aware that they were falsely claiming payments in respect of ad hoc services that had not been provided.

Mr Sirour's conduct was corrupt conduct for the purposes of s 8(2A) of the ICAC Act. This is because his conduct impaired or could impair public confidence in public administration and which involved dishonestly obtaining or assisting in obtaining, or dishonestly benefiting from, the payment of public funds for private advantage.

For the purpose of s 9(1)(a) of the ICAC Act, the Commission is satisfied that, if the facts it has found were proved on admissible evidence to the criminal standard of proof and accepted by the appropriate tribunal there would be grounds on which such a tribunal would find that Mr Sirour had committed serious offences contrary to s 192G of the Crimes Act.

As previously noted, facilitating the processing of false claims provided a financial benefit to Mr Sirour. At the very least, Mr Sirour concurred in the making of false statements in the timesheets by Mr McCreadie, Mr Balicevac, Mr Lu, Ms Huda, George Boutros and Mina Boutros. As previously noted, SIG received from SNP the difference between the cash amount paid by SIG to guards and the amount paid to it by SNP. The benefit was based on the hours claimed in the timesheets for ad hoc services, whether or not:

- the services were performed
- there had been concurrent shifts claimed
- guards had in fact performed shifts albeit in the name of other guards to avoid breaching fatigue limits.

In the context of s 9(1)(a) of the ICAC Act, it is also relevant to consider s 192E of the Crimes Act. The Commission is satisfied that, if the facts it has found were proved on admissible evidence to the criminal standard of proof and accepted by an appropriate tribunal there would be grounds upon which such a tribunal would find that Mr Sirour was an accessory before the fact to offences committed by Mr McCreadie, Mr Lu and Mr Balicevac contrary to s 192E of the Crimes Act.

Section 346 of the Crimes Act provides:

> ***346 Accessories before the fact – how tried and punished***
>
> *Every accessory before the fact to a serious indictable offence may be indicted, convicted, and sentenced, either before or after the trial of the principal offender, or together with the principal offender, or indicted, convicted, and sentenced, as a principal in the offence, and shall be liable in either case to the same punishment to which the person would have been liable had the person been the principal offender, whether the principal offender has been tried or not, or is amenable to justice or not.*

In *Osland v R* (1998) 197 CLR 316 at 341-342 [71] McHugh J explained:

> *Those who aided the commission of a crime but were not present at the scene of the crime were regarded as accessories before the fact or principals in the third degree. Their liability was purely derivative and was dependent upon the guilt of the person who had been aided and abetted in committing the crime.*

In summary, the Commission is satisfied that the

jurisdictional requirements of s 13(3A) of the ICAC Act are satisfied.

The Commission is also satisfied, for the purpose of s 74BA of the ICAC Act, that the conduct is serious corrupt conduct because the conduct took place over a significant period of time and Mr Sirour, as the owner of SIG, financially benefited from the additional hours that guards claimed. The conduct was premeditated and involved a significant amount of planning. It could also involve offences pursuant to s 192G of the Crimes Act and as an accessory before the fact to offences committed by others contrary to s 192E of the Crimes Act, which carry a maximum penalty of 10 years imprisonment, meaning they are serious indictable offences.

George Boutros

Between October 2016 and April 2018, George Boutros dishonestly obtained payment from SNP by submitting timesheets in which he made false representations as to the identities of the persons who provided or purported to provide ad hoc security guarding services to the University knowing that the funds to pay those claims would ultimately come from the University. The precise amount dishonestly obtained by George Boutros is unknown because, as an SIG employee, it is difficult to differentiate between the rostered shifts he legitimately claimed and the ghosting shifts he illegitimately claimed.

George Boutros' conduct was corrupt conduct for the purposes of s 8(2A) of the ICAC Act. This is because his conduct impaired or could impair public confidence in public administration and which involved dishonestly obtaining or assisting in obtaining, or dishonestly benefiting from, the payment of public funds for private advantage.

The Commission is satisfied, for the purpose of s 9(1)(a) of the ICAC Act, that, if the facts it has found were proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that George Boutros had committed the criminal offence of fraud contrary to s 192E of the Crimes Act.

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

The Commission is also satisfied, for the purpose of s 74BA of the ICAC Act, that the conduct is serious corrupt conduct because the conduct took place over a significant period of time, between October 2016 and April 2018. George Boutros admitted that the practice of claiming for concurrent shifts in the names of other guards was wrong. The conduct was premeditated and involved a significant amount of planning. It could involve offences pursuant to s 192E and s 192G of the Crimes Act, which carry a maximum penalty of 10 years imprisonment, meaning they are serious indictable offences.

Mina Boutros

The Commission is satisfied that Mina Boutros gave truthful evidence with respect to his involvement in the practice of ghosting at the University. However, in contrast to a number of witnesses, there was no evidence implicating him in any wrongdoing in relation to claiming payment for concurrent shifts or shifts he did not attend. He did perform additional shifts in breach of relevant fatigue requirements and, when doing so, used the names of other guards.

The Commission has carefully considered whether any finding of corrupt conduct should be made in relation to Mina Boutros. It has had regard to the Commission's Cooperation Policy in Appendix 4 . The Commission has a discretion not to make a finding that a person has engaged in corrupt conduct, even though the facts established by the evidence might permit such a finding to be made. The discretion may be exercised where a person has fully cooperated with the Commission. Relevant considerations include:

- the value to the Commission of the assistance, including the value of any evidence or other information provided by the person
- the stage of the investigation at which the person began to fully cooperate
- the extent and level of their involvement in the relevant corruption
- whether they were an instigator or beneficiary of the corrupt conduct
- whether the making of such a finding would be, in all the circumstances, unduly severe.

Having regard to all the circumstances, the Commission does not make any finding of corrupt conduct in relation to Mina Boutros.

Amyna Huda

The Commission is satisfied that Ms Huda dishonestly obtained payments from SNP by submitting timesheets in which she made false representations as to the identities of the persons who provided or purported to provide ad hoc security guarding services to the University knowing that the funds to pay those claims would ultimately come from the University.

As has already been noted, Ms Huda gave her evidence during a compulsory examination. The transcript of her evidence became an exhibit during the public investigation.

She was not required to attend the public hearing because none of the affected persons wished to ask her questions. Counsel Assisting did not make any submission that any finding of serious corrupt conduct should be made in relation to Ms Huda. It was during the preparation of this report that the Commission decided that, as a matter of procedural fairness, Ms Huda should be afforded the opportunity to make submissions in relation to her conduct and whether it was open to the Commission to make a finding that she had engaged in serious corrupt conduct and seek the advice of the Director of Public Prosecutions (DPP) in relation to possible criminal offences.

The substance of Ms Huda's submissions was that she had done nothing wrong because she had not made claims for work she did not perform. The Commission does not accept this submission. Covering the shifts of other guards who should have been onsite but were not onsite, and "doubling" the shifts for which she claimed, necessarily meant that she was not fully performing her rostered role or fully performing the role of the other guards who were not onsite. Nevertheless, there are a number of matters advanced by Ms Huda which are relevant to the question of whether a finding of serious corrupt conduct should be made.

First, as has already been noted, the Commission retains a discretion in relation to whether a finding will be made that a person has engaged in corrupt conduct. Relevant considerations have been addressed in respect of Mina Boutros. The Commission is satisfied that Ms Huda was a truthful witness and fully cooperated with the Commission throughout. Although not essential, her evidence provided further insight into the practice of ghosting at the University and the involvement of others.

Secondly, as noted above, Counsel Assisting did not submit that any finding of serious corrupt should be made in relation to Ms Huda. This was not an oversight. The Commission is satisfied that Counsel Assisting made no submission because, in comparison to other affected persons, Ms Huda's role was limited and she did not receive substantial additional payments. The evidence demonstrated that, in the weeks that were examined in detail in the public investigation, Ms Huda received a small amount – specifically $1,459.50 – in respect of the performance of concurrent shifts.

Finally, Ms Huda used the names of other guards at the direction of Mr Balicevac and Mr Lu. She claimed, and the Commission accepts, she was concerned that, if she had not complied with these, she would not only be unable to obtain overtime work but would lose her job. She had observed that these consequences were visited upon one of her female work colleagues who questioned SNP's practices and a male colleague who had raised the need for fingerprint scanning. Not only did Ms Huda act under the direction of Mr Balicevac and Mr Lu but they retained half of what she claimed when performing concurrent shifts.

The Commission makes no finding of serious corrupt conduct in respect of Ms Huda.

Section 74A(2) statement

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

a) obtaining the advice of the DPP with respect to the prosecution of the person for a specified criminal offence

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

c) the taking of action against the person as a public official on specified grounds, with a view to dismissing, dispensing with the services of or otherwise terminating the services of the public official.

An "affected person" is defined in s 74A(3) of the ICAC Act as a person against whom, in the Commission's opinion, substantial allegations have been made in the course of, or in connection with, the investigation.

The Commission is satisfied that Mr McCreadie, Mr Balicevac, Mr Lu, Mr Sirour, George Boutros, Mina Boutros and Ms Huda are affected persons for the purpose of s 74A(2) of the ICAC Act.

Mr McCreadie's evidence was the subject of a declaration under s 38 of the ICAC Act and cannot be used against him in criminal proceedings, except in relation to prosecution for an offence under the ICAC Act. However, the Commission is satisfied that there is sufficient admissible evidence to seek the advice of the DPP as to the prosecution of Mr McCreadie for offences against s 192E and s 192G of the Crimes Act, regulation 42 of the Security Industry Regulation 2016 and regulation 44 of the Security Industry Regulation 2007. That evidence includes the weekly personal timesheets emailed by Mr McCreadie and Mr Balicevac to SIG, together with SIG business records, such as the weekly Excel spreadsheets prepared for the purposes of payroll and invoicing SNP. These records recorded all weekly ad hoc guarding claimed by SNP and SIG staff, including the ghost guard names used by SNP and SIG staff for any given shift. The evidence of the SIG administrative staff who created the weekly payroll and invoicing

records at various points between August 2016 and April 2018, including Ms Li, Ms Dai and Ms Liu, is potentially available to the DPP.

Mr Balicevac's evidence was the subject of a declaration under s 38 of the ICAC Act and cannot be used against him in criminal proceedings, except in relation to prosecution for an offence under the ICAC Act. However, the Commission is satisfied that there is sufficient admissible evidence to seek the advice of the DPP as to the prosecution of Mr Balicevac for offences against s 192E and s 192G of the Crimes Act, regulation 42 of the Security Industry Regulation 2016 and regulation 44 of the Security Industry Regulation 2007. That evidence includes the weekly personal timesheets emailed by Mr Balicevac to SIG, together with SIG business records, such as the weekly Excel spreadsheets prepared for the purposes of payroll and invoicing SNP. As noted above, these records recorded all weekly ad hoc guarding claimed by SNP and SIG staff, including the ghost guard names used by SNP and SIG staff for any given shift. Again, evidence of the SIG administrative staff who created the weekly payroll and invoicing records at various points between August 2016 and April 2018, including Ms Li, Ms Dai and Ms Liu, is potentially available to the DPP.

Mr Lu's evidence was the subject of a declaration under s 38 of the ICAC Act and cannot be used against him in criminal proceedings, except in relation to prosecution for an offence under the ICAC Act. However, the Commission is satisfied that there is sufficient admissible evidence to seek the advice of the DPP as to the prosecution of Mr Lu for offences against s 192E and s 192G of the Crimes Act, regulation 42 of the Security Industry Regulation 2016 and regulation 44 of the Security Industry Regulation 2007. That evidence includes the weekly personal timesheets emailed by Mr Lu to SIG, lawfully intercepted telephone calls between Mr Lu and Mr Sirour, together with SIG business records, such as the weekly Excel spreadsheets prepared for the purposes of payroll and invoicing SNP. As noted above, these records recorded all weekly ad hoc guarding claimed by SNP and SIG staff, including the ghost guard names used by SNP and SIG staff for any given shift. Again, evidence of the SIG administrative staff who created the weekly payroll and invoicing records at various points between August 2016 and April 2018, including Ms Li, Ms Dai and Ms Liu, is potentially available to the DPP.

Mr Sirour did not give evidence at the public inquiry. However, the Commission is satisfied that there is sufficient admissible evidence to seek the advice of the DPP as to the prosecution of Mr Sirour for offences against s 192E and s 192G of the Crimes Act. That evidence includes lawfully intercepted telephone calls between Mr Sirour and Mr Lu. It also includes the evidence of the SIG administrative staff who created the weekly payroll and invoicing records at various points between August 2016 and April 2018, including Ms Li, Ms Dai and Ms Liu.

George Boutros' evidence was the subject of a declaration under s 38 of the ICAC Act and cannot be used against him in criminal proceedings, except in relation to prosecution for an offence under the ICAC Act. However, the Commission is satisfied that there is sufficient admissible evidence to seek the advice of the DPP as to the prosecution of George Boutros for offences against s 192E and s 192G of the Crimes Act, regulation 42 of the Security Industry Regulation 2016 and regulation 44 of the Security Industry Regulation 2007. That evidence includes the weekly personal timesheets emailed by George Boutros to SIG, together with SIG business records, such as the weekly Excel spreadsheets prepared for the purposes of payroll and invoicing SNP. As noted above, these records recorded all weekly ad hoc guarding claimed by SNP and SIG staff, including the ghost guard names used by SNP and SIG staff for any given shift. Again, evidence of the SIG administrative staff who created the weekly payroll and invoicing records at various points between August 2016 and April 2018, including Ms Li, Ms Dai and Ms Liu, is potentially available to the DPP.

In supplementary submissions, George Boutros contended that the Commission should not seek advice from the DPP as to the prosecution of him for possible breaches of regulation 42 of the Security Industry Regulation 2016 and regulation 44 of the Security Industry Regulation 2007. Those regulations are identical and provide as follows: "A person must not impersonate, or falsely represent that the person is, a licensee".

George Boutros submitted that the offence could be established only if a person "impersonates" or "falsely represents" that the person is a licensee. As George Boutros was the holder of a class 1 licence, it was not possible for him to have committed any offence. More particularly, it was contended that George Boutros did not "impersonate" another licensee or falsely represent that, "he was a licensee other than himself". The Commission does not accept George Boutros' construction of regulation 42 and regulation 44. It is satisfied that it would be open to the DPP to advise that using the details of other licensed guards when lodging timesheets involved the impersonation of those guards (licensees). The Commission does not accept George Boutros' submission that he did not know the use to which false entries in his timesheets would be put. It was plain that the false entries were used to obtain payment from SNP and ultimately the University.

It has already been noted that the Commission accepts Mina Boutros gave truthful evidence with respect to his involvement in ghosting at the University and that his involvement was limited to claiming additional shifts in the names of other guards in circumstances where he in fact worked those shifts. As is noted in the Commission's Cooperation Policy, the Commission has a discretion as to whether or not the advice of the DPP as to the prosecution of a person should be sought. As has already been noted, the Commission does not make any finding that Mina Boutros engaged in serious corrupt conduct. For the same reasons, the Commission makes no statement that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mina Boutros for any criminal offence.

As previously noted, the Commission makes no finding of serious corrupt conduct in relation to Ms Huda. For the same reasons, the Commission does not propose to seek the advice of the DPP in relation to her conduct.

Chapter 3: Inducements offered by Mr Sirour

This chapter examines whether SNP employees received weekly cash payments from Mr Sirour as an inducement or reward for showing favour to SIG in relation to work at the University.

Payments to Mr McCreadie and Mr Balicevac

Mr McCreadie told the Commission that he first met Mr Sirour in approximately 2011 or 2012. He also told the Commission that, when SIG became a subcontractor to SNP, he was introduced to Mr Sirour at SNP's head office. At that time, Mr McCreadie held the position of SNP account manager. He said he started to deal with SIG professionally and developed a relationship with Mr Sirour. At Mr Sirour's request, he performed undeclared private work for Mr Sirour, including a risk assessment and a tender presentation, to help Mr Sirour obtain more security contracts.

Mr McCreadie gave evidence that, in about May 2012, his assistance to Mr Sirour was rewarded with a $100 gift card. Subsequently, further $100 gift cards were given to him approximately every six weeks. He was also given a camera lens and, during 2012 and 2013, about $300 cash from time-to-time. Mr McCreadie also admitted that Mr Sirour purchased return flights to Melbourne over the new year period of 2013–14 for him and his family and gave him approximately $400 spending money. He said that, from 2014 onwards, Mr Sirour paid him $400 cash per week to ensure SIG guards were doing a good job and to ensure that SIG was well regarded by SNP. To achieve this, he would talk to, and deliver feedback from, both the guards and the clients. He was still working at SNP head office when he accepted these rewards from Mr Sirour.

Mr McCreadie said the weekly $400 cash payments were initially handed to him in person, but eventually Mr Sirour required him to sign a receipt before collecting the cash. He said he was concerned Mr Sirour might blackmail him and take those receipts to SNP. He did not disclose the gifts he received from Mr Sirour to SNP nor did he refuse them. He acknowledged he had "gotten greedy". He understood his failure to disclose the cash payments created a conflict of interest in respect of his position at SNP.

When Mr McCreadie commenced working full-time, onsite at the University in about September 2015, he continued to receive gifts from Mr Sirour. For example, he told the Commission that, in September 2015, he accepted an overnight hotel stay in Sydney for his family. He admitted he continued to receive from SIG his weekly cash payment of $400 (plus the sum for any ghosted shifts he claimed). He admitted that, by December 2017, the weekly cash payment increased to $500, which he continued to receive until the Commission executed search warrants in April 2018.

Mr McCreadie told the Commission that, in return for the weekly cash payment, he was expected to help Mr Sirour whenever he required assistance. For example, in March 2018, SNP raised concerns with SIG about the services SIG provided at another SNP site. He said he assisted Mr Sirour to formally respond to those concerns in writing. He acknowledged this was acting in breach of his obligations to prefer the interests of SNP over SIG.

Linda Willard, SNP's national scheduling manager, protective services, gave an example of Mr McCreadie showing favour to SIG in relation to the affairs of SNP. Ms Willard told the Commission that, in 2017, she became aware that, "things were not running smoothly with SIG". She said that Lisa Cooper, SNP's account manager for all other SNP sites where SIG was a subcontractor, made "numerous complaints" that SNP clients were experiencing "a number of issues" with SIG, including guards signing-in as each other and fatigue breaches. A performance meeting was held in September 2017, which Mr McCreadie attended. Mr McCreadie

accepted that he raised no complaints about SIG during the meeting, although he complained about SNP not issuing SIG uniforms. Mr McCreadie conceded he knew ghosting at the University was entrenched by this stage. The issues with SIG at other sites persisted and they were subsequently escalated to SNP's risk board.

Mr McCreadie accepted that, in general terms, the weekly cash payments from Mr Sirour were an inducement to advance SIG's commercial interests. He also understood that he was being paid up to $500 per week from Mr Sirour to make sure that SIG continued to be SNP's service provider at the University.

Mr Balicevac told the Commission that Mr Sirour was an ambitious businessman who wanted to become the principal security contractor at the University. Mr Balicevac said Mr Sirour was, however, fearful about losing the SNP subcontract. To help SIG's commercial interests, Mr Balicevac said that Mr Sirour attempted to "buy" people by paying them money.

In submissions to the Commission, Mr Sirour rejected Mr Balicevac's suggestion that he tried to "buy" people. The Commission does not accept Mr Sirour's submission. The Commission is satisfied that, in light of Mr McCreadie's and Mr Balicevac's evidence, in addition to the matters discussed in chapter 6, Mr Sirour tried to "buy" those persons whom he perceived would, in return, advance his commercial interests.

In his evidence to the Commission, Mr Balicevac accepted that, between at least August 2016 and April 2018, he received weekly cash payments from Mr Sirour, increasing from $300 to $500 (plus money received for any ghosted shifts). He told the Commission that Mr Sirour attempted to buy his loyalty. He received the weekly cash payments to advance and protect SIG's commercial interests on campus. He said that he received up to $500 per week in cash payments because, as he understood it, Mr Sirour believed that he could "save" Mr Sirour at the University, which, he suggested, he "definitely" could not. Mr Balicevac informed the Commission Mr Sirour knew he was "very close" to Mr Smith, and that Mr Sirour thought he could use their relationship to protect SIG. He said that, while Mr Sirour wanted him to "buy" Mr Smith, Mr Sirour "failed completely" in this regard.

SNP terminates SIG as a supplier in April 2018

On 10 April 2018, SNP notified SIG that, effective 8 May 2018, it no longer required SIG's services at three sites, including the University.

Mr Balicevac told the Commission that, because he was, at that time, receiving $500 per week from Mr Sirour, he took steps to "save" Mr Sirour at the University. These steps included notifying Mr Smith of the situation and involving him in the response. Mr Balicevac admitted that he was seeking to preserve his own financial interests.

Mr McCreadie told the Commission that, after SNP gave SIG notice of contract termination, he received calls from Mr Sirour, who told him, "I need you to protect my business". He told Mr Sirour he would do what he could, but it was ultimately a business decision for SNP. He said he wanted SIG to remain as a subcontractor at the University so he could continue to receive a $500 weekly payment (plus payment for any ad hoc shifts). He accepted that, after 10 April 2018, through Mr Smith, he engaged in a course of conduct to ensure that the contract between SNP and SIG at the University was not terminated. He accepted this was a gross breach of his obligations to SNP.

Mr McCreadie suggested that he, Mr Balicevac and Mr Smith "scrum[med] down" for a meeting, which, he admitted, he organised to protect Mr Sirour. Mr McCreadie said that, rather than framing the meeting

with Mr Smith as a discussion about "sav[ing]" Mr Sirour, he raised operational concerns about SIG's replacement subcontractors. It was common ground that, during the meeting, it was decided Mr Smith would raise SNP's decision to terminate SIG at the University with Mr Roche.

On 12 April 2018, Mr Smith emailed Mr Roche about SNP's removal of SIG, stating this was a "perilous decision for me (University of Sydney)". He requested "business as usual for this University in terms of the ad-hoc supplier". On 13 April 2018, SNP advised Mr McCreadie that SIG would continue as the subcontractor for "Sydney Uni only". The Commission executed search warrants on 18 April 2018 and SIG was subsequently terminated as SNP's subcontractor.

The Commission is satisfied that Mr McCreadie's and Mr Balicevac's conduct in seeking to preserve SIG's subcontract was motivated by self-interest; namely, the preservation of weekly cash payments from Mr Sirour and the preservation of payments from SIG as a consequence of ghosting.

Mr Sirour's evidence

As has been noted, Mr Sirour was provided with a copy of Counsel Assisting's written submissions at the conclusion of the public inquiry. In those submissions, Counsel Assisting submitted that Mr Sirour arranged for the giving of weekly cash payments to Mr McCreadie and Mr Balicevac as an inducement or reward for showing favour to SIG in relation to SNP's 2015 contract at the University.

Mr Sirour made written submissions in response to the submissions of Counsel Assisting. He submitted that, while the evidence "may" establish that he arranged payments to Mr McCreadie and Mr Balicevac to further SIG's business interests, the evidence "may not" establish that Mr Sirour's intention was to seek to influence Mr McCreadie and Mr Balicevac in the exercise of their functions as employees in relation to the affairs and business of SNP.

The Commission does not accept this submission. In September 2017 and April 2018, Mr McCreadie sought to influence SNP commercial decisions in relation to SIG. On both occasions, Mr McCreadie was doing more than advancing SIG's commercial interests. He was protecting SIG and trying to secure SNP's continued use of SIG as a subcontractor.

If a businessperson wishes to advance the commercial interests of their company, their actions must be legitimate. The Commission does not accept Mr Sirour's actions were legitimate. He gave Mr McCreadie and Mr Balicevac weekly cash payments. Mr Balicevac characterised the payments as bribes. Mr McCreadie claimed that he felt blackmailed. Whatever the correct classification of Mr Sirour's conduct, the Commission is satisfied that the payments were made to Mr Balicevac and Mr McCreadie by Mr Sirour as an inducement to favour SIG over the interests of their employer, SNP.

Mr McCreadie told the Commission that, despite his position of significant responsibility within SNP, which required him to look after SNP's best interests and to service its clients properly, he accepted weekly payments from Mr Sirour from approximately 2014. He said he took steps to allow SIG to "fraudulently claim payments for work that was not undertaken". He accepted this was a gross breach of his obligations to SNP. He also accepted this placed SNP in a position where it was potentially in breach of its contract to the University. Further, he accepted that he permitted SNP employees, Mr Balicevac and Mr Lu, whom he was obliged to supervise, to join him as participants in the practice of ghosting. Mr Balicevac told the Commission that, in response to Mr Sirour's inducements, he deliberately undermined SNP's commercial interests.

The Commission is satisfied that, between at least August 2016 and April 2018, Mr McCreadie and Mr Balicevac each received a weekly cash payment, increasing from $300 to $500, from Mr Sirour as an inducement or reward for showing favour to SIG in relation to SNP's 2015 contract with the University. Mr McCreadie admitted that he was "completely compromised" by the receipt of these weekly cash payments from Mr Sirour. Mr Balicevac admitted that, while he "despised" SNP but still accepted employment from SNP in 2015, in response to Mr Sirour's inducements, he deliberately undermined SNP's commercial interests.

SIG roster manager

Mr Lu admitted that he also accepted weekly cash payments from Mr Sirour; albeit in different circumstances to Mr McCreadie and Mr Balicevac.

On 15 August 2016, Mr Lu was appointed by SIG as its official roster manager at the University, a position he held concurrently with his role as SNP team leader. Mr Lu told the Commission this position involved rostering SIG guards onto shifts at the University and finding replacement guards if someone was sick. It also involved rostering the SNP staff at the University who participated in ghosting onto ghost shifts. He said that, for performing this role, from August 2016, Mr Sirour gave him $300 per week (rising to $500 by December 2017 and continuing until April 2018) and a mobile telephone, which he was

required to answer if it rang. On 30 September 2016 and again on about 1 November 2016, he was issued with a list of approximately 20 names (and corresponding security licence numbers) of ghost guards that could be supplied to SNP or SIG staff wanting to perform ghost shits. He said he kept the list of names on the mobile telephone given to him by Mr Sirour.

Mr Lu told the Commission that he was appointed as SIG roster manager after he replaced the former roster manager, an SIG guard, who accidentally emailed SNP information that indicated that guards on campus were using the names of other guards to perform shifts. Mr Lu's predecessor as SIG roster manager ceased employment with SIG at the University after this incident.

Mr Lu told the Commission that, due to the perception of a conflict of interest, he sought permission from SNP before accepting SIG rostering duties. He said permission was given to him by Mr McCreadie, who had raised the issue with his manager. Mr McCreadie's evidence was that Mr Sirour told him Mr Lu would become SIG's roster manager and he did not press the conflict of interest issue because, in part, he was receiving the weekly cash payments from Mr Sirour. Mr McCreadie said he may have raised it with his manager, but it was common knowledge amongst SNP's roster team that Mr Lu was SIG's roster manager. Mr Roche and Ms Willard told the Commission that there was definitely a conflict of interest and that SNP employees should not have been rostering for a subcontractor.

It was common ground that when Mr Lu became SIG roster manager, he continued the practice of ghosting shifts that already existed at the University. There was limited evidence available to the Commission as to the existence of the practice before August 2016. The Commission infers this was likely because ghosting was infrequently used before mid-2016. The Commission's analysis of SIG business records and the bank accounts of relevant persons showed that the prevalence of ghosting immediately increased after Mr Lu became SIG's roster manager. Indeed, according to Mr McCreadie, the frequency of ghosting became "ridiculous". Mr Lu told the Commission that, while he rarely ghosted before becoming SIG roster manager, he learned in early 2016 that some shifts were not being covered.

Mr Lu gave evidence that, initially, if a guard called in sick, he would find a replacement; however, this gradually changed. That is, he would seek no replacement, the shift would not be covered, a ghost name would be inserted on the timesheet, and someone else would claim payment. He said that he, Mr Balicevac and the team leaders would split among themselves the money for the shift that was not covered. He accepted this was dishonest.

Corrupt conduct

Daryl McCreadie

The Commission is satisfied that, between at least August 2016 and April 2018, Mr McCreadie received from Mr Sirour a weekly cash payment, increasing from $300 to $500, as an inducement or reward for showing favour to SIG in relation to SNP's 2015 contract with the University. Mr McCreadie showed favour to SIG by permitting ghosting to occur at the University. He also showed favour to SIG on at least two occasions in September 2017 and April 2018 when he attempted to undermine SNP's commercial interests in favour of his own interests and the interests of SIG.

Section 8(2A) of the ICAC Act gives the Commission jurisdiction over the conduct of those who are not public officials where their conduct impairs or could impair public confidence in public administration and which could involve any of the five matters identified in that section. For present purposes, the relevant consideration is dishonestly obtaining the payment of public funds for private advantage.

The Commission cannot be satisfied that the weekly cash payments that Mr McCreadie received from Mr Sirour were paid using public funds. SIG carried out work on a number of sites. There was no evidence the cash payments received by Mr McCreadie came from funds that were originally sourced from the University. In these circumstances, the Commission does not make a finding of corrupt conduct in relation to Mr McCreadie.

Emir Balicevac

The Commission is satisfied that, between at least August 2016 and April 2018, Mr Balicevac received from Mr Sirour weekly cash payments, increasing from $300 to $500, as an inducement or reward for showing favour to SIG in relation to SNP's 2015 contract with the University. He admitted that he did not disclose to SNP that he was receiving weekly cash payments from Mr Sirour. Mr Balicevac showed favour to SIG by permitting ghosting to occur at the University. He also showed favour to SIG in April 2018, when he attempted to undermine SNP commercial decisions in favour of his own interests and those of SIG.

In relation to s 8(2A) of the ICAC Act, the Commission cannot be satisfied that the weekly cash payments Mr Balicevac received from Mr Sirour were paid using public funds. Again, it should be noted there was no evidence the cash payments received by Mr Balicevac came from funds that were originally sourced from the University. In these circumstances, the Commission does not make a finding of corrupt conduct in relation to Mr Balicevac.

Taher (Tommy) Sirour

The Commission is satisfied that, between at least August 2016 and April 2018, Mr Sirour gave weekly cash payments to Mr McCreadie and Mr Balicevac, increasing from $300 to $500, as an inducement or reward for them showing favour to SIG in relation to SNP's 2015 contract with the University.

In relation to s 8(2A) of the ICAC Act, the Commission cannot be satisfied that Mr Sirour paid the weekly cash payments to Mr McCreadie and Mr Balicevac using public funds. In these circumstances, the Commission does not make any finding of corrupt conduct in relation to Mr Sirour.

Frank Lu

The Commission is not satisfied that, between at least August 2016 and April 2018, Mr Lu received from Mr Sirour weekly cash payments, increasing from $300 to $500, as an inducement or reward for showing favour to SIG in relation to SNP's 2015 contract with the University. The evidence is that Mr Lu disclosed his appointment to SNP. Mr McCreadie informed the Commission it was common knowledge within SNP that Mr Lu had been engaged by SIG as its roster manager. No one could have reasonably concluded that Mr Lu took on this additional work for no reward. The Commission is not satisfied to the required standard that Mr Lu was receiving payments for anything other than managing the roster as the SIG roster manager.

Further, in relation to s 8(2A) of the ICAC Act, the Commission cannot be satisfied that the weekly cash payment Mr Lu received from Mr Sirour was paid using public funds. There was again no evidence the cash payments received by Mr Lu came from funds which were originally sourced from the University. In these circumstances, the Commission does not make any finding of corrupt conduct in relation to Mr Lu.

Section 74A(2) statement

The Commission is satisfied that Mr McCreadie, Mr Balicevac and Mr Sirour are "affected" persons for the purposes of s 74A(2) of the ICAC Act.

The Commission is satisfied that the weekly cash payments Mr McCreadie and Mr Balicevac received from Mr Sirour as an inducement or reward for showing favour to SIG in relation to SNP's affairs, including SNP's 2015 contract with the University, may involve criminal conduct.

In these circumstances, the Commission considers that the advice of the DPP should be sought with respect to the prosecution of Mr McCreadie, Mr Balicevac and Mr Sirour for offences relating to corrupt commissions or rewards contrary to s 249B of the Crimes Act. Section 249B of the Crimes Act provides:

> ***249B Corrupt commissions or rewards***
>
> *(1) If any agent corruptly receives or solicits (or corruptly agrees to receive or solicit) from another person for the agent or for anyone else any benefit:*
>
> *(a) as an inducement or reward for or otherwise on account of:*
>
> *(i) doing or not doing something, or having done or not having done something, or*
>
> *(ii) showing or not showing, or having shown or not having shown, favour or disfavour to any person,*
>
> *in relation to the affairs or business of the agent's principal, or*
>
> *(b) the receipt or any expectation of which would in any way tend to influence the agent to show, or not to show, favour or disfavour to any person in relation to the affairs or business of the agent's principal,*
>
> *the agent is liable to imprisonment for 7 years.*
>
> *(2) If any person corruptly gives or offers to give to any agent, or to any other person with the consent or at the request of any agent, any benefit:*
>
> *(a) as an inducement or reward for or otherwise on account of the agent's:*
>
> *(i) doing or not doing something, or having done or not having done something, or*
>
> *(ii) showing or not showing, or having shown or not having shown, favour or disfavour to any person,*
>
> *in relation to the affairs or business of the agent's principal, or*
>
> *(b) the receipt or any expectation of which would in any way tend to influence the agent to show, or not to show, favour or disfavour to any person in relation to the affairs or business of the agent's principal,*
>
> *the firstmentioned person is liable to imprisonment for 7 years.*

As defined by s 249A of the Crimes Act, Mr McCreadie and Mr Balicevac were agents and SNP was the "agent's principal".

The Commission is satisfied that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, there would be grounds on which such a tribunal would find that Mr McCreadie committed an offence under s 249B(1)(a) of the Crimes Act of corruptly soliciting or receiving benefits as an inducement or reward for showing favour to SIG in relation to SNP's 2015 contract with the University.

As previously noted, Mr McCreadie's evidence was the subject of a declaration made pursuant to s 38 of the ICAC Act and cannot be used against him in criminal proceedings, except in relation to prosecution for an offence under the ICAC Act. However, the Commission considers there is sufficient admissible evidence to seek the advice of the DPP in relation to a prosecution of Mr McCreadie for offences contrary to s 249B(1)(a) of the Crimes Act. That evidence includes business records created by SIG and Mr McCreadie's bank records. It was Mr McCreadie's practice to bank the weekly cash payments. The evidence also includes that which could be given by the SIG administrative staff who were responsible for recording and paying the weekly cash, including Ms Li, Ms Dai and Ms Liu.

The Commission is satisfied that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, there would be grounds on which such a tribunal would find that Mr Balicevac committed offences against s 249B(1)(a) of the Crimes Act of corruptly soliciting or receiving benefits as an inducement or reward for showing favour to SIG in relation to SNP's 2015 contract with the University.

As previously noted, Mr Balicevac's evidence was the subject of a declaration made pursuant to s 38 of the ICAC Act and cannot be used against him in criminal proceedings, except in relation to prosecution for an offence under the ICAC Act. However, the Commission considers there is sufficient admissible evidence to seek the advice of the DPP in relation to the prosecution of Mr Balicevac for offences contrary to s 249B(1)(a) of the Crimes Act. That evidence includes business records created by SIG and the bank records of Mr Balicevac's wife. It was Mr Balicevac's practice to bank the weekly cash payments into his wife's account. The evidence also includes that which could be given by the SIG administrative staff who were responsible for recording and paying the weekly cash payments, including Ms Li, Ms Dai and Ms Liu.

The Commission is satisfied that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, there would be grounds on which such a tribunal would find that Mr Sirour committed offences contrary to s 249B(2)(a) of the Crimes Act of corruptly giving or offering benefits as an inducement or reward for showing favour to SIG in relation to SNP's 2015 contract with the University.

As previously noted, Mr Sirour did not give evidence at the public inquiry. However, the Commission considers there is sufficient admissible evidence to seek the advice of the DPP in relation to the prosecution of Mr Sirour for offences contrary to s 249B(2)(a) of the Crimes Act. That evidence includes the evidence referred to above in relation to Mr McCreadie and Mr Balicevac. It also includes Ms Li's text messages.

Chapter 4: SNP's head office – who knew what?

One of the matters examined by the Commission during the course of its investigation was whether anyone at the SNP head office in West Ryde was aware of the dishonest conduct associated with the provision of security services at the University. For the reasons set out below, the Commission is not satisfied that those at the head office who dealt with the timesheets submitted in relation to SNP's contract with the University or who had managerial responsibility were aware of the wrongdoing uncovered by the Commission's investigation.

Processing the University's timesheets

Under regulation 35(1) of the Security Industry Regulation 2016, SNP was required to keep a "sign-on register" at any premises on which it conducted recurrent security activities. The register was required to record, with respect to each class 1 licensee who provided security services, the name, signature and licence number of the licensee and the times when that person commenced and ceased carrying out the security services. Under regulation 35(4), a condition of SNP's master security licence was that SNP was required to take reasonable steps to ensure that each security guard who carried out security activities at the University completed the sign-on register.

SNP's timesheets for the University were pro forma documents with fields for recording the information required by regulation 35(1). This included the date of the security activity and the names of those performing the activity. With respect to each named person, the form contained fields for the person's licence number, scheduled start and finish times, actual start and finish times, signature and a "Comments" column.

The original University timesheets were retained at the Campus Security Unit office of the University. These were scanned by Mr McCreadie, Mr Balicevac or Mr Lu, who would email the scanned copies to SNP's National Operations Centre (NOC), which was located at the SNP head office in West Ryde.

The fields on many of the original timesheets were not completed. The missing information included licence numbers and signatures. In some cases, what appeared to be the same signature was written next to different names. It was evident from the original timesheets that, in some cases, white-out had been applied to delete information and new information had been entered over the white-out. The failure to record required information was evident on the face of the copies provided to the NOC, as was the similarity in signatures against different names. Careful observation of the scanned copies would also have identified, at least in some cases, that information on a number of the timesheets had been deleted by use of white-out and new details entered.

Mr Swadling worked for SNP between approximately 1995 and late 2017. He told the Commission that, during the last nine to 12 months of his employment, he was the NOC team's leader. His duties in that role included processing the SNP timesheets for the University that were emailed to the head office. This was done by entering information from the timesheets into Microster, SNP's roster management system. The number of hours worked by each security guard that were entered into Microster determined the amount of pay the security guard received.

Mr Swadling told the Commission that the timesheets were usually only sent to the NOC "just before the fortnightly pays would close", which meant that there was a rush to process them in sufficient time to ensure the security guards were paid. On occasions, such as in circumstances where only the first name of the security guard was recorded on the timesheet or when it was difficult to read the writing on the timesheets, it was necessary for him to contact Mr McCreadie, Mr Balicevac or another SNP employee at the University to obtain further information. This was to ensure relevant

information could be entered into Microster. Responses to Mr Swadling's requests were either received orally or by email. While he was aware that many timesheets had missing information, such as signatures, he told the Commission that he did not need that information in order to process the timesheets through Microster because "…if I had a name and a start and a finish time, that was enough relevant information to load into Microster". So, for example, it did not matter for Mr Swadling's purposes, if the timesheet did not record the security guard's licence number because once he entered the security guard's name into Microster, the system would automatically record the relevant licence number. In those cases, he did not need to take any steps to ensure Mr McCreadie included that information on the timesheets.

It was not clear from the evidence whether, at the times he processed the timesheets, Mr Swadling had observed any whiting-out of entries on the timesheets or any similarities in signatures against different names. He told the Commission, however, that, if he had seen evidence of whiting-out or any similarities in signatures on any of the timesheets, he would have sought an explanation from Mr McCreadie. Similarly, any other issues he had with the quality and content of information in the timesheets were raised with Mr McCreadie rather than with his supervisor at head office. He told the Commission that he had no reason to doubt what he was told by Mr McCreadie and never suspected that Mr McCreadie was giving him false information. The Commission accepts that, as SNP's senior employee at the University site, Mr McCreadie was the obvious person for Mr Swadling to contact regarding any issues with the University timesheets submitted to the NOC.

During the course of processing the timesheets from the University, Mr Swadling saw that information was missing from some of them. While he was aware of the requirements of regulation 35(1), he believed another record was maintained at the University that contained the requisite details required by law.

In November 2017, there was an exchange of emails between Mr Swadling and Mr McCreadie concerning one of SNP's University security guards who had worked an extra hour beyond his contracted patrol shift. On 24 November 2017, Mr Swadling sent an email advising Mr McCreadie that the extra hour was not payable. In this email, however, he noted that, had the security guard "written within the comments (section of the timesheet) 18:00 – 19:00 report writing (rather than patrol) [he] could have assigned that hour under USYD Additional". Mr Swadling told the Commission that the security guard could not have done an extra hour on patrol and that, as he believed the security guard had been at the University for the time claimed, he had:

> …*worked out that* [the security guard had] *been on-site for that additional hour to complete report writing, and that needs to be loaded into the Sydney Uni additional if they wish to be paid for it*.

Mr Swadling's email also included the following:

> *It would also be greatly appreciated if Time Sheets are not amended & then resent as some would see this as Ghosting Shifts or Fraud*.

Mr Swadling told the Commission that the phrase "Ghosting Shifts or Fraud" in the email was an expression of his opinion that amending and re-sending timesheets could give an impression of ghosting or fraud but that he did not have any knowledge that ghosting shifts or fraud were occurring in relation to work being undertaken at the University.

Despite being concerned that the state of the University timesheets was "unprofessional" and being aware, at least, that many had not been fully completed, Mr Swadling told the Commission that he had not been aware that the timesheets contained false information. He said he was given no training by SNP on what signs to look for to indicate potentially fraudulent conduct with respect to the timesheets.

While Mr Swadling could have done more to address the inadequacies in the timesheets that came to his attention, his failure to do so could not, without more, be equated with knowledge on his part that the inadequacies arose from dishonesty. The Commission accepts that Mr Swadling believed that he could trust Mr McCreadie to provide him with correct information and that he was not aware that the timesheets forwarded to him contained false information.

Domenic Giardini, who had previously been an SNP team leader, was appointed NOC manager in 2018. He provided a statement to the Commission in which he confirmed that, in the event that there was any issue with a timesheet, the general practice was to raise the issue with the relevant site manager. He noted that generally the timesheets from the University were emailed on a weekly basis. Given the volume of information that had to be processed, he asked Mr McCreadie to submit the timesheets on a daily basis. He recalled they were sent on a daily basis "for a while, but then it would go back to being weekly". Members of his team reported to him that information was missing from some timesheets and further details were then sought from Mr McCreadie. There was no evidence that Mr Giardini was aware that the University timesheets contained false information.

Ms Willard joined SNP in 2007 and became national scheduling manager, protective services, in August 2016. She confirmed that the University's timesheets were scanned and scanned copies provided to the NOC. The copies were received on a weekly basis, which meant that there was limited time to process them before the cut-off time for processing the payroll.

Ms Willard told the Commission that she was unaware that white-out had been used on any of the timesheets or that details, such as licence numbers and signatures, were missing from some timesheets and that those issues had never been raised with her by anyone in her team. She said she expected that, if Mr Swadling became aware of any issues relating to the timesheets, he would have raised those with Mr McCreadie.

During her evidence, she was shown a timesheet where white-out appeared to have been used and where there was a similarity in signatures against different names. She told the Commission that, if she had seen the timesheet when it came to the NOC, she would have raised the matter with Mr McCreadie, who, she understood, was a senior and trusted SNP employee. The Commission is satisfied that Ms Willard was not aware that the timesheets contained false information.

What did Mr Roche know?

Mr Roche was SNP's managing director during the period under investigation by the Commission. Although aware that timesheets were completed for work at the University, he told the Commission that he had not seen any of the timesheets.

Mr Roche agreed that there was insufficient rigour in the supervision of Mr McCreadie and his team at the University. He explained that this was due to the trust he and the SNP business as a whole had in Mr McCreadie.

In its 2014 response to the University's request for tender for security services, SNP identified the installation of fingerprint scanners as a method to monitor security guard attendance. Under the proposed system, security guards would have their fingerprints scanned when going on and off duty. This would have provided a more accurate record of attendance times and would have allowed SNP to monitor attendance periods to ensure that individual workers did not work beyond appropriate safe working times.

Mr Roche accepted that the fingerprint scanning system would have created a further layer of supervision over Mr McCreadie's operations at the University, and that the dishonest conduct uncovered by the Commission would have been monitored and may have been prevented. The Commission is satisfied that the use of fingerprint scanners at the University had the capacity to limit the dishonest activities occurring onsite.

There was evidence before the Commission that fingerprint scanners were trialled by SNP at the University for a short period in 2015. According to Mr Roche, their use was discontinued shortly after because, among other reasons, there were integration issues with Microster. He also believed that SNP's efforts to roll out the fingerprint scanning system were sabotaged. He explained to the Commission that:

> *I think the problem was that it probably just lingered over a period of time and I have no doubt now that Daryl* [McCreadie] *was obstructive in terms of getting that system in place, as was Emir* [Balicevac] *and, you know, it all just became too hard.*

He said that SNP deployed fingerprint scanners at other sites without the problems encountered at the University. That there was some obstruction was confirmed by Mr McCreadie, who told the Commission that he did not want the scanners because their use may have exposed his dishonest conduct.

As outlined in chapter 9, in relation to the July 2016 KPMG report, a practice existed at the University whereby SNP did not pay its guards overtime. SNP staff

at the University who wanted to do additional paid work would perform work through SIG. This practice – of not paying overtime to SNP security guards working at the University – reduced SNP's ability to detect dishonest conduct. This was, in part, because, although the Microster system had a function whereby it could detect if anyone worked in excess of fatigue limits, detection was dependent on reference to a person's code number.

All SNP security guards had a unique code number. However, if an SNP security guard also worked for SIG, another code number was assigned for work in his or her capacity as an SIG contractor. As Ms Willard explained to the Commission, that was a "substantial flaw" in the system because the system could not automatically identify that a particular person had worked beyond the mandated limit if the person's hours were entered against two code numbers.

Whether an individual had worked excess hours could only be ascertained by manually checking the timesheets. In his evidence to the Commission, Mr Roche agreed that the use of two code numbers for one security guard was "a serious problem".

There was no evidence before the Commission to explain how the practice of not paying for overtime came into existence. There was evidence that the practice had existed at the University from at least about 2010. The Commission heard that a number of people who held senior positions within SNP were aware that the overtime practice existed. At the University, those people included former site managers Mr McCreadie and Aaron Lucas, and other senior SNP staff onsite, Mr Balicevac and Mr Lu. At SNP's head office, the overtime practice was known to Mr Giardini and Ms Willard, both of whom learned of it in 2017.

Mr Roche told the Commission that he first became aware of the overtime practice at the University in July 2016. He accepted that there was no legitimate reason why security guards should be employed by both SNP and SIG. The only possible reason, Mr Roche accepted, was to get around the SNP-imposed ban on overtime or avoid fatigue limits. Mr Roche accepted that, when he became aware of the overtime practice in July 2016, he should have realised there was no legitimate reason for it and immediately had the issue investigated. That did not happen.

SNP submitted that it does not follow – either logically or on the evidence – that the overtime ban at the University had the potential to reduce its ability to detect the occurrence of wrongdoing. The Commission does not accept that submission. The Commission is satisfied that SNP had no visibility or knowledge of the additional hours or the nature of the work being performed by those employees who also worked for SIG. Without effective oversight, the practice had the potential to reduce SNP's ability to detect wrongdoing.

Changes to SNP head office practices

SNP has changed ownership. Paul Chong, president and group chief executive officer of Certis CISCO Pte Ltd (the parent of SNP), gave evidence after the public inquiry in relation to changed practices. Some of these have been implemented and some are in the process of being rolled out.

It was Mr Chong's evidence that, following the public inquiry in 2019, SNP staff attended training courses to address their obligations under regulation 35 of the Security Industry Regulation 2016. SNP staff also engaged in anti-bribery and corruption training. With regard to timesheet irregularities, SNP staff are now trained to report these to management at the NOC, rather than site managers.

The NOC will be reorganised to enable verification of the time and attendance of each deployed security officer against the roster. The NOC will be separate and independent from the Services Delivery team, who will be responsible for preparing the rosters.

A new electronic time and attendance system, known as the Business Operations Support System (BOSS), is to be introduced. BOSS uses independent, automated verification of employee locations and identities when attending a site. Measures are automatically activated if BOSS identifies staff members who do not attend a client site but subsequently claim payment for such an attendance. Until BOSS is operational, NOC staff will review daily timesheets to confirm all information is complete. Where a timesheet contains missing information or inconsistencies with the roster, NOC staff will escalate the matter to the NOC manager for resolution.

In approximately 2014 or 2015, a functionality had been introduced into Microster that permitted two numbers to be assigned to an employee. It allowed for a differentiation between SNP and subcontracted work. Since the inception of this functionality, SNP employees working at the University were loaded into Microster under the double-number format. SNP has now ceased to use this functionality.

Chapter 5: SIG's cash payment system

This chapter examines the arrangements that SIG put in place to pay its guards' weekly wages and, in particular, whether those arrangements were made for the purpose of avoiding its employment and taxation obligations, including leave entitlements, superannuation, workers compensation insurance premiums, payroll tax, withholding tax and GST.

The Commission identified an unorthodox arrangement that SIG implemented to pay its guards their weekly wages. A number of witnesses gave evidence of SIG's "off-the-books" cash payment system, including Ms Li (SIG's administrative and accounts manager), Ms Dai (SIG administrative staff member) and Taymour Elredi (director of a security company, Pharaohs Group Pty Ltd).

SIG business records demonstrate that, for at least the period between August 2016 and April 2018, it implemented an arrangement whereby a small percentage (approximately 10% to 20%) of SIG's workforce were on-the-books and were paid their lawful entitlements. For these employees, tax was withheld and employee entitlements, such as superannuation, were paid. The remainder of SIG's workforce were paid off-the-books in cash. Ms Li told the Commission that this arrangement was implemented by Mr Sirour to avoid taxation obligations, including GST and payroll tax, and the payment of employee entitlements such as leave, superannuation and also workers compensation insurance premiums.

Mr Elredi was an associate of Mr Sirour. His evidence corroborated the evidence of Ms Li. Mr Elredi told the Commission that Mr Sirour asked him to establish Pharaohs Group in about 2014. He said that, as director, he did "nothing" because the company had no employees and no clients. Instead, Pharaohs Group inherited most of SIG's financial obligations by assuming responsibility for the payment of the majority of SIG's security guard force. Mr Elredi said that Mr Sirour falsely promised to pay Pharaohs Group's taxation liabilities.

Pharaohs Group issued weekly invoices to SIG (or AUSP before it went into external administration) in an amount roughly equivalent to SIG's (or AUSP's) weekly off-the-books wage bill. As previously noted, AUSP was a security services company that was registered in August 2007. Mr Sirour was its sole director. AUSP was placed into external administration on 26 July 2017. Prior to external administration, SIG employees were paid from the business account of AUSP.

The Pharaohs Group weekly invoices were not prepared by Mr Elredi, but rather by SIG administration staff. Each week, SIG administration staff, who had access to the Pharaohs Group's email accounts, computer system and, later, the SIG office in Rockdale, created invoices on a Pharaohs Group invoice template in an amount roughly equivalent to SIG's off-the-books wages bill. According to Ms Li, the Pharaohs Group weekly invoices to SIG were prepared on Mr Sirour's instructions. SIG administration staff were then responsible for sending the completed weekly invoices from the Pharaohs Group email account to SIG (or AUSP before it went into external administration). Ms Li said that this invoicing system between Pharaohs Group and SIG (or AUSP) provided an illegitimate benefit to the invoiced company in the form of a GST input tax credit, which would not have been available had SIG paid its full wage bill in accordance with legal requirements.

Each Monday or Tuesday, SIG (or AUSP) paid the weekly Pharaohs Group invoice by transferring the invoiced amount into Pharaohs Group bank accounts. An analysis conducted by the Commission of the bank records of SIG, AUSP and Pharaohs Group revealed that, between December 2015 and April 2018, SIG transferred to Pharaohs Group a total of $9,281,469, while between January 2016 and October 2016, AUSP transferred to Pharaohs Group a total of $2,653,005. It should be noted that the money transferred by SIG and AUSP to Pharaohs Group related to all sites where SIG and AUSP provided security services, including the University.

Each Tuesday, SIG administration staff would email or text message Mr Elredi an instruction sheet identifying two matters. First, how much money Mr Elredi needed to withdraw, including the specific denominations. This sum usually matched both the weekly invoiced amount and the total transferred by SIG or AUSP to Pharaohs Group. Secondly, the email or text contained lists identifying how much money needed to be deposited into individual bank accounts. The second set of instructions was necessary because, rather than receiving cash, some guards preferred to have their money deposited into their bank account. These instructions identified the guards' account details and deposit amounts.

Mr Elredi told the Commission that, each Wednesday, he followed a settled banking procedure. He would attend one or both of the banks where Pharaohs Group held accounts and withdraw the cash amount in the denominations identified in the SIG instructions. The amounts exceeded $50,000. He would then attend the banks used by guards who wanted their money deposited and hand the bank tellers, first, a cheque payable to cash and, secondly, the list identifying account details and deposit amounts.

Mr Elredi would then deliver cash to SIG's offices, initially in Mascot and, from around November 2017, in Rockdale. Mr Elredi said he performed these tasks on behalf of AUSP and SIG for four years prior to the execution by the Commission of search warrants on 18 April 2018. He said he was paid $80 to $100 per week for performing these tasks. He also received $1,500, which later increased to $3,000, to assist Pharaohs Group meet its increasing financial and taxation liabilities.

Once Mr Elredi had delivered the cash, SIG administrative staff commenced processing the payroll. Ms Li and Ms Dai told the Commission that SIG administrative staff would count the cash, separate the individual amounts of cash to be paid to guards and then place that cash in envelopes with the guard's name written on the front of the envelope. The SIG guards and some SNP staff, who had carried out guard duties on behalf of SIG during the pay period, would then attend the SIG office to collect their envelope of cash. Cash collections took place at the SIG office in Mascot until November 2017. Thereafter, cash collections took place at an office location secured by SIG at Rockdale. Cash was collected from this office until the execution of the Commission's search warrants on 18 April 2018.

Finally, Mr Elredi told the Commission that, in addition to setting up this system of payment for SIG's guard force, Mr Sirour, for a fee, made Pharaohs Group system of off-the-books wage payments available to another security company, known as Paragon Risk Management Pty Ltd ("Paragon").

In NSW, it is compulsory for an employer to obtain from a licensed insurer, and maintain in force, a workers compensation policy. SIG maintained workers compensation policies between August 2016 and April 2018. A certificate of currency is a certificate issued to an employer by their insurer under a policy of insurance obtained by the employer that certifies the period from the date of its issue during which the employer is insured under the policy.

SIG held a certificate of currency from GIO workers compensation covering the period from 31 August 2015 to 31 August 2016, which stated that SIG had 25 security services workers, while the total annual wages estimated for the period of coverage was $237,255. SIG also held the following certificates of currency:

- GIO, covering the period from 31 August 2016 to 31 August 2017, which stated SIG had 30 workers and total annual wages of $300,000
- iCare workers compensation insurance, covering the period from approximately 4 September 2017 to 31 August 2018, which stated that SIG had 45 workers and total annual wages of $400,000.

The evidence (referred to below) indicates that SIG's certificates of currency for all periods of coverage between 31 August 2015 and 31 August 2018 inaccurately recorded both SIG's total number of workers and the total annual wages. The evidence shows that SIG had both more workers and higher total annual wages than were recorded on the certificates of currency.

During the public inquiry, Ms Li was asked by Counsel Assisting to review SIG's invoice to SNP for the week-ending 28 August 2016. The invoice identified all guards who SIG claimed had completed shifts at sites where SIG was SNP's subcontractor, including the University. Ms Li accepted that SIG's invoice identified approximately 80 different names of guards. Ms Li said SNP never queried why SIG's 2015–16 certificate of currency only covered 25 workers but SIG appeared to be billing in respect of a much larger number of guards.

The Commission accepts Ms Li's evidence. It is corroborated by SIG business records, which demonstrate SIG had more than 25 workers. The Commission is satisfied that SIG's 2015–16 certificate of currency inaccurately recorded only 25 workers worked for SIG during its workers compensation insurance period of coverage between 31 August 2015 and 31 August 2016. SIG business records show that as many as 80 workers were working for SIG during that period.

Further, SIG business records show that, for the weeks-ending 30 October 2016, 17 December 2017 and 15 April 2018, there were over 100 workers recorded on SIG's off-the-books payroll. These respective periods fell within SIG's 2016–17 and 2017–18 periods of workers compensation insurance coverage.

The Commission is satisfied that SIG's 2016–17 certificate of currency inaccurately recorded that only 30 workers worked for SIG during its workers compensation insurance period of coverage between 31 August 2016 and 31 August 2017. The Commission is also satisfied that SIG's 2017–18 certificate of currency inaccurately recorded that only 45 workers worked for SIG during its workers compensation insurance period of coverage between approximately 4 September 2017 and 31 August 2018. During both periods of coverage, SIG's true number of workers exceeded 100.

SIG's conduct enabled it to pay considerably less by way of workers compensation insurance premiums than would have been the case if it had not misled its insurers.

During the public inquiry, Ms Li gave evidence that, both the total number of workers and the estimate of total annual wages recorded on SIG's certificates of currency, only captured SIG employees who were on-the-books. Between 80% and 90% of SIG's workforce were paid off-the-books via Mr Elredi's company, Pharaohs Group; that is, they were paid "cash-in-hand".

For example, SIG business records show that SIG's total payroll (including payments made both on-the-books and off-the-books) for the week ending 28 August 2016 was $131,353. During that week, SIG's off-the-books payroll alone was $112,785.50. During the public inquiry, Counsel Assisting asked Ms Li whether, based on the payroll for the week ending 28 August 2016, SIG could exceed the total annual wages estimate recorded in the 2015–16 certificate of currency in approximately two weeks. She agreed. Ms Li's oral evidence is consistent with SIG business records described below.

An analysis prepared by the Commission of SIG's bank accounts was tendered during the public inquiry. The analysis showed all transfers from SIG's bank account to Pharaohs Group. The calculations below are derived from that document. The Commission is satisfied that SIG's transfers to Pharaohs Group were for the purpose of facilitating SIG's off-the-books cash payment system.

For example, between 1 January and 30 June 2016, SIG transferred $556,600 to Pharaohs Group. Based on these calculations, the Commission is satisfied that SIG's 2015–16 certificate of currency inaccurately recorded that SIG's total annual wages was $237,255.

Between 1 July 2016 and 30 June 2017, SIG transferred $4,170,727.11 to Pharaohs Group. However, it should be noted that during this period, Paragon transferred $665,222 to SIG, which SIG subsequently transferred to Pharaohs Group. Based on these calculations, the Commission is satisfied that SIG's 2016–17 certificate of currency inaccurately recorded that SIG's total annual wages was $300,000.

Finally, between 1 July 2017 and 30 June 2018, SIG transferred $4,497,973.60 to Pharaohs Group. Again, it should be noted that during this period, Paragon transferred $586,320 to SIG, which SIG subsequently transferred to Pharaohs Group. Based on these calculations, the Commission is satisfied that SIG's 2017–18 certificate of currency inaccurately recorded that SIG's total annual wages was $400,000.

Ms Li gave evidence during the public inquiry that, by using Pharaohs Group and the off-the-books payment system, depending on how many ad hoc shifts SIG workers claimed, Mr Sirour made up to $10,000 profit in a week; in part, by avoiding the payment of legal obligations such as workers compensation premiums, payroll tax and workers entitlements. Whether or not Ms Li's estimated profit figure is accurate, the evidence described above showed that SIG was making significant weekly cash transfers to Pharaohs Group for its off-the-books payroll, for which SIG was not paying workers compensation premiums, payroll tax and workers entitlements. such as superannuation. The Commission is satisfied that

Mr Sirour profited from the non-payment of these obligations.

Payroll tax in NSW is assessed on the wages paid or payable to employees by an employer whose total Australian taxable wages exceed the threshold amount. As prescribed by the *Payroll Tax Act 2007*, the threshold amount during each financial year between 1 July 2016 and 30 June 2018 was $750,000. The payroll tax rate during that same period was 5.45%.

Based on the calculations in the paragraphs above, the Commission is concerned SIG's off-the-books payroll may have exceeded the threshold amount under the *Payroll Tax Act 2007* in the financial years between 1 July 2015 and 30 June 2016, 1 July 2016 and 30 June 2017, and 1 July 2017 and 30 June 2018.

It was submitted on behalf of Mr Sirour that the Commission had not undertaken an investigation into:

- whether or not SIG lodged any payroll tax returns with the Chief Commissioner of State Revenue
- whether or not the Office of State Revenue had previously conducted an audit into SIG
- whether or not the Chief Commissioner of State Revenue previously made any assessments as to the payroll tax SIG owed
- whether, and in what amounts, SIG paid payroll tax.

It was also put that it was inevitable the Office of State Revenue had already conducted an audit into SIG and issued assessments to SIG for all relevant years. It was submitted that, for these reasons, the Commission should not make any findings or recommendations in relation to payroll tax.

The Commission does not propose to make any findings in respect of SIG and payroll tax; that is a matter for the Chief Commissioner of State Revenue. However, the Commission intends to disseminate its report to the Chief Commissioner of State Revenue so that the Commissioner can consider whether SIG has any unpaid payroll tax liability for the relevant financial years.

Counsel Assisting submitted that, by setting up the wages payment system detailed above, Mr Sirour acted with the intention of dishonestly causing a loss to a Commonwealth entity, and that Mr Elredi's evidence could be relied on in proof of such a charge.

Mr Sirour submitted that the evidence does not permit the Commission to draw any conclusions concerning the legality of Mr Sirour's conduct let alone draw any inference that the purpose of Pharaohs Group was to defraud the Commonwealth.

The submission of Counsel Assisting in relation to possible Commonwealth offences raises a jurisdictional issue in respect of the proper construction of s 74A(2) of the ICAC Act. It is addressed later in this chapter.

Mr Sirour submitted that the Commission should not rely on the oral evidence given by Mr Elredi and Ms Li. The Commission does not accept this submission. It is satisfied that Mr Elredi and Ms Li gave an accurate account of SIG's wages system. Their evidence is corroborated by SIG's business records. Those records make plain that a large weekly off-the-books cash payment system was in operation at SIG and, previously, at AUSP.

The Commission is satisfied that Mr Sirour assisted Mr Elredi to set up Pharaohs Group for the purpose of facilitating AUSP and SIG's cash payment system. The Commission is also satisfied that the cash payment system was likely set up by Mr Sirour so SIG and AUSP could avoid taxation obligations, including withholding tax, GST and payroll tax, and the payment of employee entitlements, such as leave, superannuation and workers compensation premiums.

Corrupt conduct

Taher (Tommy) Sirour

The Commission has jurisdiction to investigate allegations concerning any conduct of any person (whether or not a public official) that impairs, or that could impair, public confidence in public administration and which involves dishonestly obtaining or assisting in obtaining, or dishonestly benefiting from, the payment of public funds for private advantage.

As previously noted, University and SNP business records, in addition to a financial analysis conducted by the Commission, showed that the University paid SNP invoices for ad hoc guarding services monthly. This transaction plainly involved the payment of public funds. However, SNP usually paid SIG invoices for ad hoc guarding on a weekly basis. The 2015 University contract was a small part of SNP's business.

The Commission is not satisfied that money paid by SNP to SIG for ad hoc guarding services necessarily comprised part of the public funds paid by the University to SNP. Similarly, it is not satisfied that public funds were used to pay Pharaohs Group for the cash payment system. The Commission is not satisfied there is sufficient evidence to establish serious corrupt conduct on the part of Mr Sirour in relation to SIG's cash payment system.

Qin (Lynn) Li

Ms Li was a credible witness who fully cooperated with the Commission from the point of first contact. Her evidence was of considerable importance to the Commission's investigation. Without her assistance, much time and further resources would have been required to unravel SIG's financial records, the practice of ghosting at the University, and the wages payment system.

The Commission is satisfied that Ms Li was determined to assist the Commission and tell the truth. Her evidence was adverse to her own interests. However, she openly acknowledged that her conduct was wrongful. She acknowledged that the practice of ghosting at the University was dishonest and that SIG's cash payment system, which she assisted in implementing, was designed to avoid SIG's legal obligations.

The Commission is also satisfied that she performed her tasks at Mr Sirour's direction. Ms Li was vulnerable. The Commission accepts Ms Li's evidence that, in 2017, after she raised her concerns with Mr Sirour about the excessive hours being claimed "too many times", she was removed from any further involvement with the University. Mr Lu's evidence confirmed that, at the start of his involvement in the practice of ghosting, Ms Li raised concerns directly with him that he was making too much money. She said she was also concerned that, if she continued to raise her concerns with Mr Sirour, she might lose her job at a time when she had recently given birth.

It has already been noted that the Commission has a discretion in relation to making findings of corrupt conduct. The matters that the Commission takes into account when exercising this discretion have been addressed. Having considered all relevant matters concerning Ms Li's conduct, the Commission makes no finding of corrupt conduct in relation to Ms Li.

Section 74A(2) statement

The Commission is satisfied that Ms Li and Mr Sirour are "affected" persons for the purposes of s 74A(2) of the ICAC Act.

The Commission is not of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Ms Li for any criminal offence. Her email account was accessed and used by all SIG administrative staff. Mr Elredi also gave evidence that Ms Li had limited involvement in assisting him with regard to Pharaohs Group. For these reasons, the Commission is satisfied that, apart from her own inadmissible admissions, there is a lack of admissible evidence of criminal conduct on her part that would warrant seeking the DPP's advice.

Mr Sirour submitted that:

> [While] *it may be accepted that a limited investigation into payments Pharaohs Group made to affected persons was within the jurisdiction of the* [Commission], *the tax consequences of those payments for Pharaohs Group and SIG were not*.

He submitted that the Commission does not have jurisdiction to conduct "a generalised investigation into Pharaohs Group or its finances and tax returns or Mr Sirour's taxation affairs".

The Commission does not accept this submission. The financial affairs of Pharaohs Group, SIG, and Mr Sirour were directly relevant to the investigation of the delivery of security services and the practice of ghosting at the University.

The Commission considers that the reference to a "criminal offence" in s 74A (2) includes a Commonwealth offence. The words "criminal offence" in s 9 of the ICAC Act are defined to mean "a criminal offence under the law of the state or under any other law relevant to the conduct".

It is s 9 that imposes limitations on conduct that can amount to corrupt conduct. One limitation is the conduct could constitute a criminal offence. This includes a Commonwealth criminal offence. It would be an odd result if, having found that a person engaged in serious corruption based on the possible commission of a Commonwealth offence, the Commission would be hamstrung in terms of progressing the matter with a view to possible prosecution. That this was not Parliament's intention is supported by s 24 of the *Director of Public Prosecutions Act 1986*. Section 24 invests officers of the state DPP, including the director, with the power to prosecute offences under Commonwealth laws. There is a reciprocal power for the Commonwealth DPP to prosecute offences against state laws. The Commission is satisfied that the obligation created by s 74A(2) of the ICAC Act extends to Commonwealth offences.

It is relevant to consider s 135.1 of the *Criminal Code Act 1995* (Cth) ("the Criminal Code"), which provides:

> ***135.1 General dishonesty***
>
> *Obtaining a gain*
>
> *(1) A person commits an offence if:*
>
> *(a) the person does anything with the intention of dishonestly obtaining a gain from another person; and*
>
> *(b) the other person is a Commonwealth entity.*
>
> *Penalty: Imprisonment for 10 years.*

The Commission is satisfied that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, there would be grounds on which such a tribunal would find that Mr Sirour aided and abetted offences by SIG contrary to s 135.1 of the Criminal Code of dishonestly obtaining a gain from the Commonwealth in relation to SIG's cash payment system, including claiming false GST input credits and failing to pay withholding tax.

Section 14(1)(b) of the ICAC Act also empowers the Commission to furnish, during or after the discontinuance or completion of its investigations, evidence obtained in the course of its investigations (being evidence that may be admissible in the prosecution of a person for a criminal offence against a law of another state, the Commonwealth or a territory) to the Attorney General or the appropriate authority of the jurisdiction concerned.

In the circumstances, the Commission also proposes to disseminate this report to the Commonwealth DPP and the Commissioner of Taxation. If requested to do so, it will also disseminate relevant evidence it has gathered during the course of its investigation.

Chapter 6: Gifts and benefits received by Mr Smith

This chapter examines whether Mr Smith was offered and received, or agreed to receive, various gifts as a reward for him favouring SIG's commercial interests at the University or which might tend to influence him to favour those interests.

Mr Smith was not a credible witness. In important respects, the evidence he gave during a compulsory examination was at odds with the evidence given by him during the public inquiry. Much of what he said was also inconsistent with other reliable evidence before the Commission. A number of the explanations given by Mr Smith in relation to his own conduct and the conduct of others were inherently unlikely. These matters are addressed below.

Mr Balicevac was not a credible witness. Much of his evidence concerning Mr Smith was contradictory in significant respects. For example, during Mr Balicevac's compulsory examination on 15 June 2018, he was asked to describe his social relationship with Mr Smith. On that occasion, he said that he had only visited Mr Smith at his family home on the south coast of NSW on one occasion; namely, when he was returning from a family camping trip at Honeymoon Bay. However, during the public inquiry, Mr Balicevac told the Commission that he had visited Mr Smith at his house four or five times, including an occasion when he assisted Mr Smith in moving house and also when he dropped-off a Spiderman pinball machine in 2017 and subsequently re-collected it in 2018. The Spiderman pinball machine is addressed below.

Mr Smith's knowledge of relevant requirements

The University code of conduct, which was in operation at all times relevant to this investigation, provided that University staff:

> *…must not solicit nor accept gifts or benefits, either for themselves or for another person, which either might in any way, either directly or indirectly, compromise or influence them in their official University capacity or might appear to do so.*

It specifically provided that a staff member, who was in a position to confer a benefit on a third party, could not accept a gift from that party.

The code of conduct also provided that staff were required to comply with the University's External Interests Policy (2010), and promptly make full disclose to the University of facts and circumstances giving rise to a conflict of interest.

Mr Smith claimed he could not recall whether the code of conduct prohibited the receipt of gifts and benefits by University staff that might directly or indirectly compromise them. However, the evidence before the Commission established that, in August 2017, Mr Smith undertook online training in relation to various University policies. That included training on the code of conduct, which Mr Smith completed on 11 August 2017.

In his evidence to the Commission, Mr Smith agreed that he had completed the training and as a result had "a broad understanding of the code of conduct". The Commission is satisfied that Mr Smith was aware of the University's code of conduct and the prohibition on staff accepting gifts and benefits from contractors with whom they dealt. Such an understanding is consistent with the evidence he gave during his compulsory examination that he declined Mr Sirour's offer of gift cards and reported the offer to his manager. Mr Smith could not recall when he received the gift cards, although some were received around Christmas time.

The University's External Interests Policy (2010) was in operation at all times relevant to the Commission's investigation. The policy prohibited staff from permitting

their external, personal or financial interests to come into actual or perceived conflict with their duties to the University. The policy also required that all staff provide an annual declaration of external interests and imposed self-reporting obligations on staff to make a declaration after becoming aware of an external interest arising at any point after making the annual declaration.

During his compulsory examination in August 2018, Mr Smith told the Commission that he was not aware of the policy and had not completed any declarations under the policy. However, in February 2019, when giving evidence at the public inquiry about this policy, he said that, "I would have read it at some stage".

Mr Robinson, the CIS director, operated his own zero-tolerance policy in relation to the acceptance of gifts and benefits from contractors. He told the Commission that he made this clear to CIS staff by email and during all-staff briefings held annually in the lead up to Christmas. Mr Smith claimed not to be aware of Mr Robinson's zero-tolerance policy and told the Commission he could not recall attending any meetings at which Mr Robinson spoke of such a policy.

There was evidence before the Commission of two emails sent to all CIS staff reminding them of the University's policy. The first email, dated 15 December 2014, was sent by Louise Wagner, CIS executive officer, and reminded staff of clause 8 of the code of conduct prohibiting staff accepting a gift where the staff member is in a position to confer a benefit on the person providing the gift. The email also noted that:

> [t]*he Director has reiterated that all CIS staff cannot accept gifts and entertainment of* ***any value*** *from providers of goods and services to the University.* (emphasis in original)

Mr Smith claimed he could not recall that email.

The second email, dated 7 December 2015, was sent to all CIS staff by Kevin Duffy, CIS operations manager. In this email, Mr Duffy noted that:

> *CIS has a policy of not accepting any invitations to corporate events and/or gifts. This is very important given our responsibilities and accountabilities within the University and as a public authority.*

Although Mr Smith claimed not to recall the email, he agreed that it put him on notice that there was a policy of not accepting gifts. Although he claimed not to recall them, Mr Smith did not deny that he received or read the emails.

Given both emails were sent to all CIS staff, the Commission is satisfied that they were received by Mr Smith. They were sent by senior University officers and therefore it is likely that Mr Smith read them. The Commission is satisfied that Mr Smith had knowledge of the University's policy on the acceptance of gifts from at least 15 December 2014. If it matters, the University's policy would have been a given to any person who had served in public office. Mr Smith was a recently retired senior police officer.

The Commission is satisfied that, at all relevant times, Mr Smith was aware that he should not seek or accept gifts or benefits from those working at the University, particularly in circumstances where he was in a position to confer a benefit on the giver or the receipt of which might, or might be perceived to, compromise or influence him in the performance of his duties as an employee of the University.

Mr Smith's 2015 wedding anniversary

On 4 October 2015, Mr Smith and his wife were collected from their home by hire car and driven to the Shangri-La Hotel, Sydney, where they stayed that night

and the following night. On the evening of 5 October 2015, they dined at Wolfies restaurant in the Rocks. On 6 October 2015, they were driven home by hire car from the hotel.

Mr Smith did not pay for the hire car, the hotel or the restaurant either before or at the time he enjoyed those services.

Who paid?

On 28 September 2015, Mr Balicevac texted Mr Sirour:

> *Hi Tommy, For Monday 5th of October 2015 can we organize for Dennis dinner for 30 anniversary like QUAY Restourant* [sic] *like $250 no more then that*[.] *Or something like this.*

At 11.07 am, on 29 September 2015, the online hotel reservations portal, booking.com, sent an email addressed to Mr Sirour confirming that two nights' accommodation had been reserved for Mr Smith at the Shangri-La Hotel, Sydney, between 4 and 6 October 2015. The cost of the two nights' accommodation was $850.

A short time later, at 11.21 am, Ms Li sent an email from Mr Sirour's SIG account to the reservations team at the Shangri-La Hotel, Sydney, regarding the reservation. Ms Li attached a credit card authorisation form, authorising the Shangri-La Hotel, Sydney, to raise "all charges" on her credit card. She also arranged a dinner reservation at Wolfies restaurant using her credit card. Ms Li told the Commission that she used her credit card because Mr Sirour was not in the office at the time she arranged the booking. She said he paid her back for the hotel and restaurant costs charged to her credit card. It was her understanding that Mr Sirour met these expenses to maintain a good relationship with Mr Smith and to help protect SIG's position at the University.

Mr Balicevac, who was an SIG employee at the time, told the Commission he wanted to pay for the hotel and restaurant and arrange transport to thank Mr Smith for his efforts in seeing him being awarded a medal of valour in 2015 and for having SNP deal with him favourably following a harassment complaint. However, he later acknowledged that he intended payment as a reward for Mr Smith looking after him in his job. He said that, when Mr Sirour heard that Mr Balicevac intended to pay, Mr Sirour insisted on paying. Mr Balicevac acknowledged this was an example of how Mr Sirour pushed him to "buy" Mr Smith.

Mr Sirour submitted that Mr Balicevac was the "instigator and driver" of the gifted hotel stay and restaurant booking for Mr Smith, who "relied upon [Ms] Li to implement" it. He submitted the evidence shows that Ms Li was "actually responsible" for making the hotel and restaurant bookings.

The Commission rejects Mr Sirour's submission for the following reasons.

First, Mr Sirour's submission understates his actual involvement. The booking.com confirmation was emailed to Mr Sirour. Mr Sirour's name, along with Ms Li's, was recorded as the "contact name" on the restaurant's "credit card authorisation form". The only reasonable inference to draw from Mr Balicevac's text message on 28 September 2015 is that Mr Sirour would pay for Mr Smith's dinner on 5 October 2015. Further, Mr Sirour also texted Ms Li his approval for a former SIG guard to drive the hire car and receive payment of $250.

Secondly, it is inconceivable that Ms Li was "actually responsible" for paying, without reimbursement. It is common ground that Ms Li used her own credit card to pay for the hotel stay and restaurant. However, there is no reason why Ms Li would offer gifts to Mr Smith, nor is there any evidence that she received any benefit in relation to the practice of ghosting at the University. Ms Li told the Commission that, Mr Sirour, in consultation with Mr Balicevac, agreed to organise the hotel stay, the dinner and the hire car for Mr Smith. Her account is consistent with Mr Balicevac's text message on 28 September 2015, at least in relation to the 5 October 2015 dinner. She said that Mr Sirour and Mr Balicevac instructed her to take care of the administrative arrangements. The Commission accepts her evidence. The Commission is satisfied the hotel stay, restaurant and hire car were paid for by Mr Sirour.

In his submissions to the Commission, Counsel Assisting submitted that Mr Sirour gave the accommodation and dinner to Mr Smith as a reward for having the University's 2015 contract with SNP "agreed in terms". Mr Sirour, on the other hand, submitted that the evidence is unclear in relation to his intention in permitting those gifts to be booked.

The Commission does not accept Mr Sirour's submission. There is no direct evidence before the Commission about Mr Sirour's intention in permitting the accommodation and dinner to be booked. However, on the whole of the evidence, the Commission is satisfied that Mr Sirour paid for the accommodation and dinner as an inducement or reward for Mr Smith to use his position at the University to favour the interests of SIG in relation to the 2015 contract. The following matters are relevant.

On 10 August 2015, Mr Balicevac and Ms Li exchanged text messages regarding an employment opportunity for Mr Balicevac to move from SIG to SNP. At 11.51 am, Mr Balicevac texted:

> *Lynn as soon I get there as guarantee will bring them we gonna make easy way to get them. I be good with Dennis … When this happen, me, Daryl and Tommy to take Dennis to dinner etc … No one know…*

Mr Balicevac told the Commission the message was about allowing site-trained SIG guards to return to the University and that the dinner never took place.

Ms Li told the Commission that she understood the message meant that, if Mr Balicevac could get close with Mr Smith, he would be able to get more business for SIG, which she agreed was a good idea. She said she reported the message to Mr Sirour but was not sure if the dinner went ahead. The Commission is satisfied that, as at 10 August 2015, Mr Balicevac's intention, known to Mr Sirour, was to secretly take Mr Smith to dinner, accompanied by Mr Sirour and Mr McCreadie, to maintain a good relationship with Mr Smith and help get more business for SIG.

On 10 September 2015, the 2015 contract between the University and SNP commenced. SIG was SNP's subcontractor. On 29 September 2015, Ms Li booked the dinner at Wolfies restaurant, and accommodation at the Shangri-La Hotel, Sydney, for Mr Smith and his wife. Ms Li told the Commission that she could not remember why she was asked to book the dinner at Wolfies restaurant, except that it was agreed by Mr Sirour and Mr Balicevac and she was asked to organise it. The Commission is satisfied that, in lieu of the dinner proposed in the 10 August 2015 text message, Mr Sirour rewarded Mr Smith with dinner and accommodation to maintain SIG's relationship with Mr Smith and to help SIG secure more business following the commencement of the 2015 contract. The Commission is satisfied Mr Sirour's intention was to use Mr Smith's position at the University to favour the interests of SIG.

Mr Sirour also submitted that:

> *In relation to Mr Smith, given the overtness of the gifts the evidence may not establish that* [he] *approving the hotel bookings was corrupt. Gifts and patronage are common place in commercial transactions. Gift policies are in place to prevent conflicts of interest but not every gift from a client or supplier to an employee, even those of significant value, involves corruption or even an intention of receiving some future advantage. Most don't. The suggestion* [Mr] *Balicevac had that Mr Sirour may have wanted to provide gifts to more senior University officials suggests an openness that is contrary to any inference the potential gifts were intended to be corrupt.*

The Commission rejects this submission for the following reasons.

First, the gifts were not given to Mr Smith "overtly" or "openly" at all. The gifts were discovered by the Commission during its investigation. There was no record that Mr Smith declared these gifts to the University. The gifts were also accepted contrary to the University's policies.

Secondly, Mr Smith was a public official, acting in an official capacity or performing a public function. Mr Sirour paid for Mr Smith's accommodation, dinner and transportation during his 30th wedding anniversary celebrations in October 2015. It is relevant to consider whether, in giving Mr Smith these gifts, Mr Sirour's conduct was conduct that could adversely affect, either directly or indirectly, the honest or impartial exercise of Mr Smith's official functions. This is considered below.

Mr Smith's evidence

Mr Smith's evidence to the Commission concerning the weekend arrangements differed from that of Mr Balicevac. It was no less unsatisfactory.

Mr Smith claimed Mr Balicevac wanted to book the hotel and the restaurant (but not pay) as a gesture to Mr Smith on his wedding anniversary. Even though Mr Smith was capable of making the bookings he claimed he let Mr Balicevac organise the bookings. He also claimed he "would have" told Mr Balicevac that he intended to pay for the hotel and restaurant; although he was unsure about the exact words used. That evidence was inconsistent with his compulsory examination, where he specifically recalled telling Mr Balicevac, "I will be paying".

It beggars belief that merely booking a hotel and restaurant could reasonably be regarded as a gesture to enable another to celebrate the very personal occasion of a 30th wedding anniversary. Mr Smith was unable to explain why he did not make the bookings himself. The Commission rejects Mr Smith's evidence that the extent of Mr Balicevac's offer was booking the hotel and restaurant. It is satisfied that, at the very least, Mr Smith understood that he would not be meeting the cost of the hotel accommodation and restaurant.

Mr Smith and his wife were collected from their home in a hire car, for which Mr Smith had neither ordered nor paid. Upon check-in at the hotel, he was not required to provide a credit card as security for the cost of his stay. He told the Commission that the booking form for the hotel was given to him by Mr Balicevac in an envelope and he simply handed over the envelope when he arrived at the hotel without checking its contents. His actions in handing over the envelope without checking its contents and failure to query why the hotel did not require his credit card details is consistent with an understanding, on his part, that he was not responsible for payment of the hotel room.

Mr Smith also told the Commission he did not pay for the restaurant meal because the restaurant told him it was "covered" by a voucher.

On 6 October 2015, Mr Smith checked-out of the hotel and once again was not required to pay because he was told by the hotel staff that it was "covered". Shortly afterwards, Mr Smith and his wife were transported from the hotel back to their home in another hire car for which he made no payment.

Did Mr Smith know it was Mr Sirour who paid?

Mr Balicevac told the Commission that he never told Mr Smith that Mr Sirour was responsible for paying for the hotel accommodation and restaurant. He gave this evidence in spite of acknowledging that the hotel booking confirmation sheet dated 29 September 2015, which was in the envelope he gave to Mr Smith, was addressed to Mr Sirour.

While it is unlikely that, on Mr Smith's account, he did not read the contents of the envelope before handing it over to check-in to the hotel, there is insufficient evidence before the Commission to be satisfied that he knew on or before the time he arrived at the hotel that the hotel stay, including the restaurant bill, would be paid for by Mr Sirour. The Commission is satisfied Mr Smith knew he would not be paying.

There is, however, evidence Mr Smith subsequently became aware of Mr Sirour's involvement.

During the public inquiry, Mr Smith told the Commission that when he and his wife arrived home from the hotel on 6 October 2015, their car driver disclosed that he worked for Mr Sirour. Mr Smith claimed that was when he first realised that Mr Sirour had paid for the weekend.

This evidence was inconsistent with his previous compulsory examination evidence. There, he said that he discovered Mr Sirour's involvement when checking-out from the hotel. When that discrepancy was put to him during the public inquiry, Mr Smith said his compulsory examination evidence was an "error". The Commission does not accept that explanation. During the compulsory examination, Mr Smith repeatedly stated he became aware of Mr Sirour's involvement when checking-out of the hotel.

It may be that, initially at least, Mr Smith understood Mr Balicevac was to organise and pay for the expenses associated with the hotel stay and dinner. However, the Commission is satisfied that, by the time he checked-out of the hotel, he was well aware the cost had been met by Mr Sirour. Had Mr Smith been at all concerned with these circumstances, it would have been a simple matter for him to have insisted at checkout he pay the account and that any prepayment by Mr Sirour be credited to Mr Sirour.

Alleged repayment of the hotel stay and dinner

Both Mr Smith and Mr Balicevac told the Commission that, sometime after the weekend of 4 to 6 October 2015, Mr Smith provided Mr Balicevac with cash to cover the cost of the hotel stay and dinner.

Mr Balicevac told the Commission that, about three or four weeks after the hotel stay, Mr Smith gave him an envelope with approximately between $1,350 and $1,450 in cash to pay for the hotel and restaurant. He said Mr Smith did not explain to him why he was giving him the money other than, he said, "Emir, don't worry about [it]. You have a young family". Mr Balicevac said he subsequently handed the envelope containing the money to Mr Sirour.

Mr Smith claimed he gave Mr Balicevac about $1,250 at some time "around the first week" after the hotel stay. Mr Smith claimed his version was corroborated by Mr Balicevac's evidence. The Commission does not accept this submission. It is not clear why Mr Smith would give money to Mr Balicevac when, on his own evidence, he knew Mr Sirour had paid for the weekend and had told Mr Balicevac that he knew.

He accepted that, as a former police officer of 26 years standing, he understood the fact that Mr Sirour paying might be read the wrong way. In those circumstances, it would be expected that he would ensure any payment would be made directly to Mr Sirour or SIG and would be well documented, such as by way of a cheque or sending an email to Mr Sirour requesting a bank account into which he could make the payment. Instead, he told the Commission no written record was made of the payment.

Apart from the claims made by Mr Balicevac and Mr Smith, there is no evidence that any money was paid by Mr Smith to Mr Balicevac to cover the cost of the weekend. Neither Mr Balicevac nor Mr Smith are witnesses of credit. The Commission does not accept their evidence. The Commission is satisfied that Mr Smith did not give any money to Mr Balicevac to cover the cost of the weekend. The Commission is also satisfied that Mr Smith accepted payment of the weekend's accommodation, restaurant and transport costs as a gift from Mr Sirour.

Did Mr Smith disclose the gift?

Mr Smith told the Commission that, about a week after discovering that Mr Sirour was responsible for meeting the costs of the car, accommodation and dinner, he reported the matter to his supervisor, Morgan Andrews. He said he told Morgan Andrews, "there was a dinner and, a dinner and accommodation stay, it had been paid

by a third party and I'd given Emir [Balicevac] back the money". He was not sure whether he identified Mr Sirour or SIG in his verbal disclosure. No written disclosure was made. As noted above, the Commission is satisfied that Mr Smith did not give Mr Balicevac any money to pay for the weekend.

Morgan Andrews was not called to give evidence at the public inquiry but provided a statement, in which he recounted the following:

> *I have a recollection that Mr Smith stayed in a hotel in Sydney CBD in October 2015 for his 30th wedding anniversary and we would have generally discussed it. I do not recall Mr Smith specifically telling me that Emir Balicevac had paid for the room or a dinner. I can say that, had Mr Smith informed me that Mr Balicevac paid for Mr Smith's hotel room, this would have stuck out in my mind and I should remember it. I did not independently recall the name of the hotel and did not connect that event with Mr Balicevac at all previous to the public hearing.*

Mr Smith declined the opportunity to seek to have Morgan Andrews called to the public inquiry so he could be cross-examined on his evidence.

Mr Smith submitted that the Commission should not rely on Morgan Andrews' evidence because it was speculative and it would not be admitted in "any court proceedings".

The Commission rejects that submission.

The Commission is satisfied that, had Mr Smith disclosed to Morgan Andrews that he had repaid Mr Balicevac for the cost of accommodation and a dinner, Morgan Andrews would have recalled it. All staff were aware that the University had a no-gifts policy. The policy existed in part because the University recognised it was a public authority. To have disclosed the receipt of a sizeable benefit from a company or individual, who had a significant financial interest in services provided to the University, would have been a memorable event. The Commission is satisfied that Morgan Andrews did not recall Mr Smith's alleged disclosure because no such disclosure was made.

Hotel booking for Mr Smith in March 2017

On 22 February 2017, Ms Li and Mr Balicevac began exchanging text messages concerning another accommodation booking for Mr Smith at the Shangri-La Hotel, Sydney. During this exchange, Mr Balicevac informed Ms Li that, while it did not matter which five-star hotel was selected, "he [Mr Smith] prefer good view to be honest".

On 27 February 2017, Ms Li emailed the reservations team at the Shangri-La Hotel, Sydney, regarding Mr Smith. Attached to this email was a credit card authorisation form with Mr Sirour's credit card details. The email authorised the hotel to raise "all charges" on Mr Sirour's credit card during Mr Smith's stay between 17 and 19 March 2017. Later that day, the Shangri-La Hotel, Sydney, confirmed with Ms Li that Mr Smith's reservation was for a "Deluxe Grand Harbour View King Bedroom" and that, "once the guest checks out, we will provide you with an invoice".

On 14 March 2017, Ms Li and Mr Balicevac exchanged text messages (as follows) concerning the possibility that Mr Smith might need to cancel the hotel booking because his mother-in-law had been hospitalised.

- At 1.25 pm, Mr Balicevac texted: "can this be moved or canceled [sic] with no cost to tommy or not".
- At 1.32 pm, Mr Balicevac texted: "He saying if can't he will still go he just worried costing Tommy to cancel".
- At 1.35 pm, Mr Balicevac texted: "He is next to me". Ms Li replied by text that the booking could be cancelled without incurring any fees until 16 March 2017.
- At 1.36 pm, Ms Li texted: "Please tell Dennis, we can rebook for him anytime he wants", to which Mr Balicevac replied by text, "Yep will do".

The evidence is that Mr Smith did not stay at the hotel in March 2017.

Mr Smith told the Commission he did not know about any proposal that he stay at a hotel to be paid for by Mr Sirour. He submitted that, even if he did know that Mr Sirour would be paying for a hotel, he never agreed to accept such an arrangement. The Commission does not accept this evidence.

It is inconsistent with the unchallenged evidence of Mr Balicevac, who said that he told Mr Smith that Mr Sirour was arranging for him to stay at a hotel in March 2017. He said he told Mr Smith that, "Tommy [was] looking to get you things" and that, "Tommy [was] arranging you a booking for here". Mr Balicevac said Mr Smith was "okay" with the proposed arrangement but told him that it was a "bit risky" because he was not meant to "receive these kind of things" at work. Mr Balicevac's evidence is supported by the text messages that passed between him and Ms Li.

The Commission is satisfied that Mr Smith agreed to accept a further hotel stay at the Shangri-La Hotel, Sydney, in March 2017 and he knew it was to be paid for by Mr Sirour.

The hotel booking for March 2017 coincided with discussions between Mr Smith, Mr McCreadie, Mr Balicevac, Mr Sirour and Ms Li about a potential opportunity for SIG or another company linked to Mr Sirour to acquire more work at the University.

On 14 March 2017, at the same time that Ms Li and Mr Balicevac were exchanging messages about Mr Smith's upcoming stay at the Shangri-La Hotel, Sydney, they were concurrently exchanging messages about another company linked to Mr Sirour named "Triton". The text message exchange contemplated the possibility Triton could contract directly with the University in relation to security services for the University's Fisher Library and perform other duties at the University, including guarding, locking and unlocking.

There was evidence before the Commission that Mr Sirour was hopeful that SIG might contract directly with the University at some stage. However, if this occurred, it was likely to create a contractual problem between SIG and SNP.

One way to overcome this problem was for Mr Sirour to create a new company, Triton, which was not outwardly linked to him. Instead, the company director, Ramy Khalifa, was an associate of Mr Sirour, while Ms Li was also a director of the company. If Triton did secure a contract at the University, Mr McCreadie told the Commission that it was Mr Sirour's plan to purchase Triton after about three months.

Mr McCreadie said he discussed with Mr Smith the possibility that SIG would directly tender for guarding services at the University. He told the Commission he "flagged" with Mr Smith that Mr Sirour would probably put forward a quote for services under a different business name and that Mr Sirour's name would not be on the master security licence. He told the Commission that Mr Smith was unconcerned by this plan. Mr McCreadie recalled Mr Smith just shrugged his shoulders, which he took as an indication that Mr Smith would wait and see what happened.

In addition to Mr McCreadie's evidence, Mr Balicevac also gave evidence that he discussed with Mr Smith introducing Triton to the University.

On 13 March 2017, Mr Balicevac exchanged text messages with Ms Li, stating that Mr Smith was looking at ways to "put SIG in", "without conflicts". The messages also stated the alternate company would offer a cheaper hourly fixed-rate for guarding services than SNP by approximately $4 per hour. Mr Balicevac stated they should use Triton, because it was "to [sic] dangerous" to use SIG. Ms Li then advised that a security master licence "has been done" and she would deal with Triton's public liability and workers compensation insurance.

On 15 March 2017, Mr Balicevac texted Ms Li stating, "Dennis approaching Uni to create account code". Ms Li replied, "No problem. We just opened bank account today". Later that day, Mr Balicevac texted Ms Li stating, "SNP contract have been opened", immediately followed by messages stating "Dennis is looking in" and "Talking to finance team". Shortly afterwards, he sent the following text messages to Ms Li, "Finance team have given approval to Dennis" and "Now we looking close in contract SNP can't sue us".

Mr Smith said he did not know if he spoke to the finance team at the University around 15 March 2017 to have Triton approved as a supplier to the University. He rejected the proposition that the text messages suggested the SNP contract was being broken up, that he was talking to finance about this opportunity, and he had set up an account code for the new company. Mr Smith said the text messages did not make sense.

Mr Sirour made no submissions in relation to Triton.

There was no evidence before the Commission indicating that Triton was ever approved as a supplier to the University, or that the University had created an account code for the company. While the Commission is satisfied that Mr Smith had knowledge of Triton and that it might be used by Mr Sirour to obtain University work, it is not satisfied that Mr Smith was working with Mr Balicevac and Mr McCreadie to obtain work for Mr Sirour.

Mr Sirour submitted that it is unclear on the evidence what his intention was in permitting the March 2017 hotel stay to be booked.

There is no direct evidence of Mr Sirour's motivation for purchasing Mr Smith another five-star hotel stay. However, in light of all of the other evidence, the Commission is satisfied that Mr Sirour purchased the March 2017 hotel stay as a reward for Mr Smith's future assistance in helping SIG, or any other company linked to Mr Sirour, to contract directly with, or acquire more work at, the University.

The Spiderman pinball machine

On 28 October 2016, Mr Balicevac sent an email to Mr Smith with a link to the Zax Amusements Pty Ltd ("Zax") website. Zax sells pinball machines. The website displayed a number of pinball machines for sale between $10,000 and $14,000. One of the models was a Spiderman Vault Edition pinball machine, which cost $10,650. The sole message in the email was "President said do not look price only what you like".

During the public inquiry, both Mr Balicevac and Mr Smith were asked about this email and in particular

about the identity of the "President" and the meaning of the words "do not look price only what you like".

Both Mr Balicevac and Mr Smith told the Commission that the "President" was the president of the Serbian Club and that Mr Balicevac intended to purchase the machine through that club. Mr Balicevac told the Commission that the Serbian Club was located in Elizabeth Drive in Bonnyrigg. Mr Balicevac claimed that, by ordering it through the club, he could obtain a price discount.

Neither Mr Balicevac nor Mr Smith were able to identify the name of the president when asked by Counsel Assisting during the public inquiry. However, both Mr Balicevac and Mr Smith gave evidence that the president's first name was Boris.

The Commission rejects the evidence of Mr Smith and Mr Balicevac. There was no reference to any discount or the Serbian Club in any of the email correspondence between Mr Balicevac and Zax. The order form was made out to Mr Balicevac, not the Serbian Club or its president. That is because the machine was not purchased through either. Although the order form contained a column in which any discount could be entered, no discount was identified. Mr Balicevac admitted he did not obtain any discount.

The Commission obtained a number of statements from office holders of the Serbian Centre Club ("the Serbian Club"), trading as Bonnyrigg Sports Club, at 610 Elizabeth Drive, Bonnyrigg. One such statement was provided by Nick Nikola Maric, who had been a member of the Serbian Club since 1995, and was president of the Serbian Club between November 2014 and February 2017.

Mr Maric did not know Mr Balicevac. Further, he did not know any person named Boris who had ever been president, although he had heard that a Boris had been general manager in about 1990/1991. The general managers of the club were responsible for purchasing gaming machines but only with board approval. Although the Serbian Club had a few "amusement games" for children they were not owned by the club. Rather, they were supplied by a company that retained ownership and the Serbian Club received payments for having them onsite. Mr Maric had never been asked by anyone to assist them in the purchase of any gaming or amusement machines.

Joseph Di Pietrantonio also provided a statement. He commenced employment as the chief executive officer (CEO) of the Serbian Club on 18 November 2019. He said the club's CEO is responsible for the purchase of gaming machines. The club purchased gaming machines from licensed gaming machine suppliers such as Aristocrat and Ainsworth. The club did not use Zax as a supplier; indeed, he had never heard of that business. Further, after reviewing the business records of the club, he was unable to identify anyone named Boris who had held the office of president at any time. The only person of whom he was aware called Boris was the general manager, Boris Belevski, who held that position in 2004–05. He advised the Commission that Mr Balicevac was not a member of the Serbian Club.

A statement was provided by Mr Belevski. He was not general manager but secretary of the Serbian Club in 2004–05. He had never served as president. Although he was responsible for the club's gaming machines, he had no reason nor ability to source pinball machines at a discounted rate for members or other persons connected to the club. Mr Belevski did not know Mr Balicevac.

Mr Balicevac and Mr Smith were given the opportunity to respond to the matters raised in the statements from past and present office holders of the Serbian Club.

No response was received from Mr Balicevac. Mr Smith submitted that:

> *…the registered club (Bonnyrigg Sports) and the Serbian Club referred to in* [the statements obtained by the Commission] *do not appear to be the same entity or location to which Mr Balicevac referred to.*

The Commission rejects Mr Smith's submission for the following reasons. First, in his evidence, Mr Balicevac said the Serbian Club was located on Elizabeth Drive, Bonnyrigg. That is the same location identified in the statements from officeholders of the Serbian Club. Secondly, in his statement, Mr Belevski said that the Serbian Centre Club, trading as Bonnyrigg Sports Club, at 610 Elizabeth Drive, Bonnyrigg, was formally the Serbian Community Club. The Commission is satisfied that the Serbian Club is the same entity and has the same location as identified by Mr Balicevac during the public inquiry.

The Commission is satisfied that no person named Boris ever occupied the office of president of the Serbian Club. The Commission is further satisfied that the Serbian Club never sourced anything from Zax. The evidence of Mr Balicevac and Mr Smith concerning the involvement of the Serbian Club and Boris was a fabrication.

Although Mr Balicevac denied that the "President" was Mr Sirour, there is other evidence from which it may be inferred that the reference was to Mr Sirour.

On 8 April 2017, Mr Smith sent the following SMS to Mr Balicevac: "president surprised when SNP want move on / I hatch plan rtn and get promoted ☺ " . An available inference to be drawn from the reference to SNP is that "president" meant the head of SIG; namely, Mr Sirour.

On 2 January 2018, Mr Balicevac sent another SMS to Mr Smith in the following terms: "President said big thank you". Later that day, Mr Smith sent an SMS

to Mr Balicevac advising: "No issue we look after the president haha". Mr Smith said these messages concerned an expression of gratitude from the president of the Serbian Club to him for allowing Mr Balicevac to perform an administrative task, requested by the president, during working hours. He said that the word "we" in his message should be interpreted as a reference to himself. He denied that the president was a reference to Mr Sirour.

In his submissions, Mr Sirour claimed that he was not the person referred to as the president but was unable to advance any credible alternative.

The Commission is satisfied the words "do not look at price only what you like" in Mr Balicevac's email of 28 October 2016 meant Mr Sirour and Mr Balicevac intended Mr Smith would choose a pinball machine for his own use and that, in doing so, he need not concern himself with the cost of the machine.

Both Mr Balicevac and Mr Smith denied the pinball machine was a gift to Mr Smith.

Mr Balicevac's explanation for the email was that he asked Mr Smith to select the pinball machine but that it was for his own use and that of his children, not for Mr Smith. He claimed he did not mind what machine was selected as long as it had a comic-book character.

Mr Smith told the Commission that Mr Balicevac wanted to purchase a pinball machine for Mr Balicevac's children but did not care about the type of machine, provided his children would be able to use it when they got older. Mr Smith selected the machine for Mr Balicevac to purchase.

The evidence of Mr Balicevac and Mr Smith was unconvincing. The Commission does not accept that Mr Balicevac intended to purchase a pinball machine, worth approximately $11,000 for himself, or that he left it to Mr Smith to select the actual model. Indeed, it was Mr Smith's evidence that one reason he was involved in selecting the machine was because "it was coming to me, pretty much, in the first instance". Mr Smith's claim, that this was because he had agreed to rent the machine from Mr Balicevac, is addressed below.

Who paid?

Sometime before 10 November 2016, Mr Balicevac contacted Zax to purchase the pinball machine.

On 10 November 2016, Zax sent an email to Mr Balicevac attaching an order form for the purchase of a Spiderman pinball machine. The order form noted the price to be paid was $10,870; made up by $10,650 for the machine and $220 for freight and handling. The delivery address noted on the order form was Mr Balicevac's home.

Mr Balicevac did not have enough money to cover the purchase price of the pinball machine and therefore sought contributions towards the price from Mr Lu, Ms Li and Mr Sirour.

On 10 November 2016, about 30 minutes after receiving the Zax email, Mr Balicevac sent an email to Zax, copied to Mr Lu, that stated: "Please find attached credit card and drivers licence details. Frank will place call shortly". Attached was a copy of Mr Lu's NSW driver's licence and an American Express credit card payment authorisation form in Mr Lu's name for the amount of $6,000.

Mr Lu told the Commission that Mr Balicevac wanted to buy a pinball machine to give to Mr Smith and asked Mr Lu to contribute to the cost because they had made money from the University. He saw the invoice for the pinball machine and used his credit card to pay his share, which he thought was either $6,000 or $8,000 (as mentioned above, his payment was $6,000). He did not know if Mr Balicevac contributed towards the purchase price. He did not know whether Mr Smith was ever told he had contributed towards the purchase.

Mr Balicevac said that the money from Mr Lu was a loan to enable him to buy the pinball machine, which he later repaid.

Mr Lu denied he loaned Mr Balicevac any money to purchase the pinball machine or that Mr Balicevac repaid him any amount. That Mr Lu was not repaid is consistent with SIG business records. Those records identify an occasion where Mr Balicevac repaid an outstanding personal loan of $500 to Mr Lu in October 2016. However, there is no evidence in those records of $6,000 being paid to Mr Lu in November or December 2016.

Ms Li told the Commission that Mr Balicevac told her he wanted to purchase a "machine" for Mr Smith, although she said she did not know what kind of machine he wanted to buy. She understood Mr Balicevac's purpose in giving the "machine" to Mr Smith was to get closer to Mr Smith so "Dennis [Smith] can help". Ms Li said Mr Balicevac asked for help to fund the purchase. She approached Mr Sirour but he refused. She believed that was because Mr Sirour understood the machine would be a gift from Mr Balicevac, not him.

Ms Li contributed $1,500 towards the purchase because she believed it was important to maintain a good relationship with Mr Smith. On 2 December 2016, she deposited $1,500 into the Zax bank account. She said Mr Sirour changed his mind about contributing and agreed to also provide $1,500 towards the purchase.

Shannon Keevers, Zax workshop manager, provided a statement to the Commission in which he provided a summary of Zax's online bank statements. These recorded

that Mr Sirour deposited $1,500 into the Zax bank account on 5 December 2016. In both the public inquiry and in text messages exchanged between Mr Balicevac and Ms Li between 7 and 8 December 2016, Mr Balicevac said he subsequently repaid both Ms Li and Mr Sirour. Text messages exchanged between Ms Li and Mr Balicevac between 7 and 12 December 2016 are consistent with Mr Balicevac's account that he repaid $1,500 to each of Ms Li and Mr Sirour.

The outstanding amount of $1,870 was paid by Mr Balicevac using his credit card.

The Commission is satisfied that Mr Lu contributed $6,000 towards the purchase of the machine and that, ultimately, the final outstanding balance was borne by Mr Balicevac.

What happened to the pinball machine?

The pinball machine was delivered to Mr Balicevac's home in mid-December 2016. Mr Balicevac told the Commission that he wanted the machine for a games room he was intending to build in his house. He did not build a games room and the machine found its way to Mr Smith's home in about January 2017. Both Mr Balicevac and Mr Smith claimed this was because Mr Smith had agreed to rent the machine from Mr Balicevac for $50 per week.

There was no written rental agreement and both claimed all payments were made in cash. Although Mr Smith said that he did not make payments on a regular basis, he did not keep a record of his payments to ensure they were up-to-date.

Mr Balicevac said he only decided to rent the machine to Mr Smith sometime after the order was placed on 10 November 2016. That is inconsistent with Mr Smith's evidence that he knew he would be renting the machine at the time he was involved in its selection. He told the Commission that, although he was not particularly interested in pinball machines, "I was thinking of retiring and it was something that … may interest me". Renting the machine was not inexpensive. It is therefore surprising he would negotiate to rent something that "might" merely interest him.

During their compulsory examinations, both Mr Balicevac and Mr Smith were asked about the nature of their interactions with one another. Neither mentioned their connection with the pinball machine, nor the rental agreement. During the public inquiry, Mr Smith said he had not disclosed the machine in his compulsory examination because he understood the Commission was only interested in whether he had received any gifts and the machine had not been a gift. The questions asked of Mr Smith and Mr Balicevac about their relationship were broader than the exchange of gifts. If there were a legitimate rental agreement for a pinball machine, it should have been disclosed.

According to their public inquiry evidence, the rental agreement ended around Australia Day 2018. Mr Balicevac told the Commission he intended to collect the pinball machine from Mr Smith's house, but he was unable to collect it at that time so it remained in Mr Smith's possession.

When the Commission executed search warrants on 18 April 2018, Mr Balicevac was on holiday on Moreton Island in Queensland. He returned home in late April 2018. In May 2018, he borrowed a friend's van to collect the pinball machine from Mr Smith's house. He said Mr Smith expressed a concern to him that the rental arrangement might be misinterpreted and that it might look like Mr Balicevac bought the machine for Mr Smith.

Mr Smith disputed Mr Balicevac's evidence that he told Mr Balicevac holding the pinball machine might be misinterpreted as being a gift. He said he had a legitimate agreement with Mr Balicevac, and that the machine was returned to Mr Balicevac because the agreement was over and Mr Balicevac was taking it back for his children.

The Commission is satisfied that the pinball machine was in Mr Smith's possession from about January 2017 to about May 2018.

Mr Lu's telephone call and the meeting on 23 April 2018

On 23 April 2018, the Commission lawfully intercepted a telephone conversation between Mr Lu and Mr Balicevac, who was still on holiday on Moreton Island. Mr Lu told Mr Balicevac that he was waiting to meet Mr Smith at Broadway Shopping Centre, near the University. Mr Balicevac told Mr Lu that, if Mr Smith asked him about the pinball machine, that he was to pretend he did not know what Mr Smith was talking about.

Mr Balicevac was unable to provide any explanation to the Commission for asking Mr Lu not to mention the pinball machine to Mr Smith. Mr Lu told the Commission that he did not know why Mr Balicevac did not want him to talk to Mr Smith about the pinball machine.

According to Mr Smith, he organised the meeting at Broadway because he was worried about Mr Lu's wellbeing following the Commission executing search warrants on 18 April 2018. He said he told Mr Lu to tell the truth to the Commission's investigators if they spoke with him. Mr Lu recalled, however, that Mr Smith told him he should not mention any of the gifts that Mr Smith had received, including the gift cards that he had given to

Mr Smith on Mr Sirour's behalf. When asked by Counsel Assisting for his response to Mr Lu's recollection of their conversation, Mr Smith could only offer, "I don't recall saying it".

There is no evidence that the pinball machine was mentioned at the meeting. Indeed, Mr Lu recalled it was not mentioned.

Mr Smith gave inconsistent evidence about the nature of his social interactions with Mr Lu. During the public inquiry, Mr Smith said he only ever saw Mr Lu once off campus, being the occasion at Broadway. However, in his earlier compulsory examination, he said he "never socially engaged with [Mr Lu] outside of work at any place". At the time of Mr Smith's compulsory examination, he was unaware of the lawfully intercepted telephone conversation between Mr Lu and Mr Balicevac, which indicated the meeting at Broadway.

The Commission accepts Mr Lu's evidence he was told by Mr Balicevac that he wanted to buy the pinball machine for Mr Smith to thank him for having made money from the University. That Mr Balicevac wanted to buy the machine for Mr Smith is also consistent with the evidence given by Ms Li.

That Mr Smith selected the pinball machine, which he understood was to be paid for by Mr Balicevac, and that he knew that it would be coming to him at the time of selection, is consistent with him understanding it was to be a gift. Although the machine was returned to Mr Balicevac in May 2018, the Commission is satisfied this was not because any rental agreement had been terminated but because by then both Mr Balicevac and Mr Smith were aware of the Commission's investigation and wanted to remove the machine from Mr Smith's house in order to be able to deny it had been a gift.

The Commission is satisfied that there was no rental agreement between Mr Smith and Mr Balicevac and that both Mr Balicevac and Mr Smith understood the pinball machine was a gift to Mr Smith.

Mr Smith agreed he had discussions with Mr Balicevac about changes at the University and the ability of SIG, or any other company associated with Mr Sirour, getting more work but he had emphasised it needed to be through a tender or contract.

It is appropriate to make some observations about what Mr Smith could actually do for SIG.

Mr Balicevac told the Commission there were two ways SIG, or Triton, could get additional ad hoc work at the University. The first option involved formal procurement. He said a "finance or [procurement] person" at the University told him that, if the University were looking to acquire something for more than either $100,000 or $200,000, it had to go to tender. He said Mr Smith's response to this information was, "Look, this is too messy, I'm not interested in this…". He said the second option involved Mr Smith using some leverage with Mr Hardman to influence the outcome of the procurement process. He said he understood that Mr Smith would "get Simon [Hardman] to get Tommy [Sirour]". He could not recall if Mr Smith told him this, but it was his understanding.

After Mr Balicevac gave this evidence during the public inquiry, he was shown a document that appeared to corroborate his account. On 4 July 2017, Mr Balicevac texted Ms Li and attached an undated screenshot of a text message Mr Balicevac received from Mr Smith. The screenshot of the text message from Mr Smith read:

> *Ues ling talk him last night/ just few details/ tell tommy hav nkt fogtot but gunna do diff way/ not procurment too hard/ I gunna use hardman leverage.*

After being shown this message in the public inquiry, Mr Balicevac said he understood the message to mean that Mr Smith would use some power or leverage over Mr Hardman to get Mr Sirour more ad hoc work at either the Fisher Library or locking-up and unlocking buildings. He said ultimately nothing happened because Mr Smith may not have asked Mr Hardman and it involved "too much paperwork". He said Mr Smith said, "just leave it alone" and that, "Tommy [Mr Sirour] never got this job".

Mr Smith also gave evidence about the screenshot text message. During the public inquiry, he said:

- "tell tommy hav[e] n[o]t fo[rg]ot" meant Mr Sirour had asked to apply for work at the University and he had not forgotten
- "not procurment too hard" meant there was a "process question" about if Mr Sirour was allowed to apply and his indication was that it would be going through procurement (he denied it meant he was not going to use procurement because it was too hard)
- "use hardman leverage" meant Mr Hardman, who was about to commence working at the University, was arriving with a reputation of "actually getting things done". He said he, who had been covering Mr Hardman's position for about a year, "couldn't do all the … strategic stuff and keep the operations going." He denied that it meant he was trying to involve Mr Hardman because he had some leverage over him.

The Commission does not accept Mr Smith's evidence about the "hardman leverage". Instead, the Commission accepts Mr Balicevac's evidence. Mr Balicevac's account is corroborated by the undated screenshot text message

from Mr Smith that Mr Balicevac sent to Ms Li on 4 July 2017.

The Commission is satisfied that, in the event that SIG or any other company associated with Mr Sirour applied for additional ad hoc work at the University, Mr Smith had planned to influence the outcome of a procurement process to assist SIG, or any other company associated with Mr Sirour, get more work at the University. There is no evidence that Mr Smith's plan ever eventuated. However, the Commission is satisfied that influencing the outcome of the procurement process was one way that Mr Smith intended to assist SIG get more ad hoc work at the University.

Having regard to the whole of the evidence, the Commission is satisfied that the purchase of the pinball machine was organised by Mr Balicevac and accepted by Mr Smith as a reward for Mr Smith using his position at the University to favour the interests of SIG.

The 2018 overseas tickets

As discussed in chapter 3, on 10 April 2018, SNP sent an email to Mr Sirour (copying in Mr McCreadie) confirming that SNP no longer required the services of SIG at three sites, including the University, effective from 8 May 2018. SNP probably determined this action on 9 April 2018, as Mr Balicevac forewarned Mr Smith of SNP's intention to terminate the contract with SIG by text message on that day.

On 11 April 2018, Mr Smith, Mr McCreadie and Mr Balicevac "scrum[med] down" and attended a meeting that, Mr McCreadie said, he organised to protect Mr Sirour and ensure there was no change at the University. There is no evidence that Mr Smith knew Mr McCreadie and Mr Balicevac were, on their admission, trying to "save" Mr Sirour. Mr Smith said he was concerned about the "operational needs" of the University if SIG guards were removed. During the meeting, it was decided that Mr Smith would contact Mr Roche to persuade him to allow SIG to remain a subcontractor at the University.

Mr Smith told the Commission that he drafted an email to Mr Roche following a discussion with his manager, Mr Hardman, who approved it to be sent. There was no record of this discussion, nor was Mr Hardman sent the email that Mr Roche ultimately received.

At 12.24 pm, on 12 April 2018, Mr Smith emailed Mr Roche about SNP "moving on" SIG. Mr Smith stated, "[t] his is a perilous decision for me (University of Sydney)" because, among other reasons, approximately 10 SIG guards held positions of "critical" importance for "my daily operations at this site". He stated that replacing those people with guards that had not been trained or inducted "will cripple my operations". He stated, "I am requesting business as usual for this University in terms of the ad-hoc supplier". He concluded the email stating:

> *I have NOT received an official email request to accede to the new supplier, but realistically for THIS SITE (University of Sydney) I don't want to get it and have to answer it in an official capacity and send it up the chain*. (emphasis in original)

Mr Smith's email to Mr Roche was misleading. He claimed he did "not personally know the owner of S International Group". It also falsely stated that, "[T]here has not been 1 breach of the KPIs for operations/guarding at this site since the inception of the contract in 2015". As discussed in chapter 9, Mr Smith knew certain KPIs were not being monitored adequately, if at all.

Mr Robinson told the Commission that he first learned of Mr Smith's email of 12 April 2018 to Mr Roche during the public inquiry. Mr Robinson's unchallenged evidence was that the opinions expressed by Mr Smith in the email did not reflect the University's position, which was not to coerce SNP to retain SIG as its subcontractor. He said Mr Smith should not have written to Mr Roche without having consulted him, Mr Hardman (and there is no record that Mr Smith did do so) or Ben Hoyle (deputy director, campus services, CIS). Indeed, he said that Mr Hoyle's position was "very different to the notion of keeping SIG". Further, he said changing subcontractors, in circumstances where there was continuity with the security services contractor, could have been achieved within a one-month period.

Mr Smith denied he was "going in to bat" for Mr Sirour. He said he was advancing the "operational needs" of the University. The Commission does not accept that Mr Smith was advancing the "operational needs" of the University. So much is clear from the evidence of Mr Robinson.

The Commission is satisfied that Mr Smith was not acting on behalf of the University, or in the University's interests, when sending the email to Mr Roche on 12 April 2018. The Commission is satisfied that Mr Smith was acting in the interests of SIG.

At 3.08 pm, on 13 April 2018, Fawad Walizada, SNP's work health and safety national manager, notified Mr McCreadie that SIG would continue as an SNP subcontractor at "Sydney Uni only". The following communication exchange took place later that day.

- At 3.47 pm, Mr McCreadie notified Mr Smith by email of SNP's decision.
- At 3.54 pm, Mr Smith texted Mr Balicevac:

"Tom put hold on swap subby / thT is a start / dazza gunna tell tommy tell him act low".

- At 4.35 pm, Mr Smith texted Mr Balicevac: "He happy tommy" and "Reprieve for a while".
- At 4.37 pm, Mr Balicevac texted: "Thank you boss" and "He is over the moon".
- At 4.51 pm, Mr Smith texted: "Thanks for today / I even have other idea if they shunt snp keep tommy / for some Positions but I keep myself a".

Mr Smith was not able to explain to the Commission the meaning of these messages.

On 15 April 2018, Mr Roche responded to Mr Smith, stating that SNP had indefinitely put on hold plans to change contractors at the University. At 6.24 am, on 16 April 2018, Mr Smith emailed Mr Roche and thanked him for his response.

On 16 April 2018, Ms Li exchanged text messages with Mr Sirour, as follows.

- At 10.29 am, Ms Li texted: "Tommy, emir ask me to reminder you about organising gift for Dennis".
- At 10.35 am, Mr Sirour responded by text: "Yes pls".
- At 10.36 am, Ms Li texted: "What do u wanna me to organise?".
- At 10.37 am, Mr Sirour responded by text: "He want tickets to overseas. Just call emir and get all details from him then let me know".

Ms Li told the Commission that she guessed these messages related to an overseas trip Mr Sirour wanted to purchase for Mr Smith as a gift for helping SIG remain SNP's subcontractor at the University. Mr Balicevac gave evidence that he also knew Mr Sirour wanted to purchase overseas flights for Mr Smith as a reward for speaking with Mr Roche, but he did not think Mr Smith knew about the plan to reward him.

Mr Smith denied requesting tickets from Mr Sirour. He told the Commission that he had discussed flights with Mr Sirour once, near the pool at the University, when Mr Sirour explained that, "he had some sort of business where they were doing flights". He could not recall if tickets were offered to him. He could not confirm one way or another whether he had a discussion with Mr Sirour about tickets for an overseas trip being provided to him. He did, however, discuss his "thoughts" about going overseas with Mr Balicevac in around April 2018.

At 10.41 am, on 16 April 2018, Ms Li texted Mr Balicevac:

Hi emir, I have talked to Tommy already. He asked whether u can give me all the details about the trip. So I can organise the ticket.

There was no evidence of Mr Balicevac responding to this text message. Mr Balicevac said he did not have any details and did not know where Mr Smith wanted to go. He said that Mr Smith never asked him or Mr Sirour for overseas tickets.

On 18 April 2018, the Commission executed search warrants, at which time those involved became aware of the Commission's investigation. There is no evidence of any further communications concerning tickets for Mr Smith. There is also no evidence that he was provided with tickets.

The Commission is satisfied that Mr Sirour intended to purchase tickets for Mr Smith to thank him for working to keep SIG as SNP's contractor at the University.

Mr Smith submitted that the Commission should find that he never accepted or agreed to accept tickets for an overseas trip. There is no direct evidence before the Commission that Mr Smith sought such tickets. However, an inference to that effect is available based on the whole of the evidence.

In sending the email to Mr Roche on 12 April 2018, Mr Smith was advancing the interests of SIG. By his own admission, Mr Smith had discussed flights with Mr Sirour on one occasion. Significantly, when giving evidence in the public inquiry, Mr Smith could not confirm or deny having a discussion with Mr Sirour about being provided with tickets for an overseas flight.

His text message to Mr Balicevac at 4.51 pm, on 13 April 2018 (referred to above), contained the words "Thanks for today". Those words are consistent with something having been done for Mr Smith that warranted his thanks.

Mr Sirour's text message of 16 April 2018 to Ms Li – "He want tickets to overseas. Just call emir and get all details from him then let me know" – is consistent with Mr Smith having requested tickets.

The Commission is satisfied that Mr Smith agreed to receive tickets for an overseas trip from Mr Sirour in April 2018, as a reward for persuading Mr Roche to agree to not removing SIG as SNP's subcontractor at the University.

Gift cards

During his compulsory examination, Mr Smith said he always declined or returned any gift cards that were offered to him. He outlined an instance where he declined gift cards offered to him by Mr Sirour, and subsequently reported them to his manager. During the public inquiry, however, he admitted that, in 2017, he received a

Christmas gift card from Mr Lu worth around $100, and a bottle of alcohol from Mr Balicevac, which he conceded he did not declare to the University.

Counsel Assisting submitted that this evidence, given by Mr Smith during his compulsory examination, was knowingly false. Mr Smith submitted that the failure to remember these gifts was an oversight. The Commission accepts Mr Smith's submission. The Commission is not satisfied that the evidence establishes Mr Smith's failure to disclose the gifts during his compulsory examination was intentional.

Corrupt conduct

Dennis Smith

The Commission is satisfied that Mr Smith accepted or agreed to accept the following gifts:

- payment by Mr Sirour for accommodation for himself and his wife at the Shangri-La Hotel, Sydney, between 4 and 6 October 2015 in the amount of $850, a meal at Wolfies restaurant on 5 October 2015 in the amount of $369.50, and transport costs of a car and driver to and from the hotel in the amount of $250
- payment by Mr Sirour for a further stay at the Shangri-La Hotel, Sydney, between 17 and 19 March 2017 in the amount of $1,368 (although the booking was subsequently cancelled due to Mr Smith's family's circumstances)
- a pinball machine, worth $10,650, paid for by Mr Balicevac and Mr Lu
- tickets for an overseas trip from Mr Sirour in April 2018.

In each case, the Commission is satisfied that Mr Smith accepted, or, in the case of the hotel accommodation in March 2017 and tickets for an overseas trip in April 2018, agreed to accept, the gift as an inducement or reward to use his position at the University to favour the interests of SIG and Mr Sirour or to influence him to show such favour.

In each case, Mr Smith's conduct was corrupt conduct for the purposes of s 8 of the ICAC Act. This is because his conduct, in each instance, involved conduct that adversely affects, or that could adversely affect, either directly or indirectly, the honest or impartial exercise of his public official functions within the meaning of s 8(1)(a) of the ICAC Act.

The Commission is satisfied, for the purpose of s 9(1)(a) of the ICAC Act, that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, there would be grounds on which such a tribunal would find, in each case, that Mr Smith committed an offence under s 249B(1)(a) or s 249B(1)(b) of the Crimes Act.

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

The Commission is also satisfied, for the purpose of s 74BA of the ICAC Act, that, in each case, the conduct is serious corrupt conduct because Mr Smith, as security operations manager at the University, was a senior employee of the University entrusted to provide security services to the University. His conduct could have impaired public confidence in public administration. The conduct was premeditated. Mr Smith received, or agreed to receive, the gifts over a three-year period. Further, the conduct could involve offences pursuant to s 249B(1)(a) or s 249B(1)(b) of the Crimes Act, which carry a maximum penalty of seven years imprisonment, meaning they are serious indictable offences.

Taher (Tommy) Sirour

The Commission is satisfied that Mr Sirour gave, or offered to give, the following gifts to Mr Smith:

- payment for accommodation for Mr Smith and his wife at the Shangri-La Hotel, Sydney, between 4 and 6 October 2015 in the amount of $850, a meal at Wolfies restaurant on 5 October 2015 in the amount of $369.50, and transport costs of a car and driver to and from the hotel in the amount of $250
- payment for a further stay at the Shangri-La Hotel, Sydney, for Mr Smith and his wife between 17 and 19 March 2017 in the amount of $1,368 (although the booking was subsequently cancelled due to Mr Smith's family's circumstances)
- tickets for an overseas trip in April 2018.

In each case, the Commission is satisfied that Mr Sirour gave, or, in the case of the hotel accommodation in March 2017 and tickets for an overseas trip in April 2018, offered to give, the gift to Mr Smith as an inducement or reward to use his position at the University to favour the interests of SIG.

In each case, Mr Sirour's conduct was corrupt conduct for the purposes of s 8 of the ICAC Act. This is because his conduct, in each instance, involved conduct that adversely affects, or that could adversely affect, either directly or indirectly, the honest or impartial exercise of official functions by a public official within the meaning of s 8(1)(a) of the ICAC Act.

The Commission is satisfied, for the purpose of s 9(1)(a) of the ICAC Act, that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, there would be grounds on which such a tribunal would find, in each case, that Mr Sirour committed an offence under s 249B(2)(a) or s 249B(2)(b) of the Crimes Act.

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

The Commission is also satisfied, for the purpose of s 74BA of the ICAC Act, that, in each case, the conduct is serious corrupt conduct because the gifts were given, or offered to be given, by Mr Sirour to Mr Smith with the intention of influencing Mr Smith, a public official, to use his position at the University to show favour to Mr Sirour's companies in relation to the affairs or business of security guarding services at the University. The conduct was premeditated and involved a significant level of planning. Further, the conduct could involve offences pursuant to s 249B(2)(a) or s 249B(2)(b) of the Crimes Act, which carry a maximum penalty of seven years imprisonment, meaning they are serious indictable offences.

Emir Balicevac

The Commission is satisfied that, in late 2016, Mr Balicevac purchased a pinball machine for $10,650 as a gift for Mr Smith to which he ultimately contributed $4,650 (comprising his own contribution and the reimbursement of $1,500 to each of Mr Sirour and Ms Li) and arranged for Mr Lu to contribute $6,000. The purpose of the gift was to induce or reward Mr Smith to use his position at the University to favour the interests of SIG or to influence him to show such favour.

Mr Balicevac's conduct was corrupt conduct for the purposes of s 8 of the ICAC Act. This is because his conduct involved conduct that adversely affects, or that could adversely affect, either directly or indirectly, the honest or impartial exercise of official functions by a public official within the meaning of s 8(1)(a) of the ICAC Act.

The Commission is satisfied, for the purpose of s 9(1)(a) of the ICAC Act, that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, there would be grounds on which such a tribunal would find that Mr Balicevac committed an offence under s 249B(2)(a) or s 249B(2)(b) of the Crimes Act.

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

The Commission is also satisfied, for the purpose of s 74BA of the ICAC Act, that the conduct is serious corrupt conduct because the gift was provided by Mr Balicevac to Mr Smith with the intention of influencing Mr Smith, a public official, to use his position at the University to show favour to Mr Balicevac and SIG in relation to the affairs or business of security guarding services at the University. The conduct was premeditated and involved a significant level of planning. Further, the conduct could involve offences pursuant to s 249B(2)(a) or s 249B(2)(b) of the Crimes Act, which carry a maximum penalty of seven years imprisonment, meaning they are serious indictable offences.

Frank Lu

Apart from making a $6,000 contribution towards the pinball machine, the evidence concerning Mr Lu's involvement or his state of mind is unclear other than he was told by Mr Balicevac that he should contribute because he had made money at the University.

Counsel Assisting did not make any submissions to the Commission that Mr Lu should be found to have engaged in corrupt conduct in relation to contributing $6,000, at Mr Balicevac's request, towards the purchase of a pinball machine for Mr Smith. In these circumstances, the Commission makes no findings.

Section 74A(2) statement

The Commission is satisfied that Mr Smith, Mr Balicevac, Mr Sirour and Mr Lu are "affected" persons for the purpose of s 74A(2) of the ICAC Act.

Mr Smith's evidence was the subject of a declaration under s 38 of the ICAC Act and cannot be used against him in criminal proceedings, except in relation to prosecution for an offence under the ICAC Act. However, the Commission is satisfied that there is sufficient admissible evidence to seek the advice of the DPP as to the prosecution of Mr Smith for offences against s 249B(1)(a) or s 249B(1)(b) of the Crimes Act of corruptly receiving benefits from Mr Sirour and Mr Balicevac as an inducement or reward for Mr Smith showing favour, or not showing disfavour, to Mr Balicevac and companies associated with Mr Sirour in relation to security guarding services at the University.

The admissible evidence includes lawfully intercepted telephone calls, telephone text message exchange records (including between Mr Smith and Mr Balicevac and also between Mr Sirour and Mr Balicevac) and business records created by SIG, the University and the suppliers of the gifts.

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 Smith for giving false or misleading evidence at the public inquiry contrary to s 87(1) of the ICAC Act. The relevant evidence concerns the:

- October 2015 30th wedding anniversary celebration weekend, either when considered as a whole or by reference to its particular discrete aspects
- March 2017 hotel stay and Mr Smith's denials and statements as to a lack of knowledge about Triton or any other companies linked to Mr Sirour potentially acquiring more work at the University
- Spiderman pinball machine from Mr Balicevac, including the undocumented rental agreement and the identity of the "President".

The Commission is satisfied that there is sufficient admissible evidence to seek the advice of the DPP as to the prosecution of Mr Sirour for offences against s 249B(2)(a) or s 249B(2)(b) of the Crimes Act of corruptly giving benefits to Mr Smith as an inducement or reward for Mr Smith showing favour, or not showing disfavour, to Mr Balicevac and companies associated with Mr Sirour in relation to security guarding services at the University. The admissible evidence includes telephone text message exchange records (including between Mr Sirour and Mr Balicevac, and Mr Sirour and Ms Li) and business records created by SIG and the suppliers of the gifts.

Mr Balicevac's evidence was also the subject of a declaration under s 38 of the ICAC Act. However, the Commission is satisfied that there is sufficient admissible evidence to seek the advice of the DPP as to the prosecution of Mr Balicevac for offences against s 249B(2)(a) and s 249B(2)(b) of the Crimes Act of corruptly giving a benefit to Mr Smith as an inducement or reward for Mr Smith showing favour, or not showing disfavour, to Mr Balicevac and companies associated with Mr Sirour in relation to security guarding services at the University. The admissible evidence includes lawfully intercepted telephone calls, telephone text message exchange records (including between Mr Balicevac and Ms Li, and Mr Balicevac and Mr Smith) and business records created by SIG and the suppliers of the gifts.

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 Balicevac for giving false or misleading evidence at the public inquiry contrary to s 87(1) of the ICAC Act. The relevant evidence concerns:

- the Spiderman pinball machine from Mr Balicevac, including the undocumented rental agreement and the identity of the "President"
- his social relationship with Mr Smith described during his compulsory examination on 15 June 2018.

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 Lu for any offence. As has been noted, apart from making a $6,000 contribution towards the pinball machine, the evidence concerning Mr Lu's involvement or his state of mind is unclear, other than he was told by Mr Balicevac that he should contribute because he had made money at the University. Counsel Assisting did not make any submissions to the Commission that Mr Lu should be found to have engaged in corrupt conduct in relation to contributing $6,000, at Mr Balicevac's request, towards the purchase of the pinball machine. In these circumstances, the Commission does not propose to seek the advice of the DPP.

Chapter 7: Line-marking

Under the 2015 contract, SNP was responsible for the performance of line-marking duties in relation to pedestrian crossings and parking bays on campus. Every third year of the 2015 contract, the budget for line-marking increased and SNP attempted to complete a full repaint on campus. In the other years, the line-marking budget was smaller and only essential repainting was performed. Line-marking was initially undertaken by a subcontractor to SNP: namely, Complete Linemarking Services Pty Ltd (CLS).

Mr McCreadie told the Commission that, in about January 2017, his SNP colleague, John Dirienzo, a qualified painter, approached him and Mr Balicevac with a proposal to team up and perform line-marking tasks at the University at a cheaper rate than CLS, which would deliver a greater profit margin to SNP. He said SNP was subsequently notified about the proposal to use Mr Dirienzo's company, JRD Painting, to perform line-marking at the University. However, he said SNP was not informed that he and Mr Balicevac had formed a partnership arrangement with Mr Dirienzo.

On 20 January 2017, Ms Willard emailed Mr McCreadie and Mr Balicevac and said that, subject to work health and safety requirements being met, SNP accepted the proposal for JRD Painting to perform line-marking at the University. Mr Dirienzo commenced line-marking works at the University in February 2017. Both Mr McCreadie and Mr Balicevac gave evidence that they performed painting duties with Mr Dirienzo outside of their core rostered hours and without SNP's knowledge.

On 29 September 2017, Mr Dirienzo resigned from SNP. In his resignation email, he said that his trading name or licence number might be used in the future in a fraudulent manner without his knowledge or consent. Mr McCreadie told the Commission that he did not know what Mr Dirienzo was thinking when he raised this concern on departure from SNP.

On 9 November 2017, Mr McCreadie emailed Philip Tansey, SNP branch manager, with a proposal for him and Mr Balicevac to be considered as an "in-house resource" for small line-marking jobs at the University. Small line-marking jobs included painting symbols on parking bays, repainting pedestrian crossings, and painting with stencilling for marked parking bays. The proposal was accepted by SNP, which subsequently assigned a creditor ID to Mr McCreadie. On approximately 30 November 2017, Mr McCreadie and Mr Balicevac commenced small line-marking jobs at the University.

Mr McCreadie told the Commission that the issue of a potential conflict of interest was not raised with him by anyone at SNP. He said that he had no qualifications, such as a trade licence, to perform line-marking at the University. Mr Balicevac also gave evidence that he had no qualifications to perform line-marking at the University.

Mr Smith told the Commission that, while he was aware that Mr McCreadie and Mr Balicevac were performing small line-marking jobs on campus, he understood they were doing so with a qualified painter.

During the period that they performed line-marking duties at the University for both JRD Painting and themselves, Mr McCreadie was paid $21,644.11 and Mr Balicevac was paid $21,662.14.

Ms Willard told the Commission that, at the time, she was not aware that Mr McCreadie and Mr Balicevac were performing line-marking duties at the University. She understood these tasks were being performed by CLS or JRD Painting. Her evidence was that Mr McCreadie and Mr Balicevac performing line-marking duties, in circumstances where both men were managers on campus, involved a clear conflict of interest. She told the Commission that, if she had received Mr McCreadie's and Mr Balicevac's proposal to be considered as an "in-house resource", she would have rejected it "a hundred percent ... I would say this is laughable. You can't do this".

Mr Roche told the Commission that Mr McCreadie and Mr Balicevac performing line-marking duties at the University involved a conflict of interest. He agreed that Mr Tansey's approval of Mr McCreadie's and Mr Balicevac's line-marking proposal showed a lack of adherence to SNP's conflicts of interest policy.

While the evidence shows that Mr McCreadie and Mr Balicevac engaged in conduct that was in conflict with their duties to SNP, the Commission makes no finding of corrupt conduct in relation to the line-marking activities undertaken by them.

Chapter 8: The restoration of Mr Balicevac's mobile telephone to its factory settings

On 15 June 2018, Mr Balicevac attended a compulsory examination. During the compulsory examination, the Commissioner made a direction pursuant to s 35 of the ICAC Act requiring Mr Balicevac to produce his Apple iPhone forthwith, which he did. The compulsory examination did not conclude on 15 June 2018 and Mr Balicevac was stood down.

The compulsory examination continued on 20 June 2018. At some point during the intervening period between the compulsory examination on 15 June and 20 June 2018, Mr Balicevac's Apple iPhone was restored to its factory settings. In effect, somebody external to the Commission used Mr Balicevac's Apple credentials (his username and password) to remotely delete material from the iPhone. Fortunately, the Commission had already downloaded the contents of Mr Balicevac's iPhone before the factory settings were restored to the iPhone.

Mr Balicevac's iPhone contained evidence relevant to this investigation. For example, text message exchanges were extracted from Mr Balicevac's iPhone and tendered by Counsel Assisting during the public inquiry. A number of these have been referred to in this report.

Mr Balicevac told the Commission that only he and his wife had access to his Apple iTunes account. He denied he arranged for the restoration of the factory settings on the iPhone. He denied that his wife was responsible. He also denied that he gave instructions for anyone else to do it. He said he had no knowledge of how the contents of his iPhone were restored to its factory settings.

Mr Balicevac gave evidence that, he assumed, the Commission downloaded a copy of the contents of his iPhone and, instead of returning his original iPhone, "gave me another phone". The Commission rejects this evidence. The Commission is satisfied that the iPhone returned to Mr Balicevac was the iPhone produced by him.

Counsel Assisting submitted that the Commission should seek the advice of the DPP as to whether Mr Balicevac gave knowingly false evidence in relation to his knowledge of the circumstances by which his Apple iPhone was restored to its factory settings during the intervening period between his compulsory examinations on 15 June and 20 June 2018, in contravention of s 87 of the ICAC Act.

Mr Balicevac submitted that there is an insufficient basis for the Commission to seek advice from the DPP in relation to s 87 of the ICAC Act. He submitted that there was no evidence before the Commission in relation to the "way Iphones work, and in particular the methods by which the phone can be reset to its 'factory settings'".

The Commission accepts Mr Balicevac's submission.

Counsel Assisting also submitted the Commission should seek the advice of the DPP as to whether Mr Balicevac destroyed a thing relating to the subject matter of an investigation with the intention of delaying or obstructing the carrying out by the Commission of any investigation, in contravention of s 88(2) of the ICAC Act.

Mr Balicevac submitted that, in relation to s 88(2) of the ICAC Act, Counsel Assisting's submission "is also insufficient". He submitted his evidence, which Counsel Assisting submitted can be used against him for the purposes of an offence of this nature under s 37(4)(a) of the ICAC Act, "provides insufficient grounds to prosecute Mr Balicevac fails [sic] to satisfactorily expose his liability for an offence".

The Commission also accepts Mr Balicevac's submission.

The Commission is of the opinion that there is insufficient evidence to consider obtaining the advice of the DPP with respect to the prosecution of Mr Balicevac for any criminal offence in relation to the Apple iPhone.

Chapter 9: Corruption prevention

The Commission is satisfied that the University's tender process for the provision of security services and its lack of a robust contract management framework may have contributed to the occurrence of corrupt conduct.

A number of risks within the security industry were identified in statements provided to the Commission by the Australian Security Industry Association Limited (ASIAL) and the NSW Police. These include the:

- low-profit margins, which create an incentive for non-performance
- prevalence of cash-in-hand payments
- non-payment of workers' entitlements
- high rates of non-compliance with relevant regulatory requirements.

The University's risk assessment did not deal with any of these issues. The report by the tender evaluation committee (TEC) and the report provided to the finance and audit committee (FAC) also failed to address these issues.

The University's lack of understanding regarding the context in which guarding services are provided meant it did not take the steps necessary to prevent corruption. Some of the problems associated with the tendering process and the contract management framework that allowed the corruption to occur are as follows. The University:

- did not properly assess the risks related to the provision of security services and consequently had inadequate mitigation measures in place
- failed to undertake due diligence checks on SNP, and its proposed subcontractors, even though this is an essential component of supply chain management. This left the University exposed to improper practices and substantial reputational risks
- did not examine SNP's assurance framework, even though this is essential to contract governance and supply chain management
- did not address the use of technology in the awarding of the tender and management of the contract, despite it being one of the industry's key methods for ensuring contract performance and enhancing the safety and welfare of guards
- did not understand that the hourly rate for ad hoc security services charged by SNP was low; making it unlikely that Award wages would be paid in some circumstances such as Sundays and public holidays.
- largely left SNP to manage and monitor itself, as effective contract management controls were not in place
- selected some key performance indicators (KPIs) that were deficient and then failed to adequately monitor those KPIs
- ignored red flags that were sufficiently alarming to require investigation.

Ultimately, while it is difficult to quantify the threat to student and staff safety arising from the corrupt conduct identified in previous chapters of this report, the practice of ghosting at the University created the likelihood that campus safety was compromised, as shifts for guarding services were not performed, performed poorly or undertaken by fatigued guards. Given that the provision of security services is an important component of student and staff safety, the corrupt conduct undermined a precondition for maintaining the welfare of students and staff on campus.

The tender process and awarding of the contract to SNP

The tender process, resulting in the awarding of the 2015 contract to SNP, had a number of deficiencies. Problems

with the tender process typically grew as it progressed and the contract commenced. It may have been difficult for corrupt conduct to have occurred if the University's tendering process had been more robust.

The procurement strategy

There were deficiencies in the University's procurement strategy because it did not address major risks. The result of this shortcoming meant the stage was set for poor decision-making in the awarding of the tender and the management of the contract.

The risk assessment for the contract was a high-level statement that did not include a consideration of the operational risk of the guarding function. The risk assessment ignored and underrated many of the risks applicable to the contract, despite the threat from poorly delivered security services being significant. Such an oversight was surprising given guarding services were integral to ensuring student and staff safety. Another important indicator of risk was that the security services contract was for a substantial amount – in excess of $26 million. While large contracts are not necessarily high-risk, there is typically a correlation between cost and risk.

The procurement strategy rated the overall risk of the tender as insignificant. The assessment of many of the risk factors listed in the strategy was also questionable. For example:

- unexpected demand swings were rated as not applicable, ignoring the fact demand swings occur during high-risk guarding activities, such as protests, demonstrations, sit-ins, and visits from controversial people
- supplier-related factors, including contract breaches, performance quality and delivery, and financial viability were rated as low likelihood and low impact
- reputational risks were rated as low likelihood and low impact. This was despite the risks arising from a failure to provide proper guarding services at high-risk public events. The risk of security workers being deprived of Award conditions and, in effect, exploited was also a reputational risk to the University, which espoused fairness in work practices. It was ignored
- the privacy/trade secret/confidentiality risk was rated as low likelihood and medium impact with a total rating of medium (ignoring the possibility that security guards might have access to confidential research and deal with sensitive information)
- procurement risks that were unaddressed in the risk assessment included the fairness of the process (for example, the benefits that SNP enjoyed as the incumbent), the appropriateness of the specifications and the assessment criteria, and significant probity breaches, such as those involving undeclared conflicts of interest.

A better practice risk assessment strategy incorporates a well thought-out methodology for identifying key risks. The current International Standard on Risk Management ISO 31000: 2018 ("the Risk Management Standard") states that risk assessment should be conducted systematically, iteratively and collaboratively.

In line with the principles established in the Risk Management Standard, the identification of procurement risks should be tailored to a specific project and based on an examination of information acquired through different sources. In terms of the security industry, key sources of information could be obtained through: industry research and drawing on industry networks, consultation with key stakeholders, and a consideration of previous contract breaches and audit reviews.

It is also important that risk management is an integral part of all organisational processes. While the security contract risks were considered in the procurement strategy, albeit poorly, thereafter, they were not addressed again. For example, key documents such as the tender evaluation plan, the request for tender (RFT) and the TEC's report detailing the tender assessment did not deal with the context of the contract and the contract risks or assumptions. This is a natural flow-on from the fact that they were not extensively dealt with in the procurement strategy.

In response to the corrupt conduct identified in this report, the University has developed *Guidelines for using the risk assessment tool* ("the Tool") to assist staff in understanding procurement risks. The Tool sets out a number of pre-existing risks as well as providing the option of including project specific risks. While the Tool identifies a number of risks such as "subcontracting management" and industries "which could give rise to unethical supplier or sub-contractor behaviour" there is no commentary explaining these risks.

RECOMMENDATION 1

That the University ensures that key tender documentation, such as procurement strategies, tender evaluation plans and TEC reports, include a realistic and detailed assessment of procurement and contract risks. This assessment should be conducted in a manner that incorporates operational risks and complies with the risk management principles in the International Standard on Risk Management ISO 31000:2018.

RECOMMENDATION 2

That the University amends its *Guidelines for using the risk assessment tool* to provide more detailed guidance on major contract risks.

The request for tender

Tenderers prepared their submissions based on the RFT. Richard Allen, the University's chief procurement officer, did not review the RFT before it was issued. He claimed this "was not part of the process". The lack of review by Mr Allen meant that it was less likely that any errors or deficiencies would have been detected in time to take remedial action.

For a contract as significant as the 2015 security contract, the RFT should have sought information from the tenderers about their assurance frameworks; that is, the processes, systems and controls in place to ensure that services are provided in accordance with the contract. As a result of not receiving this information, the University was unable to assess a key aspect of tenderers' structure and ability to perform the contract.

Specifically, the University could have requested and assessed details of tenderers':

- employment screening, due diligence and relevant human resource processes
- rostering systems
- ethical integrity systems, including whistleblowing procedures and gifts policies
- relevant policies and standard operating procedures, including the use of technology to verify guarding services
- risk management procedures
- independent audit systems to verify the provision of security services
- processes for conducting in-house reviews of workplace practices
- procedures for complying with relevant industrial instruments and security licensing requirements
- compliance with requirements to make relevant statutory payments
- systems for managing subcontractors and ensuring their compliance with legislative, contractual and other requirements.

Some of the specific elements of an adequate assurance framework are discussed in more detail below.

Specifications and assessment criteria ignored technology requirements

In many service contracts, technology requirements are vital to ensuring successful contract delivery as well as acting as a powerful corruption prevention mechanism. Technology is available, and widely used in the security industry, to enable the easy monitoring of guards for their own safety and welfare. The use of technology also allows enhancements to the efficiency of security operations and provides assurance that security guards are undertaking the activities in a contract. Technological devices include global positioning systems (GPS), mobile telephones, wands and swipe cards linked to readers at specified locations, fingerprint scanners, and computer software to analyse data about patrols and the locations of security guards.

Despite being a key component in monitoring contractor performance, technology requirements did not form part of the tender assessment criteria. In any case, although SNP's tender stated that it would adopt technology-based attendance management mechanisms, no such technology was ever deployed.

Information about industrial relations practices was not requested

The University's *Finance and Accounting Manual Procurement: Tendering Procedures* ("the Tendering Procedures") states that the tender capability assessment must cover tenderers' workplace and industrial relations management practices and performance. Despite this, the RFT sought no information about industrial relations practices and members of the TEC had no recollection of discussing issues such as fatigue management or the prevalence of fraud in the security industry.

Under the Security Services Industry Award 2010 ("the Award"), the maximum hours a guard can work during any day is 14 (with two of those hours as overtime). On occasion, guards worked up to 36 hours straight without a break; sometimes sleeping on the job. Former SNP employee, Mr Lu, acknowledged that it did not create a safe environment to have fatigued guards on duty.

At the time of the conduct, SNP's rostering software, Microster, did not detect fatigue breaches by guards working as contractors and subcontractors. Microster contained "hard rule" alerts for any rostering of guards that resulted in a breach of fatigue rules. It was possible, however, for the majority of rostering staff to override the hard rule control and, in effect, ignore alerts. SNP also provided limited instructions as to the circumstances in which rules could be overridden.

Additionally, Microster allocated two separate numbers to a guard who worked as both a contractor and

subcontractor. As a result, Microster would not generate an automatic prompt when a guard breached fatigue rules by working as both a contractor and subcontractor. This particular functionality of Microster has now been changed, but was nevertheless concerning at the time, given that SIG supplied over 2,000 hours of guarding services per week to SNP.

As a result of the deficiencies associated with Microster, SNP had limited controls in place to prevent breaches of fatigue rules. Mr Roche agreed that these deficiencies created a serious flaw in the system.

The failure to highlight fatigue-prevention breaches meant it was not possible to detect when guards were rostered on for excessively long shifts. The possibility that guards would sleep on the job created a risk of corruption arising from a failure to fulfil contractual obligations.

Information about tenderers' risk management practices was not requested

It was essential for the University to gain assurance that contractors and others in the supply chain were managing significant risks. In order to help gain this assurance, the University should have requested and assessed information about tenderers' risk management frameworks, including the management of downstream risks in the supply chain.

The University did not request tenderers' risk management policies and practices. As discussed, while some limited aspects of risk management were considered in the procurement strategy, this could not give a clear indication about the tenderers' ability, motivation and attitude to risk management.

Essential information about subcontractors was not requested

Subcontracting can be a high-risk activity. Generally, the further away a business is from the client in the supply chain, the greater the risk for non-compliance with relevant laws and industrial instruments. The NSW Police has identified the non-payment of worker entitlements as a problem endemic in the private security industry and associated with illegal activities. Similarly, ASIAL has noted that:

> *With subcontracting you need to ensure it is all done legitimately, that people are paid in accordance with the Award, that it is not cash in hand. It is a problem with everyone making a skim on the way through and that is where you start to get some of the more nefarious practices where people are paying cash in hand.*

ASIAL has also advised "users of security services should pay a lot of attention to subcontracting to ensure they know exactly what is going on".

Subcontracting was a criterion used to assess tenders. Despite this, the information requested about subcontractors by the University lacked specificity and the information provided in tenderers' submissions about this topic was sparse. The University requested the following information about subcontractors in the tender response schedules:

- the length of the relationship with the tenderer
- the annual value of arrangements
- a description of the approach to subcontractor performance management.

Without knowing details about the subcontracting entity, including key personnel, history and capabilities, it was not practical to assess whether they were suitable for providing security services to the University.

Mr Allen acknowledged that the management of subcontracting was not something that he had developed as a capability within the University's procurement services unit and that it would be ideal for the University to have a deeper understanding of supply chain issues. Similarly, members of the TEC acknowledged that they did not closely scrutinise the issue of subcontracting.

Key information that could have been requested from tenderers to ensure transparency over subcontractor arrangements include:

- the percentage of the work that was expected to be subcontracted to each subcontractor (there is a fundamental difference between a business model heavily reliant on subcontractors compared to using subcontracted guards occasionally), and, although this issue was raised in the RFT, it was not included in the attached tenderer response schedules or the final assessment criteria
- the situations where subcontracted guards would be rostered, for example, at high-risk events
- details about each subcontracting entity, including key personnel, history and capabilities
- evidence of compliance of each subcontractor with security licensing requirements
- evidence of compliance of each subcontracting entity with workplace laws and industrial instruments, and details concerning how compliance would continue to be monitored by the contractor (for example, periodic checks of records such as pay slips and mechanisms for detecting fatigue-limit breaches)
- proof of subcontractor public liability insurance and workers compensation insurance

- information about how subcontractors would be appointed by the contractor, including who would be responsible for subcontractor appointments
- details concerning how subcontractors' performance would be monitored
- details concerning how any issues with subcontractor non-compliance would be handled
- references for each subcontractor for the University to check.

Without knowing such details about subcontracting entities, it was not possible to assess whether they were suitable for providing security services to the University.

At the time of the corrupt conduct, SNP account managers and client site managers, who were co-located with subcontracted staff, could appoint subcontractors. This practice, which has since changed at SNP, provided an opportunity for collusion between different tiers of SNP's supply chain.

Furthermore, SIG's certificates of currency for workers compensation, provided to SNP, consistently under-reported the number of guards employed by the company. For example, for the period between 31 August 2015 and 31 August 2016, the certificate of currency for SIG identified that it had coverage for 25 workers, with a total wage bill of $237,255. By way of comparison, an invoice from SIG to SNP, dated 31 August 2016, identified 80 guards' names across different shifts and sites for the week-ending 28 August 2016.

As the University did not request workers compensation documentation from subcontracting entities, it could not perform an analysis of the number of guards that SIG would be required to supply compared to its coverage for the purposes of workers compensation both during the tender evaluation and over the life of the contract. SNP also did not undertake any analysis of guard numbers provided by SIG compared to the total number of guards identified in SIG's workers compensation certificates of currency.

The under-reporting of guard numbers for the purposes of workers compensation coverage was an indicator that illegal practices were taking place, including the failure to make statutory payments and the non-payment of worker entitlements.

Mr Robinson, CIS director, informed the Commission during his evidence that subcontractor requirements should mirror the requirements placed on contractors. He also agreed that some written assurance of compliance with requirements should be obtained in writing from either the contractor, proposed subcontractor, or both.

RECOMMENDATION 3

That the University assesses contract assurance frameworks that cover key risks involved in the provision of services, such as a reliance on subcontracting, when assessing the capability and capacity of tenderers.

The tender evaluation plan

The tender closing date for the security contract tender was 28 November 2014. This was before the TEC members signed off the tender evaluation plan, which contained the tender assessment criteria and weightings. This fell short of best practice recommended in NSW Government guidelines ,and could have given rise to a perception that the evaluation plan was influenced by the tender submissions received.

It was not the practice of the Mr Allen to review tender evaluation plans.

RECOMMENDATION 4

That the chief procurement officer formally reviews RFTs for high-risk tenders and tender evaluation plans for significant procurement undertakings.

Fairness issues when dealing with an incumbent contractor

Contract mobilisation

In the interests of fairness, it is important that tender specifications do not appear to cater unduly for the incumbent.

The security contract tender assessment criteria provided a weighting of 12.5% for "mobilisation to meet the contract and Transitioning Strategy." This amounted to 21.7% of the total non-pricing criteria. As SNP was the incumbent tenderer, it would have undertaken minimal work to mobilise to meet the contract and could expect to receive the highest rating. The assessment of non-pricing criteria was also important, as it was used to evaluate each tenderer and select those that were eligible for moving to the next phase of the tender.

The high weighting given to the mobilisation criterion may have created a perception of bias and may have had the potential effect of favouring SNP, as it was already providing security services to the University. The TEC scores for this criterion were high for SNP and typically low for most of the other tenderers.

Srinath Vitanage, a senior procurement specialist at the time and member of the TEC, acknowledged in regard to the mobilisation criterion that, although the CSU

wanted to change some arrangements compared to the previous security services contract, the incumbent would "definitely be in a better position to transition to mobilise".

The provision of a consolidated contract through the delivery of combined guarding, security electronic maintenance, parking machine and line-marking services

The provision of a consolidated contract was included as a criterion in the tender evaluation plan and given a weighting of 15%. The weighting given to the contract price criterion in the tender evaluation plan was 12.5%. It is difficult to understand why the provision of a consolidated contract had a higher weighting than the total contract price.

SNP was one of only three tenderers that submitted a consolidated contract and offered an overall contract discount. Fifteen did not; all of which were eliminated by the TEC from consideration.

Tenderers providing a consolidated contract appeared to be at an advantage. The submission to the FAC seeking approval to award the contract to SNP emphasised tenderer rankings under a consolidated contract. This was despite the RFT stating that the University had decided that the major contracts managed by the CSU would be put to open market together and that appropriately experienced security companies could submit tenders in response to either a single section, some sections or all sections of the RFT.

The establishment of probity walls

There is no record of the University taking measures, such as establishing probity walls, to ensure SNP employees did not access information about the tender process. Mr Robinson, however, acknowledged that all tender documents should have been locked down in a separate room.

Mr Smith sat near key SNP employees while he was a member of the TEC, and other SNP employees had access to his work location. There were occasions when such access could have provided opportunities for improper conduct, including the periods between the decision to enter into a tender process and the receipt of tender submissions, and the initial assessment of tenders and the best-and-final offer stage.

There is a reasonable apprehension that SNP employees could have been in a position to overhear conversations or see documents that would provide an unfair advantage during the tender process. Information could have been obtained about the assessment of SNP's proposal, confidential information about deliverables and pricing in the proposals of other tenderers, and information about the focus, deliberations and expectations of the TEC. To maintain faith in the fairness of the tender process it was essential that controls and systems be implemented to protect tenderers' commercial-in-confidence information.

RECOMMENDATION 5

That the University should review its tender assessment criteria and weightings to avoid perceptions that unwarranted advantages are provided to a particular tenderer.

RECOMMENDATION 6

That probity walls and/or other safeguards should be established where there is a risk that someone connected to a tenderer could access confidential information about a tender process and tenderers' submissions.

Consistency of internal tender documentation

The criteria in the RFT listed under the evaluation criteria heading did not completely correspond with the tenderer response schedules and the criteria used to evaluate tenders, which was set out in the tender evaluation plan. For example, the RFT evaluation criteria did not include the provision of a consolidated contract criterion. Mr Vitanage acknowledged that, "It is important that the evaluation criteria are the same in the RFT and the Tender Evaluation Plan".

RECOMMENDATION 7

That the University should ensure consistency across its tender documentation concerning how tenders will be evaluated.

The TEC did not examine the rates of pay provided by tenderers for ad hoc guarding services

During the tender process and throughout the time that the contract was managed, the University failed to observe that the ad hoc hourly rate for guarding services was low.

In a statement provided to the Commission, the CEO of ASIAL advised that security companies are low-profit-margin businesses, with margins sometimes as low as 3%. He stated that low profit margins promote a "race to the bottom mentality", where nefarious practices start to evolve such as cash-in-hand payments and guards not receiving entitlements. Low margins can also create an uneven playing field, where legitimate companies are competing against others that are not paying everything

they should. Subcontracting may present risks in this environment as every level of the supply chain takes a margin, further reducing profits.

During the public inquiry, Ms Li told the Commission that Mr Sirour paid guards in cash for the purposes of avoiding "the high tax, superannuation, workers' compensation and payroll tax".

SNP stated in its tender submission that, for the first year of the contract, it would charge $32.57 per hour for ad hoc guarding services, with an anticipated increase of 3% for each year thereafter. By way of comparison, during the period from 1 July 2015 to 1 July 2016, the hourly award rates for level 2 guards were $39.96 for Sundays and $49.95 for public holidays. These rates do not include on-costs for workers compensation, superannuation and payroll tax.

The Commission heard that the TEC did not assess the viability of the guarding rates of pay. Mr Vitanage conceded:

> *I think we did not have that knowledge* [regarding the legitimacy of guarding payment rates] *and I certainly did not know the market, the security industry well enough.*

Mr Smith also did not perceive SNP's low rate to be a risk factor but viewed it as a positive point in SNP's favour. Mr Robinson, who was a member of the tender review board for the contract, also confirmed that the issue of contract pay rates was not identified as a risk associated with the contract and that the University did not undertake a comprehensive exercise to understand the pay rates provided by tenderers. Mr Robinson conceded in his statement to the Commission that there is "always room for improvement" regarding the University's internal processes concerning procurement and contract management.

Evidence before the Commission of SIG invoices submitted to SNP show that guards were not paid award rates. For example, SIG's invoice, dated 28 December 2015, shows that the hourly rate charged for patrol guards was $24.80 (excluding GST). This includes work undertaken on 25 and 26 December, when the public holiday rates should have been $49.95 for a level 2 guard (excluding GST), even without overtime.

The University has recently engaged an industrial specialist to review tenderers' rates to ensure Award rates and entitlements can be paid. In addition, the University now requires tenderers to declare that they have complied with industrial instruments.

RECOMMENDATION 8

That the University should continue to assess all tenderers and, where relevant, their supply chains to ensure compliance with Awards.

The TEC's assessment of tenderers' use of subcontractors was unclear

The assessment instructions for the subcontractor criterion were: "assess the length of relationship and annual value of proposed subcontracted services", and "assess the Tenderers' approach to subcontracted performance management".

The tender evaluation plan provided minimal evaluation guidance, contributing to a lack of clarity in relation to the scoring of the subcontracting criterion. Consequently, members of the TEC were inconsistent when scoring tenderers on the subcontracting issue. Some companies with no subcontractors were rated lower than others with subcontractors, which was counterintuitive, as there was no risk of subcontractors performing poorly if they were not engaged. Moreover, the comments of committee members sometimes do not appear to support the rating given.

Mr Smith gave SNP a rating of seven for subcontracting. This was the highest rating of all the tendering companies. Mr Smith gave companies that had no subcontractors ratings of between three and six. Mr Smith also gave a rating of four to Atlas Cleaning/Security Pty Ltd with the explanation: "Minimal dollar value with another company. 7yr relationship". If the value of subcontracting to Atlas Cleaning/Security was minimal, and if there was a long relationship, it is difficult to understand why the rating was so low.

RECOMMENDATION 9

That all TEC chairs and/or appointed probity advisers should ensure that tender scoring methodologies are clear to evaluators and that the tender assessment criteria have been followed.

The perceived independence of TEC members

Contrary to the tender evaluation plan, Mr Smith and David Owens (the independent member of the TEC and managing director of Risk e-Business Consultants Pty Ltd) discussed their methodology and weightings regarding the subcontracting criterion outside of the formal tender process. Initially, Mr Owens rated tenders without a nominated subcontractor as an eight out of 10; however, after discussing the matter with Mr Smith, he revised his score to six out of 10. Mr Owens' revised

scores matched Mr Smith's submitted scores, which favoured SNP. In his oral evidence, Mr Owens denied acting improperly.

Mr Smith conceded that he breached the requirements of the tender evaluation by engaging with Mr Owens outside of official TEC meetings. This was particularly problematic, given that Mr Owens was the independent on the TEC and he was specifically selected to bring objectivity to the tender process. Mr Robinson told the Commission that the interactions between Mr Smith and Mr Owens defeated the purpose of requiring an independent member to sit on the TEC and that the process was fundamentally flawed as a result.

The contract was awarded by decision-makers with insufficient information

After the TEC assessed the submitted proposals, it prepared a report including a recommendation to award the contract to SNP. The University's tender board reviewed the report and approved the recommendation, subject to the FAC providing its approval. The FAC had the delegation to approve the awarding of the security contract, as it was over $10 million in value.

Ideally, an evaluation report should ensure a decision-maker understands exactly what was done, how the tenderers rated on the criteria and why the recommended tenderer was selected. The tender evaluation report for the contract did not contain the scores for each of the assessment criteria, making it difficult for the tender board members to assess whether the criteria were properly applied. For example, the recipients of the report were not able to see how SNP was assessed on its use of subcontractors.

Mr Allen provided a statement to the Commission. He said that, at the time of the awarding of the contract, the tender board did not meet in person. This practice has now changed to facilitate sufficient dialogue and ensure that its members can more directly ask questions.

The FAC's resolution to award the contract to SNP was based on a summary report with limited information. The report summarised the evaluation process, financial data, the reasons for selecting SNP and draft KPIs for the contract, but otherwise provided limited information about the contract.

The FAC would have been better placed to make an informed decision about the contract if it had been provided summarised information about the key objectives of the contract and how the preferred tenderer would address them. The FAC should also have been provided information about the key risks in the provision of security services and how they would be mitigated by the contract's provisions.

Alec Brennan, a member of the FAC, provided a statement to the Commission. He said that he would expect an assessment of risks to be part of the documentation provided to the FAC. However, he also stated that typically the FAC members would spend no more than 15 minutes discussing a decision to award a contract and that he would only expect a two-to-three page contract summary to be provided to the FAC members. He expressed the view that it was not fair to expect the volunteer FAC members to wade through documents.

RECOMMENDATION 10

That tender reports to the FAC and the tender board should contain adequate information to enable key issues to be understood. The information should include:

- **tenders' assessment criteria scores**
- **key contract risks and their mitigation**
- **key assumptions**
- **any significant probity concerns and the manner in which they were resolved.**

The contract with the winning tenderer

Subcontracting terms

Although SNP was required to obtain the written consent of the University prior to subcontracting (or, as submitted by the University, consent could be given in any terms deemed acceptable to the University), the contract's subcontracting clause was limited. For example, the contract did not have a mechanism that covered the extent of subcontracting permitted. Once permission had been given, it also did not require SNP to obtain further permission if the percentage of subcontracting increased significantly.

Assurance framework

As discussed, the contract did not require SNP to have an assurance framework in place for its own personnel or for its subcontractors. Instead, the assurance relied on by the University for the performance of subcontractors was to make SNP responsible for its performance. The basic principles of supply chain management recognise the importance of the customer not abrogating responsibility for subcontractors in high-risk contracts.

The University's right to audit

The audit rights clause in the contract was limited. For instance, the audit access was limited to 60 days after the termination of the contract. If the contract were

terminated due to a significant concern, it is unlikely this would be adequate time for an audit to be commenced and completed after reasonable notice had been given.

The contract also did not specify that SNP had an obligation to provide assistance and to provide records and information in a data format and storage medium that was accessible by the University.

Timesheets

The contract and works orders did not cover timesheets. As timesheets are a key control and a primary source of evidence that security guards are present for shifts, the contract should have set out terms and conditions covering the production, storage and examination of timesheets.

Technology requirements

There were no contract clauses requiring technology to be used to track guards and ensure that they were undertaking their duties properly.

RECOMMENDATION 11

That the University should ensure all future contracts for the provision of security services include adequate provisions covering:

- **subcontracting terms**
- **contractor assurance frameworks**
- **right-to-audit clauses**
- **timesheet access**
- **technology requirements.**

The University's management of the contract

SNP was left to manage and monitor itself

SNP was largely left to manage and monitor itself, which allowed corrupt conduct to occur and remain undetected. Although those involved in the corrupt conduct were ultimately responsible for their actions, the University could not entirely abrogate its responsibility to ensure that corruption did not occur.

CSU staff lacked the requisite contract management skills, capability and capacity. Mr Smith was primarily responsible for overseeing the contract. His principal work experience was as a police officer and licensed security consultant and he did not have a strong contract management background.

Of further concern, Mr Robinson described CSU as operating as a silo and as a team that kept to themselves.

The University, did not have basic internal controls in place, including:

- regularly observing attendance sheets being filled in
- requiring guards to leave evidence that they had visited key locations
- performing regular random checks that security guards were on duty through surprise visits to locations
- performing checks for special events to ensure that the required guards were present
- reviewing CCTV and access records to ensure that guards were adequately performing their duties
- reviewing hand-over shift reports
- requiring digital devices to be in place, such as fingerprint readers, card scanners for guards, and software for tracking movements and activities.

Additionally, the University failed to implement an adequate rotation of duties or segregation of duties for its staff dealing with the provision of security services. Mr Smith told the Commission that he was only onsite for 35 hours per week and there were no University staff present on weekends or after he left at 3 pm during the week. When he was not at work, he said he would ring SNP staff in the evening to check on the performance of guards. Consequently, University staff had limited visibility over the performance of the contract, creating a potential for corrupt conduct.

Mr Smith gave evidence that he provided a business case to Stephen Sullivan, divisional manager for facility management and services, seeking the appointment of in-house team leaders to assist in overseeing the provision of security services. Mr Sullivan told the Commission he denied the request due to a pending strategic review and resourcing constraints.

Wayne Andrews is the chief financial officer at the University. In his evidence, he accepted the process of authorising invoices, in circumstances where there were no internal staff on weekends or after 3pm on weekdays to verify the performance of security guarding services, was a fundamentally flawed process.

Mr Smith gave evidence that he was restrained by privacy law from accessing CCTV footage, GPS data and access control data as a general means of monitoring guards in the absence of a formal complaint. The University advised the Commission there was no impediment to

Mr Smith using the data to monitor the movement of security guards.

RECOMMENDATION 12

That security contractors should be required to provide evidence that they have properly implemented internal controls to ensure that security staff (including subcontractors) have completed their duties in accordance with the contract and work orders.

RECOMMENDATION 13

That the University should document its internal contractor controls. A report of the conduct of the controls, exceptions to the controls and the resolution of those exceptions should be given to relevant managers in CIS.

RECOMMENDATION 14

That the University should perform random checks that security guards are on duty. These could include GPS monitoring, reviewing CCTV and access records, and surprise visits to certain locations.

RECOMMENDATION 15

That there should be a regular rotation between at least two University employees who undertake contractor checks to ensure that security services are provided.

(The University submitted that it is in the course of implementing recommendation 15).

Timesheets

Under clause 35 of the Security Industry Regulation 2016 ("the Regulation"), SNP was required to keep a sign-on register at the University.

Timesheets are an essential internal control to monitor security services and prevent fraud. Despite reviewing the timesheets once or twice per day, Mr Smith told the Commission that he did not notice similar signatures or the use of white-out and he believed that any anomalies were a result of human error. He stated that the purpose of his review was to ensure guards were present and had signed in. Mr Smith also expressed the view that the timesheets were a document that SNP should have been managing.

In a statement produced to the Commission pursuant to s 21 of the ICAC Act, the University stated that its staff did not check invoices against original or scanned timesheets. The University stated that this task was solely SNP's responsibility. Mr Robinson conceded that, with the benefit of hindsight, the University should have required SNP to provide timesheets with its invoices.

In addition, the University could have:

- addressed the issue of site timesheets in the security contract (as discussed above)
- required SNP to provide specimen signatures against which to check attendance of guards
- required security guards to sign timesheets in the presence of University staff (where practical) or alternatively ensured that electronic clocking devices were used to monitor when guards commenced and finished shifts
- adequately inspected the original paper timesheets.

RECOMMENDATION 16

That the University should have access to guard timesheets. The University should also inspect the timesheets to ensure compliance with legislative requirements and the contract, and to help confirm charges on invoices.

RECOMMENDATION 17

That security contractors should be required to provide specimen signatures against which the signatures of guards should be checked.

Some KPIs were poorly drafted and inadequately managed

The University's monitoring of contract KPIs was deficient as performance data was unreliable, not available or difficult to measure. The University also placed too much emphasis on self-reporting by SNP.

The work order annexed to the 2015 contract stipulated nine monthly KPIs. Mr Smith gave evidence that, after August 2016, he was jointly responsible with SNP for KPI reporting. Duane Ledford, the security risk coordinator, would provide some limited KPI data to assist Mr Smith. Mr Smith would discuss this information on a monthly basis with Mr McCreadie. A verbal position was agreed at this meeting, and the decision recorded in a spreadsheet. There was no reporting to senior management about whether KPIs were met.

The first KPI stated: "That appropriate officers as required by the University will be made available to fulfil the requirements of the statement of works." Mr Smith stated that, to assess performance against this KPI, he relied on what Mr McCreadie told him and his own observations while onsite. He agreed this was not sufficient to

determine whether SNP had met the KPI. Mr Ledford confirmed he was not asked to compile data on the first KPI. Despite the reports recording that all KPIs for guarding services were met between February 2016 and December 2017, it is plain from the Commission's investigation that SNP did not meet the first KPI, as guards were not present at every shift during that period.

The fifth KPI stated: "All University buildings are to be patrolled at least once in each 12 hour period." Mr Smith gave evidence that the fifth KPI could not be measured. Mr Ledford confirmed that it was not possible for SNP to meet this KPI with the level of staffing that was stipulated under the contract. Instead, Mr Ledford said that Mr Smith or Morgan Andrews instructed him to compile statistics for only a low percentage of buildings. Mr Robinson acknowledged that, as the fifth KPI was not properly measured, the University was not in a position to ascertain whether it was met.

The sixth KPI stated: "All '24 hour spaces' within the University are to be patrolled 2 times each night". The evidence about the monitoring of the sixth KPI was inconsistent. Mr Smith stated that this KPI was difficult to measure, as guards were already permanently placed in all 24-hour buildings. Mr Ledford gave evidence that he did, at times, compile statistics on the sixth KPI, and it was largely met.

In contrast, Mr McCreadie gave evidence that Mr Ledford would have to manually check data entered into an incident reporting software program to measure whether the KPI was met. This data was not always accurate and it was time-consuming to compile the report. Mr McCreadie was only aware of Mr Ledford compiling the report a couple of times. On the available evidence, it is unclear if the sixth KPI was met or accurately measured.

Mr Ledford also stated that he was not asked to compile reports for the third, fourth and seventh KPIs, concerning response requirements, until after the Commission's investigation became overt. Mr Ledford's evidence suggests that these KPIs were largely unmeasured.

Morgan Andrews stated that the KPIs in the previous 2009 SNP contract were generally specific and achievable; however, in the 2015 contract the KPIs were vague and difficult to measure. He recalled that the onus and philosophy of the University was to put the responsibility for KPI measurement onto SNP.

In relation to the 2015 contract, the KPIs could have incorporated the following areas:

- complaints about service levels
- student perceptions of safety
- feedback from library staff and other users
- data about security incidents and near misses
- cooperation with other parts of the University.

The lack of management of KPIs by the University made it more difficult to detect corruption and created a false impression that the security services were operating effectively.

RECOMMENDATION 18

That the University should have KPIs in place that cover the essential requirements for the provision of security services. It should also ensure KPI monitoring for security contracts is based on data that is trustworthy, measurable and relevant, and that reliance on contractor self-reporting is minimalised.

The processes for controlling ad hoc contract expenditure were weak

Between December 2015 and March 2018, the expenditure for ad hoc guarding services at the University (in excess of the contract) was $2,650,266.58 (excluding GST). Many of the invoices were authorised by Mr Smith.

There was limited management scrutiny of the amount being spent on ad hoc guarding services. The University allowed this expenditure to be approved at a relatively low management level despite it being for a significant cumulative amount. It is also possible that the approval of ad hoc expenditure was in breach of policy, as there was confusion at the University over whether contract variations should be approved at a transactional or cumulative level.

The base contract made limited attempts to quantify the seasonal nature of guarding work. Consequently, although some of this expenditure was predictable, a large ad hoc component was required to deal with specific peaks in demand.

Clause 6.1 of the University's Finance and Accounting Manual Procurement Policy ("the Procurement Policy") states:

> *Except for contracts for approved major capital works for building projects, acquisitions that were previously approved by the Tender Board will need a further approval if unforeseen variations exceed 10% of the original approved amount (i.e. contract life including any extension options).*

Clause 24 of the University's Tendering Procedures states:

> *…variations up to 10% on the approval amount do not require additional approval by the Tender Board. Except for contracts for approved major capital works*

for building projects, variations in excess of 10% require Tender Board approval for the revised total.

While the contract contemplated the provision of ad hoc guarding services at specified rates, it did not attempt to quantify the guarding hours required to fulfil these services. Consequently, it is likely that clause 6.1 of the Procurement Policy and clause 24 of the Tendering Procedures ought to have applied, as the ad hoc expenditure exceeded 10% of the contract value. Instead, the convention was adopted that each monthly invoice containing ad hoc expenses for guarding services was viewed in isolation.

This practice appears to contradict the University's view that invoices should be aggregated over the term of a contract to determine the delegation level required. Wayne Andrews acknowledged that there may have been different interpretations at the University concerning how delegations were meant to operate; that is, whether one looks at the total value of a contract variation or whether the approval level is set at an annual or transactional limit.

It is possible that Mr Smith did not have adequate delegation to approve the ad hoc expenses and senior management did not give due consideration to the high expenditure. This lack of scrutiny contributed to an environment that made it easy for corruption to occur.

Another element of the ad hoc guarding arrangements was the adoption of a user-pays approach. Consequently, if specific areas of the University needed guards, it would come out of its budget. The adoption of a user-pays system also meant that organisations, such as University clubs, would be required to pay for guarding services for specific events. As the end users of ad hoc guarding services were reliant on "experts" within CSU to determine how many guards were required, the adoption of a user-pays approach did act as a control against excess expenditure.

Similarly, the CSU lacked the incentive to minimise costs or monitor the budget for ad hoc expenditure because it was not required to pay for many ad hoc services. Mr Smith and Mr Robinson gave evidence that the ad hoc guarding work had no budgeting constraint and was assessed purely on a risk basis. Morgan Andrews also stated:

As it was coming out of their accounts, we would provide the guards rather than argue, sometimes it seemed they had a bucket of money and were happy to use guards for certain duties, which I would not consider traditional security roles.

The University has implemented changes in an attempt to control its expenditure on ad hoc guarding services. A new contract regime has been adopted, based on a task-by-task performance that is identified through a pre-planned, 10-week cycle. The base contract will incorporate guarding services, which were previously billed as ad hoc work, due to the greater ability to predict requirements for these services.

RECOMMENDATION 19

That the University should develop controls to identify when contract variations exceed 10% of the original contract amount. It should also clarify that a sufficiently senior delegate is required to scrutinise and approve cumulative ad hoc contract payments that exceed 10% of the contract value.

Minimum four-hour charges

As described in chapter 2, SNP charged the University a minimum of four hours when a guard was required for ad hoc activities. This practice had its origins in the obligation placed on SIG, via the Award, regarding minimum shift durations for casual guards. The Commission heard evidence that some jobs took about 15 minutes to complete. Some ad hoc work was undertaken by guards during their rostered shifts. The University approved payments for a four-hour block, even though there was no contractual obligation for it to do so.

The embedding of contractors at the University

Mr Robinson provided evidence that he was concerned about the informality between SNP managers and the University's CSU staff; for example, meetings were held between in-house staff and SNP managers at the University's poolside café.

In part, this situation arose because of the close physical proximity between SNP/SIG personnel and University staff who sat together in an open-plan office in CSU. The embedding of SNP staff at the University was a deliberate contract management strategy adopted by SNP that was endorsed by the University.

Fostering close relationships between contractors and in-house staff can help ensure contract objectives are met and opportunities are maximised though the building of strong professional relationships. Nevertheless, it is equally important to recognise that the co-location of contractors with in-house staff can create probity risks, including staff over-identifying with a contractor's interests and staff socialising with contractors – a situation that can give rise to conflicts of interest, perceptions of bias and undue influence.

Ideally, the University should have taken stringent measures to ensure that its staff continued to identify with its interests and to understand their obligations

to the University. Mr Robinson gave evidence that it is now expected that meetings between contractors and University staff are formal and occur inside the CSU.

Additionally, the University should have taken steps to introduce additional layers of independent scrutiny into the contractual arrangements. One significant measure would have been to share responsibility for formal KPI monitoring with a team that was independent of CSU, or at least not involved with security contractors on a regular basis.

RECOMMENDATION 20

That the University considers sharing some contract management duties between internal staff, who are co-located with security contractors, and staff, who do not have day-to-day contact with security contractors.

Governance issues

Gifts and benefits

The gifts and benefits offered to, and accepted by, Mr Smith are discussed in chapter 6.

Mr Robinson informed CSU staff on numerous occasions that he had a zero-tolerance approach towards the acceptance of gifts from contractors. The University's code of conduct stated that:

> *Cash or gift vouchers must not be accepted from any third party which derives a commercial benefit from a contractual relationship with the University under any circumstances.*

The University did not establish ethical expectations for suppliers

At the relevant times, the University did not have in place a code of business ethics or code of business practice for suppliers.

It is difficult to insist that suppliers act ethically, especially in specific circumstances, without clearly establishing ethical standards. The failure to establish expected standards of behaviour can create an ethical vacuum, which, in turn, contributes to corrupt conduct.

RECOMMENDATION 21

That the University should develop a code of business practice or similar document and contractually bind major suppliers to comply with it. The document should include:

- **a prohibition on suppliers or potential suppliers offering gifts and benefits**
- **a prohibition on actions that place University staff or other individuals in the supply chain in conflict of interest situations**
- **a requirement for suppliers to have comparable provisions in contracts with subcontractors or other companies in the supply chain**
- **details of where people can make reports (including anonymous reports) of breaches of the code of business practice.**

The University did not establish a reporting mechanism for security guards and other similar people in the supply chain

A reporting mechanism might act as a deterrent to people engaging in fraud and corruption, and lead to its earlier detection. It is worth noting that a whistleblower, who was a former guard at the University, raised the ghosting practices during a car ride undertaken with Mr Robinson in an Uber vehicle in March 2018.

The University did not have an advertised mechanism for guards and other people in the supply chain to report corruption. Guards were required, however, to undertake induction training. This training could have been used as an opportunity to explain how to report corruption. For example, information could have been incorporated into the training about the *Public Interest Disclosures Act 1994* and how to report to the Commission and similar bodies.

During the public inquiry, Mr Roche gave evidence that SNP has since introduced a new whistleblowing policy. The revised procedures include the establishment of an independent whistleblowing reporting hotline.

RECOMMENDATION 22

That the University should establish a clear mechanism, and one that is clearly communicated, for the staff of suppliers and subcontractors to report corrupt conduct.

The University did not have a fraud and corruption control plan

Since 2010, the Commission has conducted the following four public inquiries into corrupt conduct involving procurement at the University of Sydney:

- *Investigation into undisclosed conflicts of interest of a University of Sydney employee* (September 2010)
- *Investigation into the recruitment of contractors and other staff by a University of Sydney IT manager* (October 2012)

- *Investigation into the conduct of a university manager and others in relation to false invoicing* (June 2015)
- *Investigation into the conduct of a University of Sydney ICT manager* (May 2016).

The Australian Standard on Fraud and Corruption Control AS 8001–2008 states that entities should develop and implement a fraud and corruption control plan documenting the entity's approach to controlling fraud and corruption exposure at strategic, tactical and operational levels. The University does not have a fraud and corruption control plan in place notwithstanding a clear expectation that organisations, especially those in the public sector or receiving significant public sector funding, will have appropriate fraud and corruption control plans.

RECOMMENDATION 23

That the University adopts a fraud and corruption control plan that appropriately addresses the risks of fraud and corruption. Among other things, the plan should reflect the findings made in previous Commission investigation reports concerning universities and ensure that the corruption prevention issues are not dealt with in isolation, but that the cumulative implications are properly considered.

The University ignored red flags

The University ignored red flags that highlighted problems sufficiently large and potentially indicative of corrupt conduct that should have caused it to halt and investigate the provision of security services.

The University did not take any action as a result of an internal audit into the SNP contract highlighting significant non-compliance

As discussed in chapter 4, on 26 July 2016, KPMG reported on its audit, *University of Sydney: SNP Contract Compliance Review* ("the KPMG report"). The report observed some "significant issues" of non-compliance regarding the 2015 contract, which are discussed below.

The executive summary of the KPMG report stated that the University operates in an environment where ensuring that the contractors it engages are complying with relevant regulations and Awards, and are engaging in practices that are ethical and in line with the University's objectives, is critical to protecting staff rights and managing the University's reputational risk. Further, as one of the University's largest soft-services contracts, it was important that the University, as well as SNP, exercises an adequate level of oversight of the operations of the contractors and any subcontractors engaged.

In the summary of observations, the KMPG report stated that, to accomplish the principal objective of working with a service provider that is compliant with legislation and policies, it is fundamental that the University has robust processes in place for governance over the contractor operations and that these controls are built in as part of tendering and contractual requirements. It was further stated that the contractor should be able to clearly demonstrate the effectiveness of the controls that they have implemented to meet any contractual and regulatory requirements.

The following were raised as "significant issues" in the key observations section:

> *Practices exist to circumvent payment of overtime allowance to SNP staff resulting in non-compliance to* [sic] *the EBA* [enterprise bargaining agreement].
>
> …
>
> *On performing a reconciliation between the rosters, sign-in/sign-out books and payroll data (for January 2016 to March 2016) for a sample of ten SNP staff, internal audit identified practices that could potentially circumvent SNP's obligations relating to payment of overtime allowance to security guards. On discussions with SNP, it was noted that this was due to a few security guards working both as SNP staff (as per the core roster) and as SIG staff (for extra shifts over and above the roster at normal rates). It is also noted that beyond the issue with overtime allowances, this practice may pose an occupational hazard to staff who work on a continuous basis without adequate rest breaks between shifts.*
>
> *(a) Overtime not paid to staff: As per Clause 12.1 of the SNP EBA, 'An employee may elect to work additional hours outside of rostered ordinary hours. Such hours as worked shall be paid for at the rate prescribed in Clause 8.1 for Voluntary Overtime'. It was noted that for four out of eight staff, there were instances where the number of hours recorded in the sign-in/sign-out records was more than those specified in the SNP roster, however as per Payroll data this was not paid as overtime. This may be due to the fact that the same security guard is working for both as SIG and SNP; the same sign-in/sign-out sheet is used by SNP and SIG, therefore the total hours recorded there would mismatch with the SNP payroll data, with the balance being paid by SIG (which we were unable to validate as this related to SIG payroll data). However, our interviews with sample security guards confirmed that some guards are working as both SNP and SIG staff often on advice from SNP, as means* [sic] *to get additional work without getting overtime allowance.*

(b) Working beyond hours/days specified in the EBA: As per Clause 12.1(c), 'no employee shall be required to work 12 hour shifts on more than five consecutive days.' However for three out of eight staff, we noted instances where staff were working more than five days a week consecutively on 12 hour shifts, resulting in non-compliance to the EBA. Additionally, there were instances where the same staff had worked for six days or more consecutively, however the hours worked on one of the days was less than 12 (often ten or eight) which may not actually result in non-compliance to the EBA, however the staff still ends up working more than five days in a row.

On review of sign-in/sign-out records, we also noted that one security guard (SIG) had worked for 15 days in a row without any breaks (the number of hours worked per shift varied from four to 13). As per the Modern Award, separate long breaks of continuous time off work in each roster cycle, depending on the length of the roster cycle should be given to staff. For instance, as per Clause 21.4 (b) of the Award, 'regardless of the roster cycle, an employee on a roster cycle must not be required to work more than a total of 48 hours of ordinary time without a long break of at least 48 continuous hours.'

(c) Inaccurate/out-of-date rosters: It was noted that rosters were not up to date and did not reflect the actual number of days that staff were working on site. It was noted that for six out of ten staff, there were instances where the number of hours/days worked mismatched with the roster.

Further, there were instances where staff on the roster did not actually work on that site/campus for a certain period, however the roster was not updated with the changes/replacement staff. For instance, the March 2016 core roster had eight instances where the security guard on the roster did not actually work on site and was replaced by another guard. SNP advised this was due to the fact that it is difficult for to [sic] *re-include someone in the core roster after they have been removed from the roster. It is acknowledged that the core roster is static and is updated on a monthly basis.*

In relation to the "significant issue" of inaccurate rosters, this observation highlighted a significant internal control weakness, as rosters should be used to plan and monitor time worked.

The report further noted an "Issue of Concern" that 30 staff who had signed in/out in the attendance book for the period of January to March 2016 were not in the staff listing. While these staff were considered non-core, this indicated an internal control weakness in relation to guards who attended the University on a regular basis and, especially when combined with the other internal control weaknesses identified in the report, should have led to further review by the University.

Overall, the report contained a number of indicators of possible corrupt conduct, particularly:

- staff being recorded in the attendance book but not the staff listings
- staff being paid when they were not rostered and rosters for security guards being inaccurate and not reflecting the number of days that staff were working onsite
- the splitting of normal time and overtime between SNP and SIG, which had the effect of reducing SNP scrutiny of the overtime
- a high number of days or shifts being worked by a guard.

The University should have followed up the indications of mismanagement and possible corruption raised in the KPMG report, particularly as the report included limited subcontractor data because contracts between SNP and its subcontractors were out of scope. Vice-chancellor Dr Michael Spence told the Commission that, with the benefit of hindsight, it should have been within scope.

However, in a statement produced to the Commission, the University said that, "no specific action" was taken in relation to the KPMG report. This was unfortunate.

The KPMG report was distributed to Mr Duffy (CIS operations manager), Ryan Sierra (CIS deputy operations manager), Mr Sullivan and Morgan Andrews. However, by 26 July 2016, Morgan Andrews had left the University and Mr Smith was acting in that role. Mr Smith received the KPMG report and read it in full around 26 July 2016.

Mr Robinson was not provided with a copy of the report. In fact, Mr Robinson told the Commission that he was not informed about the KPMG report when it was initially commissioned by Mr Duffy. He told the Commission that he only became aware of the KPMG report in 2018, when he was complying with requests to provide documents to the Commission. He believed that the KPMG audit should have been provided to him and that the report was of sufficient significance to issue SNP with a breach of contract notice.

Instead, the University's response to the KPMG report came from Mr Smith. On 8 August 2016, Mr Smith emailed Mr McCreadie and Neil Fields (operations manager) from SNP, and requested SNP formally respond to the KPMG report, address its findings (specifically mentioning the "significant" category) and implement immediate corrective action. Mr Smith requested that SNP identify how the practices came about, plus any remedial

action to prevent reoccurrence. Mr Smith's email was forwarded to Mr Roche.

On 11 August 2016, Mr McCreadie emailed SNP senior managers and attached notes he had "been working on" with Mr Smith. Mr McCreadie told the Commission that the notes, which he prepared and discussed with Mr Smith, responded to the key recommendations and observations in the KPMG report. He said that he intended SNP to use the notes as the basis for its formal response to the matters raised in the KPMG report. He said he did not view collaborating with Mr Smith as improper. He said Mr Smith was a good customer who wanted to help out SNP.

Mr Smith told the Commission that he could not recall having any involvement preparing SNP's response to the KPMG report. He said he was unaware of Mr McCreadie's notes. He accepted that providing input into SNP's response to the KPMG report may be improper.

The Commission rejects Mr Smith's evidence. The Commission accepts Mr McCreadie's evidence on the basis that his account is corroborated by documentary evidence and he had no reason to give untruthful evidence. The Commission is satisfied that Mr Smith and Mr McCreadie collaborated on SNP's response to the KPMG report. This was improper.

On 23 August 2016, SNP delivered its response to the KPMG report to Mr Smith. SNP's response to the audit did not provide any particulars concerning how it was going to address the issues that were raised. The SNP response was also misleading as it stated that no practices existed to circumvent the payment of overtime to its employees and also that no employee was either required, or encouraged, to work for SIG by SNP. SNP's response also did not provide any response to the "significant" issue of an SIG staff member working 15 days in a row without any breaks.

On 25 August 2016, Mr Smith emailed Mr Sullivan and said he had read SNP's response to the KPMG report and, "on balance [SNP] have answered the concerns raised by KPMG". In contrast, Mr Robinson gave evidence to the Commission that SNP's response to the audit was "very poor" given the gravity of the issue. He was also asked about Mr Smith's response, and said it showed a serious error of judgment.

In the email to Mr Sullivan, Mr Smith also stated that he would monitor the items raised by KPMG at KPI meetings later in the year, and ensure compliance was continuing. Neither Mr Sullivan nor Mr McCreadie recalled any further compliance monitoring occurring.

On 26 August 2016, Mr Sullivan forwarded Mr Sierra, (copying Mr Smith) SNP's response to the KPMG report, stating that he and Mr Smith were satisfied with SNP's responses, which they would monitor during monthly contractor meetings. Mr Sullivan told the Commission that he relied on Mr Smith's review of SNP's response to the audit.

Mr Smith had a different recollection. He said that he and Mr Sullivan were awaiting a response in relation to the KPMG report from their superiors, Mr Sierra and Tony Fisher, CIS corporate services divisional manager. The Commission does not accept this. Mr Sullivan's email disavows Mr Smith's evidence.

It is unfortunate that the University did not satisfactorily respond to the KPMG report. On the same day that Mr Sullivan notified Mr Sierra that he and Mr Smith were happy with SNP's response, Mr McCreadie, Mr Balicevac and Mr Lu were four days into a practice, which would continue until April 2018, of dishonestly obtaining payment for excessive hours of ghosting shifts for the performance, or purported performance, of ad hoc security shifts requested, and ultimately paid for, by the University.

In addition to the missed opportunity to provide the report to senior management, the University's director of internal audit was not provided with a copy of the KPMG report. In fact, between January 2015 and September 2018, a large number of audits or reviews were undertaken by third-party providers for the vice-principal of operations that were not undertaken through the internal audit unit, including the KPMG report of 26 July 2016.

There are a number of reasons for providing audit reports to the director of internal audit, including that the reports:

- enable internal audit staff to have a better understanding of the key issues covered, which is likely to be relevant in understanding how risks are managed, the effectiveness of internal controls and whether governance structures are appropriate
- help ensure that problems are not buried and that an impartial and objective assessment of the audit results is performed
- enable internal audit staff to help operational areas take effective remedial actions
- enable internal audit staff to carry out the necessary quality controls to ensure that the audits are undertaken properly, in accordance with the University's standards and the International Professional Practices Framework for internal auditing
- allow internal audit to track the implementation of audit recommendations and escalate relevant issues to the FAC.

As the director of internal audit was not provided with copies of the reports, the FAC members were also not given copies. An essential governance activity was consequently missed and the general governance process subverted. Mr Brennan, who is a member of the FAC, agreed that it is not good practice for an operational manager to commission an internal audit without the knowledge or input of the internal audit function.

RECOMMENDATION 24

That all internal audit reports should be given to the director of internal audit and reported to the FAC. The internal audits should be reviewed by an internal audit manager to assess the implications of the report and whether there are red flags of possible fraud and corruption. If necessary, internal auditors' working papers should also be obtained.

Mr McCreadie's actions to hinder KPMG

On 14 June 2016, Mr Sierra emailed Morgan Andrews and noted that Mr McCreadie had asked KPMG staff when they would be conducting interviews onsite with SNP guards for the audit and what questions they were going to ask. Mr Sierra noted that this defeated the purpose of the visit. Mr Sierra also said that KPMG raised a further concern that Mr McCreadie, and another SNP employee, implemented a restrictive measure by controlling with whom KPMG spoke and by not providing the relevant documents.

Mr McCreadie told the Commission he was concerned the review process could identify evidence of the dishonest ghosting conduct, which could have had adverse consequences for him.

There was no evidence that the University reprimanded Mr McCreadie in attempting to undermine the KPMG audit.

The University did not formally action a 2016 recommendation for a review of its campus security

Despite student and staff safety being a significant concern to the University, its executive and senior management appear to have not formally actioned an earlier recommendation for a review of its security services.

The report, *Creating a Safer Community for All: Sexual Harassment and Assault on Campus*, was released in 2016 by the University detailing results to a survey it had undertaken on campus security.

The report highlighted a number of areas of potential concern. For example, only 75.7% of students agreed or strongly agreed that they felt safe on campus. The report also noted that, in open text feedback, in respect of specific improvements for safety on campus, one of the most frequently cited concerns was "insufficient security personnel".

According to the report: "All recommendations have been noted and endorsed by the Senior Executive Group for implementation and address areas of concern highlighted by respondents to the Survey". Of the five recommendations, one was that a review be undertaken of existing campus security with a view to strengthening security and safety measures on campus (recommendation 4).

In response to recommendation 4, the Commission required the University to produce reports detailing the review and action taken, pursuant to s 22 of the ICAC Act. The University did not provide evidence that a formal review had been undertaken in response to recommendation 4, although some activities were undertaken in 2015 and 2016 that resulted in enhancements to the courtesy bus service and an increase in the guarding force.

A thorough review of existing campus security services, in line with recommendation 4, may have highlighted the existence of control weaknesses in relation to the provision of security services.

In relation to the current investigation, it was submitted by the Commission that the University did not action recommendation 4 of its report. In reply, the University's submissions asserted that the Commission's corruption prevention submissions on this matter involved a denial of procedural fairness. The University submitted:

> *No witness was asked either about the report or the implementation of its recommendations and no notice was given to the University requiring such evidence to be "presented" by it.*

The Commission is satisfied that, in providing the corruption prevention submissions to the University and subsequently receiving submissions in reply from the University, the University was provided with a sufficient opportunity to respond to the issues raised in the corruption prevention submissions.

The 24 recommendations in this report are made pursuant to s 13(3)(b) of the ICAC Act and, as required by s 111E of the ICAC Act, will be furnished to the University and the Minister for Education.

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

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

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

Appendix 1: The role of the Commission

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

The Commission's functions are set out in s 13, s 13A and s 14 of the ICAC Act. One of the Commission's principal functions is to investigate any allegation or complaint that, or any circumstances which in the Commission's opinion imply that:

i. corrupt conduct (as defined by the ICAC Act), or

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

iii. conduct connected with corrupt conduct,

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

The Commission may also investigate conduct that may possibly involve certain criminal offences under the *Electoral Act 2017*, the *Electoral Funding Act 2018* or the *Lobbying of Government Officials Act 2011*, where such conduct has been referred by the NSW Electoral Commission to the Commission for investigation.

The Commission may report on its investigations and, where appropriate, make recommendations as to any action it believes should be taken or considered.

The Commission may make findings of fact and form opinions based on those facts as to whether any particular person has engaged in serious corrupt conduct.

The role of the Commission is to act as an agent for changing the situation that has been revealed. Through its work, the Commission can prompt the relevant public authority to recognise the need for reform or change, and then assist that public authority (and others with similar vulnerabilities) to bring about the necessary changes or reforms in procedures and systems, and, importantly, promote an ethical culture, an ethos of probity.

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

Appendix 2: Making corrupt conduct findings

Corrupt conduct is defined in s 7 of the ICAC Act as any conduct which falls within the description of corrupt conduct in s 8 of the ICAC Act and which is not excluded by s 9 of the ICAC Act.

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

(a) any conduct of any person (whether or not a public official) that adversely affects, or that could adversely affect, either directly or indirectly, the honest or impartial exercise of official functions by any public official, any group or body of public officials or any public authority, or

(b) any conduct of a public official that constitutes or involves the dishonest or partial exercise of any of his or her official functions, or

(c) any conduct of a public official or former public official that constitutes or involves a breach of public trust, or

(d) any conduct of a public official or former public official that involves the misuse of information or material that he or she has acquired in the course of his or her official functions, whether or not for his or her benefit or for the benefit of any other person.

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

Subsection 8(2A) provides that corrupt conduct is also any conduct of any person (whether or not a public official) that impairs, or that could impair, public confidence in public administration and which could involve any of the following matters:

(a) collusive tendering,

(b) fraud in relation to applications for licences, permits or other authorities under legislation designed to protect health and safety or the environment or designed to facilitate the management and commercial exploitation of resources,

(c) dishonestly obtaining or assisting in obtaining, or dishonestly benefitting from, the payment or application of public funds for private advantage or the disposition of public assets for private advantage,

(d) defrauding the public revenue,

(e) fraudulently obtaining or retaining employment or appointment as a public official.

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

(a) a criminal offence, or

(b) a disciplinary offence, or

(c) reasonable grounds for dismissing, dispensing with the services of or otherwise terminating the services of a public official, or

(d) in the case of conduct of a Minister of the Crown or a Member of a House of Parliament – a substantial breach of an applicable code of conduct.

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

Subsection 9(4) of the ICAC Act provides that, subject to subsection 9(5), the conduct of a Minister of the Crown or a member of a House of Parliament which falls within the description of corrupt conduct in s 8 is not excluded

by s 9 from being corrupt if it is conduct that would cause a reasonable person to believe that it would bring the integrity of the office concerned or of Parliament into serious disrepute.

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

Section 74BA of the ICAC Act provides that the Commission is not authorised to include in a report under s 74 a finding or opinion that any conduct of a specified person is corrupt conduct unless the conduct is serious corrupt conduct.

The Commission adopts the following approach in determining findings of corrupt conduct.

First, the Commission makes findings of relevant facts on the balance of probabilities. The Commission then determines whether those facts come within the terms of subsections 8(1), 8(2) or 8(2A) of the ICAC Act. If they do, the Commission then considers s 9 and the jurisdictional requirement of s 13(3A) and, in the case of a Minister of the Crown or a member of a House of Parliament, the jurisdictional requirements of subsection 9(5). In the case of subsection 9(1)(a) and subsection 9(5) the Commission considers whether, if the facts as found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that the person has committed a particular criminal offence. In the case of subsections 9(1)(b), 9(1)(c) and 9(1)(d) the Commission considers whether, if the facts as found were to be proved on admissible evidence to the requisite standard of on the balance of probabilities and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that the person has engaged in conduct that constitutes or involves a thing of the kind described in those sections.

The Commission then considers whether, for the purpose of s 74BA of the ICAC Act, the conduct is sufficiently serious to warrant a finding of corrupt conduct.

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

In Australia there are only two standards of proof: one relating to criminal matters, the other to civil matters. Commission investigations, including hearings, are not criminal in their nature. Hearings are neither trials nor committals. Rather, the Commission is similar in standing to a Royal Commission and its investigations and hearings have most of the characteristics associated with a Royal Commission. The standard of proof in Royal Commissions is the civil standard, that is, on the balance of probabilities. This requires only reasonable satisfaction as opposed to satisfaction beyond reasonable doubt, as is required in criminal matters. The civil standard is the standard which has been applied consistently in the Commission when making factual findings. However, because of the seriousness of the findings which may be made, it is important to bear in mind what was said by Dixon J in *Briginshaw v Briginshaw* (1938) 60 CLR 336 at 362:

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

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

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

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

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

Appendix 3: Summary of responses to adverse findings

Section 79(A)(1) of the ICAC Act provides that the Commission is not authorised to include an adverse finding against a person in a report under s 74 unless the Commission:

- has first given the person a reasonable opportunity to respond to the proposed adverse finding, and
- includes in the report a summary of the substance of the persons' response that disputes the adverse finding, if the person requests the Commission to do so within the time specified by the Commission.

Counsel Assisting the Commission made written submissions setting out, inter alia, what adverse findings he contended it was open to the Commission to make against Mr Smith, Mr McCreadie, Mr Balicevac, Mr Lu, Mr Sirour and George Boutros.

These were provided to parties on 5 April 2019. Between 29 April 2019 and 6 May 2019, the Commission received written submissions in response made on behalf of the parties.

On 22 May 2019, Counsel Assisting provided additional submissions on a limited number of issues, which did not propose any adverse findings against any person. No parties provided a response to those submissions.

On 3 February 2020, Ms Huda was given the opportunity to make submissions in relation to potential adverse findings. Submissions in response were provided to the Commission on 13 March 2020. That same day, Ms Huda was given the opportunity to make further submissions in relation to potential adverse findings. Further submissions in response were provided to the Commission on 19 March 2020.

On 2 March 2020, Mr Smith and Mr Balicevac were given the opportunity to make submissions on a limited number of issues in relation to potential adverse findings. On 9 March 2020, Mr Smith provided submissions in response to the Commission. Mr Balicevac did not provide any further submissions in response.

On 13 March 2020, Mr Sirour and George Boutros were given the opportunity to make submissions on a limited number of issues in relation to potential adverse findings. Submissions in response were provided to the Commission by George Boutros on 19 March 2020 and by Mr Sirour on 26 March 2020.

The Commission considers that, in these circumstances, the parties had a reasonable opportunity to respond to the proposed adverse findings.

Where adverse findings have been made in the body of this report, submissions made in response by individual parties to that finding have been included if requested by the party or if the Commission determined they ought to be reproduced.

Appendix 4: The Commission's cooperation policy

The Commission's cooperation policy

Introduction

The NSW Independent Commission Against Corruption ("the Commission") aims to protect the public interest, prevent breaches of public trust and guide the conduct of NSW public officials. To do this we:

- investigate and expose corrupt conduct in and affecting most of the NSW public sector (including state government agencies, local government authorities, members of Parliament and the judiciary but excluding NSW Police and the NSW Crime Commission);
- actively prevent corruption through advice and assistance; and
- educate the NSW community and public sector about corruption and its effects.

Corruption harms public administration, can involve the misuse of public funds and assets and undermine trust in government and the effective and efficient delivery of public services. It involves secrecy and deception and is often difficult to detect without inside information.

The purpose of this policy is to set out what we can do to encourage those involved in corruption to cooperate with us to establish that corrupt conduct has occurred and the full extent of that conduct so that we can stop the harm arising from such conduct.

How to cooperate with the Commission

A person can cooperate with us by:

- fully reporting any corrupt conduct at the earliest possible time;
- honestly and completely disclosing all relevant information;
- providing voluntary assistance during an investigation, including by providing evidence and/or other information in relation to the subject matter of an investigation, including at a public inquiry; and
- giving evidence in the criminal prosecution of others arising from the investigation.

Merely fulfilling certain legal obligations under the *Independent Commission Against Corruption Act 1988* ("the ICAC Act"), such as producing documents in response to a notice or summons issued by the Commission or attending to give evidence in response to a summons (unless the evidence is comprehensive and entirely truthful), does not constitute cooperation for the purposes of this policy.

Protection for those cooperating with the Commission

We take seriously the need to protect people who have assisted us, including their family members, against any potential harm, intimidation or harassment arising from their cooperation.

Section 50 of the ICAC Act provides that, if the safety of a person (or the safety of any other person, including family members) may be prejudiced or the person may be subject to intimidation or harassment because the person assisted the Commission, we may make arrangements to:

- protect the person's safety; or
- protect the person from intimidation or harassment.

Such arrangements may involve directing the Commissioner of Police to:

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- provide protection;
- provide personnel or facilities or both to assist in providing protection; or
- otherwise assist in providing protection.

The Commission may also make an order to protect a person's safety or to protect a person from intimidation or harassment. It is a criminal offence for anyone to contravene such an order.

Under s 93 of the ICAC Act, it is a criminal offence for any person who uses, causes, inflicts or procures, or threatens to use, cause, inflict or procure, any violence, punishment, damage, loss or disadvantage to any person for or on account of the person:

- assisting the Commission; or
- giving evidence to the Commission.

Under s 94 of the ICAC Act, it is also a criminal offence for an employer to dismiss an employee or prejudice the employee because the employee assisted the Commission.

Potential benefits of cooperating with the Commission

There are various potential benefits available to those who fully cooperate with us.

1. Acknowledgement of assistance in a Commission report

The Commission may prepare a report in relation to any matter that has been the subject of an investigation. Such reports are made public and published on our website.

Where appropriate and subject to the consent of the relevant person(s), we will include mention in our report of the cooperation provided by particular persons and the value of that cooperation to us in uncovering corruption. This will be a public acknowledgement of the assistance provided to us in uncovering corruption.

2. Discretion not to make corruption findings

In reporting on its investigations, the Commission may make factual findings and findings that a person has engaged in serious corrupt conduct.

The Commission may exercise a discretion not to make a finding that a person has engaged in corrupt conduct, even though the factual findings permit such a finding.

The discretion may be exercised where a person has fully cooperated with the Commission. Relevant considerations include:

- the value to the Commission of the assistance, including the value of any evidence or other information provided by the person;
- the stage of the investigation the person began to fully cooperate;
- the extent and level of their involvement in the relevant corruption;
- whether they were an instigator or beneficiary of the corrupt conduct; and
- whether the making of such a finding would be, in all the circumstances, unduly severe.

3. Discretion not to recommend consideration of prosecution

In reporting on its investigations, the Commission may make a statement as to whether consideration should be given to:

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

Where a person has fully cooperated with the Commission, the Commission may also exercise its discretion to not recommend consideration be given to seeking the advice of the DPP or the taking of disciplinary or dismissal action against that person.

Where a person, who has given false or misleading evidence to the Commission, voluntarily returns to the Commission and cooperates by providing a full and truthful account, we will take that cooperation into account when deciding whether consideration should be given to obtaining the advice of the DPP with respect to a prosecution for an offence under s 87 of the ICAC Act of giving false or misleading evidence. In exercising our discretion we will take into account:

- whether the person has on their own volition approached the Commission to change their evidence;
- whether the person has provided a full and truthful account;
- the stage of investigation at which the person approached the Commission to change their evidence; and
- whether the change is likely to materially affect the progress and outcome of the investigation.

4. Indemnities and undertakings

Under s 49 of the ICAC Act, the Commission may recommend to the NSW Attorney General that a person be granted an indemnity from prosecution for a specified offence or in respect of specified acts or omissions. If such an indemnity is granted, no proceedings may thereafter be instituted or continued against the person in respect of the offence or the acts or omissions.

The Commission may also recommend to the Attorney General that a person be given an undertaking that an answer, statement or disclosure in proceedings before the Commission or the fact of a disclosure or production of a document in proceedings before the Commission will not be used in evidence against the person. If such an undertaking is given, the answer, statement, disclosure or the fact of the disclosure or production is not admissible in evidence against the person in any civil or criminal proceedings, other than proceedings in respect of the falsity of evidence given by the person.

5. Assistance to a person convicted of an offence

Where a person who has cooperated with the Commission is subsequently convicted of an offence arising from the Commission investigation, we can provide a letter to the relevant court setting out details of the cooperation and request the court take that co
operation into account when imposing the sentence.

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INDEPENDENT COMMISSION
AGAINST CORRUPTION

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