

22<sup>nd</sup> February 2024

Sent by email to [budget.estimateds@parliament.nsw.gov.au](mailto:budget.estimateds@parliament.nsw.gov.au)

Dear Portfolio Committee Members

**NSW Budget Estimates PC3 – Education and Early Learning, Western Sydney (Car)  
Held on Tuesday 20th February 2024 915am-530pm**

On Tuesday 20<sup>th</sup> February 2024, I became aware of statements referring to myself and my business activities being made by the chair of this committee, Ms Abigail Boyd, MLC.

I contacted the NSW Budget Estimates Secretariat by email and telephone to enquire as to the formal process for right of reply and to refute each of the statements being made about me in a public forum.

My own enquiries that day had identified a reference to Factsheet no 10 – Citizens Right of Reply, the latest amendment to this procedure was adopted by the Legislative Assembly on 9<sup>th</sup> May 2023.

Budget Estimates Secretariat advised me that this Right of Reply only applied where mention or statements were made in the Assembly, and that in these circumstances where statements have been made in a committee, that there is no formal process for Citizens Right of Reply in New South Wales.

I broadly summarised to the Secretariat all the statements that I wished to reply to. It was suggested to me that an appropriate way to proceed would be for me to write to the Portfolio Committee members clearly setting out my response to the statements made that were a direct reference to myself.

It was further explained that the Committee would then be able to consider whether this reply should be published as a matter of public record and a footnote provided in Hansard referencing this reply. I would encourage the Committee members to support just such an approach, in the interests of accurate, fair, and balanced public records in New South Wales.

Turning to the hearing itself, I have referenced the Uncorrected Transcript of PC3 below, and also referred to video recordings of the statements made about myself.

I have itemised below the specific statements made relating to me, and then below that using the same reference nomenclature, I have provided my response, which is evidence based and factual.

Statements made Relating to Mr Martin Berry

- a) I'm just looking at the eTendering records as, everyone knows, I love to do from time to time. I'm looking at somebody, a Mr Martin Berry.
- b) Who I believe was/is the senior leasing manager of property services (video refers to was)
- c) He is on a contract from 13<sup>th</sup> October 2022.
- d) He's just had his contract extended until 22 April 2024.
- e) He is on an annual salary of \$436,000.
- f) I understand that Mr Berry also works at Metro.



- g) He is not only employed on \$436,000 a year within School Infrastructure he's also got a job at Metro.
- h) So, it does cause concern as to how many other people are on those kinds of salaries doing more than one job.

My response to each of these defamatory comments about myself and my business activities, which as I have mentioned can be supported by evidence, is as follows:-

- a) It is not possible to look at the eTender website and see my name Mr Martin Berry, as the chair inferred. Government agencies utilise eTender to document, amongst other matters, contracts awarded by NSW government agencies and departments. In doing so it is a requirement under the Contract Award Notice Details sub section to state the name of the contractor along with the ACN and ABN amongst other matters.

In this particular case for the tender and award of the Senior Leasing Manager it very clearly states, on page 1 of the 3-page register, that the Contractor Name is Heathwest Advisory Pty Ltd.

There is absolutely no reference anywhere to either my name or the names of Directors or employees of Heathwest Advisory Pty Ltd. This is how eTender displays information for all companies that enter into formal contracts with an NSW government entity.

I have provided a copy of the Contracts register for SINSW03224/22 for the Committees reference.

- b) This is not a true statement. I have never undertaken the role of Senior Leasing Manager in Property Services, for the Department of Education or any other entity. Furthermore, I have never been offered such a role, nor proposed myself for such a role.

As follows from item a) above it is not possible from the eTender Contracts register to determine the name of the person(s) who is undertaking the temporary placement role.

Heathwest Advisory Pty Ltd was appointed to provide these services, it is of course the Department's decision as to whether they wish to appoint any or no tenderer to undertake and deliver particular professional services.

A member of the Heathwest Advisory Pty Ltd team is delivering these services to the Department, I might add to a very high standard including resultant efficiencies and overall cost savings for the State.

By naming Martin Berry as the senior leasing manager, falsely, this is detrimental to my reputation for the type of work I personally undertake both in terms of skills and seniority and to my professional standing amongst clients and industry colleagues and bodies.

- c) This is not a true statement. I am not on any contract with any entity that commenced on 13<sup>th</sup> October 2022, Heathwest Advisory Pty Ltd entered into a contract with the Department to provide these services with an original contract duration of 13<sup>th</sup> October 2022 until 25<sup>th</sup> October 2023.

As stated, a member of the Heathwest Advisory team (not me) is undertaking this temporary placement. That team member is of course fully supported by me, as all our commissions are. This enables the company to provide the best possible service to meet our Clients' needs. There is no fee or charge to the Department for my time or costs in providing that support to Heathwest Advisory personnel.



- d) This is not a true statement, the contract with Heathwest Advisory Pty Ltd has been extended until 22<sup>nd</sup> April 2024. It is not a contract with Mr Martin Berry as stated above.
- e) This is not a true statement. My salary, annual or otherwise, is not \$436,000 per annum. My remuneration is paid by Heathwest Advisory Pty Ltd, the amount I am remunerated is private and confidential information. I can say it is not directly related to the amount the company may be paid as a fee for delivering professional services to the Department of Education.

The eTender register quite clearly states that the estimated amount payable to the contractor (including GST) is \$436,425 (Goods or services supplied).

It does not seem feasible as to how a payment to a company can be misinterpreted as my annual salary.

Heathwest Advisory Pty Ltd of course, by definition of the entity itself, does not have an annual salary.

It cannot and should not be concluded that the amount of money to be paid by a client to a private business directly relates to Directors annual salaries, I believe we would all recognise this.

- f) If the statement relates to Sydney Metro, then I can advise that Heathwest Advisory Pty Ltd holds a current contract with Sydney Metro, that was secured following a competitive tender process. Martin Berry does not hold any contracts with Sydney Metro, Martin Berry is not a paid contractor of Sydney Metro.

I do not see why this is relevant to this Committee nor why it is relevant to a hearing with the Department of Education.

- g) This is not a true statement. As stated above I am not employed by School Infrastructure on \$436,000 a year. Phrasing the comment that I also have a "job at Metro", is clearly designed to give the belief that I am undertaking two positions at the same time and charging clients for work inappropriately.

I do not have a job at Metro, this also implies and creates the belief that I am in the paid employment of Sydney Metro, the definition of the word job supports this implied criticism.

- h) This is not a true statement as it refers to me. The premise of the statement is not applicable to me for the reasons provided above.

The Department of Education could have simply been asked, for example, can you please provide the number of individual contractors (not company's) who are not employees of the Department, who are paid over \$400,000 per annum and whether they work full time for the Department or not.

This question would have then provided the committee with an answer to the concern of how many people are paid on those kinds of salaries, or to be precise income as opposed to salary.

I manage a small business, recognised as a small business by the NSW Government, that always operates with professionalism and integrity.

The reputation of the business, myself and the team members in the business, has been earned through high quality work, achievement of deliverables, innovative solutions and commercial focus that benefits all of our Clients. We are seen as dependable, trustworthy and reliable business, acting with integrity.



Why should I be singled out, adversely damaged and insulted in a hearing, where I have no opportunity to defend either myself or the company, and where it provides no relevance to the question that the Committee sought answered.

No explanation was given by the Committee as to why I was targeted in this way. I have clearly been adversely affected in reputation and in future dealings with others and injured including through unreasonable invasion of my privacy.

It seems clear to me that the chair has received information from a third-party individual(s), and then without undertaking even the slightest cursory checks on the validity of that information, used it to defame me.

For the above reasons and explanation, which as I have mentioned I can support with evidence and facts, rather than wild speculation, I ask that the Committee support and agree to publish this correspondence as a footnote to Hansard, so that this letter becomes public record and available to all members of the public to access and read.

I would also request that the Committee or chair write to me, with appropriate clarity, recognising that there were significant errors in the references made to Mr Martin Berry in this hearing, that the information communicated about Mr Berry should not be relied upon, that Mr Berry has written to the Committee correcting the record and that the Committee regrets any reputable damage to Mr Berry.

I note that the Australian Parliament has some very sound requirements for Senators that include:

“The Senate considers that, in speaking in the Senate or in a committee, senators should take the following matters into account:

1. the need to exercise their valuable right of freedom of speech in a responsible manner;
2. the damage that may be done by allegations made in Parliament to those who are the subject of such allegations and to the standing of Parliament;
3. the limited opportunities for persons other than members of Parliament to respond to allegations made in Parliament;
4. the need for senators, while fearlessly performing their duties, to have regard to the rights of others; and
5. the desirability of ensuring that statements reflecting adversely on persons are soundly based.”

I do not consider that in the case of this NSW Committee that there has been any consideration of the above prior to my naming and deformation, yet clearly these are very sound principles which should be at the heart of public life.

I want to thank the Committee for consideration of this reply, and I urge you again to support its inclusion on the public record. Your response at the earliest opportunity would be most welcome.

Yours faithfully

Martin Berry  
Director



# eTendering

Home / Contracts Register Search / Contracts Register  
/ Contract Award Notice Detail View - SINSW03224/22

## Department of Education / Senior Leasing Manager (Property Services) - Temporary Placement - SINSW03224/22

**Contract Award Notice ID** SINSW03224/22

**Publish Date** 30-Jan-2023

**Category** Professional Services (excl Consultancies)

**Agency** Department of Education - Corporate

**Particulars of the goods or services to be provided under this contract**

Senior Leasing Manager (Property Services) - Temporary

Placement

**Original Contract Duration** 13-Oct-2022 to 25-Oct-2023

**Amended Contract Duration** 13-Oct-2022 to 22-Apr-2024

### Contract Award Notice Details

**Contractor Name** Heathwest Advisory Pty Ltd

**ACN** 607350578

**ABN** 49 607 350 578

**Is an Aboriginal or Torres Strait Islander owned business** No

**Street Address** Level 26, No. 1 Bligh Street

**Town/City** Sydney

**State/Territory** NSW

**Postcode** 2000

**Country** AUSTRALIA

**Other private sector entities involved in, with an interest in or benefiting from this contract**

Not Applicable

**Estimated amount payable to the contractor (including GST)**

\$436,425.00 (Goods or services supplied)

**Amended estimated amount payable to the contractor (including GST)**

\$654,637.50 (Goods or services supplied)

**Any provisions for payment to the contractor for operational or maintenance services**

Not Applicable

**Method of Tendering**

Limited

**Description of any provision under which the amount payable to the contractor may be varied**

Not Applicable

**Description of any provisions under which the contract may be renegotiated**

Not Applicable

**Summary of the criteria against which the various tenders were assessed**

<b>Evaluation Criteria</b>	<b>Weighting</b>
Non-Price Criteria-	70%
Price Criteria-	30%

**Contract Contains Agency 'PiggyBack' Clause**

No

**Industrial Relations Details for this Contract**

**Name of Sub-contractors (incl. ABN & ACN)**

Not Applicable

**Applicable Industrial Instruments**

Not Applicable

**Location of Work**

Not Applicable

**NSW Industrial Relations inspectors routinely audit the employment records of contractors and sub-contractors to all NSW Government contracts. The results of these inspections are published on the NSW Industrial Relations website.**

**Agency Contact** SINSW Procurement

**Street Address** Level 8, 259 George Street

**Town/City** Sydney

**State/Territory** NSW

**Postcode** 2000

**Country** AUSTRALIA

**Email Address**

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