

**INQUIRY INTO NSW GOVERNMENT'S USE AND  
MANAGEMENT OF CONSULTING SERVICES**

**Organisation:** Fire Brigade Employees' Union (FBEU)

**Date Received:** 17 July 2023

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Partially  
Confidential

17 July 2023

Ms Abigail Boyd MLC  
Chair, Public Accountability and Works Committee  
Parliament House  
Macquarie St  
Sydney NSW 2000



Dear Ms Boyd,

### **Inquiry into the NSW Government's use and management of consulting services**

Thank you for the opportunity to make a submission to this inquiry. The Fire Brigade Employees' Union (FBEU) commends the timeliness of this inquiry. Professional Firefighters in NSW have noted, with concern, the escalating use and dependency on external consultants by Fire and Rescue NSW (FRNSW), at the expense of the operational needs of firefighting, and consequently, the standard of community protection.

This submission will present the inquiry with information obtained through the FBEU's own investigations to provide a case study of one agency whose use of consulting services, we believe, is lacking in accountability of public money and good governance.

In providing this submission we will inform the following inquiry terms of reference; (b), (c), (d), (e), (g), (i) and (k). We endorse the Attorney-General for New South Wales, Unions NSW, and Public Service Association submissions with regard to recommendations for the committee to consider.

### **About the Fire Brigade Employees' Union**

The FBEU is a trade union registered under the *Industrial Relations Act 1996* (NSW). The FBEU represents over 6000 permanent and retained professional firefighters in Australia's largest fire and rescue service, Fire and Rescue NSW (FRNSW). FBEU members work across metropolitan and regional areas and are involved in all manner of emergency response. NSW professional firefighters provide a range of emergency management activities, including prevention/mitigation, preparedness, response, and recovery.

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## About Fire and Rescue NSW

FRNSW is the State Government agency responsible for the provision of fire, rescue and hazmat services in cities and towns across New South Wales. FRNSW is constituted under the *Fire and Rescue NSW Act 1989*. Section 5A of the act provides '[i]t is the duty of the Commissioner to take all practicable measures for preventing and extinguishing fires and protecting and saving life and property in case of fire'<sup>1</sup>. Paul Baxter was appointed Commissioner of FRNSW on 16 January 2017. He had previously held the role of National Commander at Fire and Emergency New Zealand (FENZ) from January 2012.

A recent FRNSW report titled 'Adverse Structure Fire Outcomes 2016 - 2021' documents a statistically significant increase in fire fatalities within FRNSW jurisdictions between 2016-2021.<sup>2</sup> The report, peer-reviewed by Monash University, underscores the importance of response times from appropriately resourced firefighters in increasing survivability in structural fires, and preventing loss of life and property.

A report commissioned this year by the FBEU with The Centre of Full Employment and Equity (CofFEE) identifies a 'growing sense of dislocation and distrust of the FRNSW management, who were characterised as careerists obsessed with achieving their own KPIs to advance their own fortunes while neglecting the needs and concerns of the operational firefighters.'<sup>3</sup>

Firefighters were quoted as saying:

'The disconnect with management and the people at fire stations on ground who actually do the work is just growing. Really year on year when I joined the job we had a commissioner who knew people's name. You know he'd get out the stations ... I feel like there's been a push now with everything's about their KPI's. Now everything's about what's good for them? ... I think that's one of the major things that's creating a disconnect between you know the people at the coalface let's say and the people who sit up in the ivory tower in management.'<sup>4</sup>

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<sup>1</sup> *Fire and Rescue NSW Act 1989* s5A (emphasis added).

<sup>2</sup> Fire and Rescue NSW, 'FRNSW Adverse Structure Fire Outcomes 2016-2021' (Report, 20 April 2023) <https://www.fire.nsw.gov.au/gallery/files/news/2023/FRNSW%20Adverse%20Structure%20Fire%20Outcomes%20-%202016%20-%202021.PDF> p35.

<sup>3</sup> William Mitchell, 'Occupational health effects for firefighters: The extent and implications of physical and psychological injuries and the sources of occupational stress' (Centre of Full Employment and Equity, Policy Report No 23-01, April 2023) [https://fbeu.net/wp-content/uploads/CofFEE\\_Literature\\_Review\\_Focus\\_Group\\_Final\\_Report\\_April\\_17\\_202392.pdf](https://fbeu.net/wp-content/uploads/CofFEE_Literature_Review_Focus_Group_Final_Report_April_17_202392.pdf) p10.

<sup>4</sup> Ibid p64.

The report links the change in management attitudes to the focus on the monetary cost of firefighting and corporatisation of the fire brigade:

'... the disconnect has been commensurate with that reduction in money. And basically the structure started to change at the management level, where from a firefighters viewpoint in the station things that have been identified that required to be done just have never got done.'<sup>5</sup>

Specific to this inquiry, the CoffEE report notes that the increased use of FRNSW consultants was observed by Firefighters to be at the expense of sufficient funding for training, support and standard of community service. FRNSW's multi-million-dollar rebranding and strategy exercise the 'Plus Plan' was considered to represent the true heights of this disconnect.

### **Commissioner Baxter's Plus Plan**

The Plus Plan was an outcome of the FRNSW Corporate Plan 2018-2021. As explained by FRNSW, the initiative is about recreating 'identity' and educating the community on the role of a fire brigade. According to FRNSW annual reports, since 2017 spending on external consultants has grown 137% compared to the previous six years.<sup>6</sup> Many of the consultants listed in these reports appear to relate to the Plus Plan including Critical Management Group Pty Ltd, the business entity of strategist Dr Marc Stigter.

To the FBEU's knowledge, the true cost of the Plus Plan initiative has never been disclosed. When asked in Budget Estimates in 2022 Commissioner Baxter simply stated, 'millions'. When asked to clarify he stated, 'I doubt very much whether we would be able to actually give you a completely accurate figure of what we did'.<sup>7</sup> On the proposition of value for money, there seems very little examination of this expenditure in-line with the agencies core functions.

Commissioner Baxter undertook a similar re-branding initiative while at FENZ which prompted public scrutiny. The FENZ re-brand is said to have cost more than \$300 million.<sup>8</sup> In both initiatives, Commissioner Baxter utilised the expertise of Dr Stigter.

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<sup>5</sup> Ibid p65.

<sup>6</sup> See FRNSW Annual reports 2016/17 to present.

<sup>7</sup> Portfolio Committee No 5 - Regional NSW and Stronger Communities, Parliament of NSW, Budget Estimates Questions on Notice (Transcript, 2 September 2022) p40 ('Budget Estimates Transcript').

<sup>8</sup> <https://www.rnz.co.nz/news/national/334148/big-day-as-nz-s-fire-services-merge>

Dr Stigter describes himself as a 'Strategic and Cultural Change Agent', is an Associate Director of Melbourne Business School and has held various governance and board positions.<sup>9</sup> He has published several books including 'Solving the Strategy Delusion' in 2015.

Dr Stigter was one of the larger expenses incurred from consultant engagements related to the FRNSW Plus Plan. The relationship between Commissioner Baxter, Dr Stigter and FRNSW was subject to at least one Public Interest Disclosure (PID) to the Independent Commission against Corruption (ICAC).<sup>10</sup> The allegations made were:

1. Commissioner Paul Baxter FRNSW engaged his personal friend, Mr Stigter (for whom the Commissioner had previously endorsed a book) of CMG, in breach of NSW Government procurement rules and regulations, to carry out consulting services for FRNSW on 13 & 14 June 2017.
2. After the tender for consulting services for expert advice on strategy had closed and was under review for selection, the Commissioner intervened in the procurement process to have Mr Stigter's company awarded the consulting work despite advice that the tender had closed and that to do so was outside of the NSW Government Procurement Guidelines. The Commissioner claimed Mr Stigter was the only service provider who could deliver the strategy, however it is alleged this was never tested or justified.
3. Requests from the Commissioner were specifically kept verbal to avoid there being any formal advice on record preventing the engagement. The Commissioner proceeded to approve the engagement of Mr Stigter without the knowledge of the Procurement Department, again actioned this way to prevent any formal advice on the record to prevent the engagement.
4. Subsequent events throughout the course of the engagement of Mr Stigter's company additionally indicate corrupt conduct involving the Commissioner:
  - a. Increase in the value of the project scope with no due process followed – the cost had exceeded the \$150k threshold required to go to tender.
  - b. The excessive daily rate of \$6,000/day plus all expenses, charged by Mr Stigter, for a 'one man operation'.
  - c. In an attempt to conceal the increase in costs the invoices were processed under separate orders.
  - d. Absence of an evaluation (no value proposition was ever undertaken and was not submitted to the Procurement Department to evaluate).

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<sup>9</sup> <https://au.linkedin.com/in/marc-stigter-phd-b6084312>

<sup>10</sup> App 12 ICAC Form s53 FRNSW Feb 2021.

- e. Seeking retrospective accreditation for government pre-qualification panel to conceal and legitimise the manner in which CMG had come to be engaged.
5. Staff were unable to speak out on these matters, as it was made clear that the Commissioner wanted to continue engaging Mr Stigter and there were to be no questions raised regarding his invoices and they were to be paid. The procurement team were not apprised of the payments or engagement of Mr Stigter and had no visibility of the engagement criteria or the work delivered.
6. The advice given to the Commissioner was that this engagement should be reported to Justice to properly define the scope of what was needed going forward (ie to ensure no scope creep which was being used as the excuse to keep expanding the service and increasing payments) and then proceed to tender. This was not done and was clearly a financial benefit to the Commissioner's friend, Mr Stigter. The Commissioner sought to know how he can make the engagement appear legitimate in the event it were to be audited.<sup>11</sup>

In February 2021, ICAC referred the PID to FRNSW for investigation. FRNSW then engaged external investigators O'Connor Marsden & Associates (OCM) to prepare a report back to ICAC ('the investigation report').<sup>12</sup>

Through *Government Information (Public Access) Act (GIPA)* access applications, and related administrative review proceedings which remain on foot in the NSW Civil and Administrative Tribunal (NCAT), the FBEU have obtained some of the information about that relationship between the parties including the PID referral from ICAC and OCM's investigation report. Relevant documents are referenced throughout this submission and attached as appendices.

This submission will focus on the relationship between FRNSW and Dr Stigter.

## **Annual Report Figures**

In response to a Budget Estimates Question on Notice Commissioner Baxter stated that a total of \$707,395.36 was paid for Dr Stigter's services across the period 25 May 2017 to 16 October 2021<sup>13</sup>. This total amount has been confirmed by the FBEU through a document of 'vendor payment records' obtained through a *GIPA* application, detailing individual payments to Dr

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<sup>11</sup> Ibid.

<sup>12</sup> App 1 OCM Investigation Report; App 3 OCM Investigation Plan.

<sup>13</sup> Portfolio Committee No 5 - Regional NSW and Stronger Communities, Parliament of NSW, Budget Estimates Questions on Notice (2 September 2022) QoN14 Transcript p38 ('Questions on Notice').

Stigter.<sup>14</sup> However, these payment records do not accord with figures declared in individual FRNSW Annual Reports.

FRNSW as an NSW Government agency is obligated to report the use of consultants as part of their annual reports, as per the *Public Finance & Audit Act 1983*, and the *Annual Reports (Departments) Act 1985*. The accuracy of this reporting across Government has been criticised by the Auditor-General previously.<sup>15</sup> Consultancy engagements costing less than \$50,000 may be reported by total for a category, for example Management Services, while engagements above \$50,000 must be reported individually. According to FRNSW's vendor payment records,<sup>16</sup> the 2017/18 Annual Report over quotes the payments made to Dr Stigter while the 2018/19, 2019/20 and 2020/21 reports less than what was actually paid. See the below summary:

	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22
Annual Report	<\$50,000	\$439,067	\$66,000	<\$50,000	<\$50,000	<\$50,000
Vendor Payment	\$47,556.02	\$424,510.96	\$72,600	\$86,828.38	\$75,900	\$0

The vendor payment records detail a total of \$707,395.36 paid by FRNSW to CMG between 2017-2021, with payment descriptions including phrases such as 'strategy engagement', 'strategy & cultural progress', 'review', 'annual engagement'. The records are indicative of there being just one consultant and one scope of work, a scope which should have been subject to a competitive procurement process.

### Public Interest Disclosure Increases

In addition to the PID that is subject to the ICAC referral discussed above, FRNSW received a growing number of PIDs across the period of Stigter's engagement. Based on data from FRNSW

<sup>14</sup> App 16 Payment History Dr Stigter.

<sup>15</sup> See eg, Auditor-General of NSW, Submission No 1 to NSW Legislative Council Public Accountability and Works Committee, *Inquiry into NSW Government's use and management of consulting services* (13 June 2023).

<sup>16</sup> App 16 Payment History Dr Stigter.

annual reports, the declared numbers of PIDs, all of which related to allegations of corrupt conduct, received by FRNSW were:

16/17'	17/18'	18/19'	19/20'	20/21'	21/22'
4	2	9	33	5	10

### **The Engagement of Dr Stigter**

Records show that on 13 April 2017, the FRNSW Program Management Office (PMO) released a request for quote (RFQ) with a closing date of 29 April. This RFQ was part of a scope of work to manage the review and creation of the FRNSW Corporate Plan 2018-2021. During this process, four quotes were received with one, provided by 'Straight Talk', recommended as the preferred provider by FRNSW staff involved in the process.<sup>17</sup> Upon commencement in the role of Commissioner on 25 April, Baxter is said to have questioned the scope of the RFQ and terminated the procurement process, recommending instead that FRNSW use the services of Dr Stigter.<sup>18</sup>

Record shows that a previous contractual relationship between Commissioner Baxter and Dr Stigter had occurred at FENZ and extended for 'four to five years', highlighting a long-standing professional relationship.<sup>19</sup> The Commissioner had also provided a quote for the introduction to Stigter's 2015 book 'Solving the Strategy Delusion'.<sup>20</sup>

In addition, publicly available information on LinkedIn shows that Commissioner Baxter undertook an Advanced Management course at Melbourne Business School in 2008, during which time Dr Stigter was an Associate Director of the school.<sup>21</sup>

According to both Commissioner Baxter's statements in budget estimates and the investigation report, a conflict-of-interest declaration was never made in respect to the relationship between the two.<sup>22</sup> FRNSW's *Conflicts of Interest Policy* states that Senior Executives, 'Must declare any

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<sup>17</sup> App 1 OCM Investigation Report p24.

<sup>18</sup> Ibid p15.

<sup>19</sup> Ibid p19.

<sup>20</sup> App 8 Solving the Strategy Delusion Extract.

<sup>21</sup> <https://au.linkedin.com/in/paul-baxter-qso-6334a0b>

<sup>22</sup> App 1 OCM Investigation Report p15; Budget Estimates Transcript (n 7) pp39-40.

private interests on commencement of their employment, when circumstances change, and annually (requirement under the *Code of Ethics and Conduct for NSW Government*)'.<sup>23</sup>

These documents the FBEU have obtained through GIPA applications reveal two periods of engagement which will be explained below.

## **Engagement Period 1**

As documented in an answer to a question on notice in budget estimates, Dr Stigter was engaged at FRNSW between 25 May 2017 to 16 October 2021.<sup>24</sup> It was not until June 2018 that FRNSW began a formal procurement process through the NSW Government eTendering system.<sup>25</sup> The period from 25 May 2017 to this procurement process ('Engagement Period 1'), which cost at least \$492,408.08,<sup>26</sup> is littered with events that raise concern around the appropriateness of the procurement of Dr Stigter and Commissioner Baxter's oversight of it.

### *Lack of documented contractual arrangement*

No contract has been provided to the FBEU via GIPA applications to substantiate an engagement during this period. It also appears that no contract was provided to the OCM investigators.<sup>27</sup> In an email dated 24 October 2022 from [redacted] Director Procurement, to the FRNSW GIPA liaison he states, 'The main concern is around the contracts. There is a period where the engagement of Mr Stigter was done without undertaking a procurement process' and that he doesn't have 'the information around that engagement'.<sup>28</sup> Similarly, [redacted] Executive Officer – Office of the Commissioner, responds to the GIPA liaison that she is not able to locate a contract for the first engagement period.<sup>29</sup>

The FBEU do not understand how a contractor or consultant can legally be engaged and paid by a public sector agency using public money without contractual documentation in place, however those documents are described. Without such documentation, and in the absence of even basic

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<sup>23</sup> App 1 OCM Investigation Report p15.

<sup>24</sup> Questions on Notice (n 13) p38.

<sup>25</sup> App 11 Email dated 1 June from [redacted] to Commissioner.

<sup>26</sup> App 1 OCM Investigation Report p21.

<sup>27</sup> Ibid pp19-21.

<sup>28</sup> App 13 Emails Between [redacted] and GIPA 24 October 2022.

<sup>29</sup> App 14 Emails Between [redacted] and GIPA 24 October 2022.

details exchanged over emails between the parties, there appears to be no legal basis for the invoices to be paid.

The documents that are available to the FBEU are a series of undated proposals from Dr Stigter along with one of two Briefings to the Commissioner prepared by FRNSW staff. For reasons which remain unclear, the briefing document dated 9 November 2017 is being withheld by FRNSW and is subject to administrative review proceedings in NCAT.

These documents show that Dr Stigter was engaged on a daily rate of \$6,000 a day. While FRNSW cite this as a 'discounted' rate, a recent media release concerning the use of Dr Stigter's service at Dandenong Council in Victoria refer to a 'reasonable' daily rate of \$4,500.<sup>30</sup>

#### No competitive procurement process

Following Baxter's suspension of the original RFQ process Dr Stigter was engaged by FRNSW.<sup>31</sup> The investigation report found no evidence that Dr Stigter's engagement was evaluated against other tender proposals or the open market.<sup>32</sup> These circumstances are at odds with FRNSW requirements to achieve value for money in accordance the *NSW Procurement Policy Framework* and *Public Works and Procurement Act* s 176(2).

#### Not a pre-qualified supplier

Dr Stigter was not registered under the NSW Procurement Prequalification Scheme (Performance and Management Services SCM0005) at the time of his initial engagement. The FRNSW Procurement Manual required three written quotes for an engagement of this value.<sup>33</sup> These matters are said to have been raised on 12 July 2017, by Senior Project Officer in the PMO.<sup>34</sup> On 7 August 2017 an application for Dr Stigter's inclusion on the scheme was submitted.<sup>35</sup>

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<sup>30</sup> <https://dandenong.starcommunity.com.au/news/2023-02-13/retreat-cutback-after-pub-test-rebuke/>

<sup>31</sup> App 1 OCM Investigation Report pp15.

<sup>32</sup> Ibid p20.

<sup>33</sup> Ibid p22.

<sup>34</sup> App 3 OCM Investigation Plan p5.

<sup>35</sup> App 1 OCM Investigation Report p68.

Contrary to the above, the Briefing to the Commissioner document dated 9 November 2017 states, 'Critical Management Group (Marc Stigter, PhD) was engaged under the NSW Procurement Prequalification scheme for performance management services.'<sup>36</sup>

### Series of Short-Term Engagements

It is the FBEU's understanding based on NSW Public Sector procurement policies and guidelines, where it is foreseeable that multiple engagements for the same body of work will occur the total cost should be considered in line with procurement thresholds rather than the cost of the individual engagements.

Throughout Engagement Period 1, Dr Stigter is engaged through a series of short-term engagements and extensions without any documented contract. However, there is strong evidence that a long-term engagement was foreseeable and considered at the time of first engaging Dr Stigter. The report considers:

- a. The original project brief detailed a series of workshops, not just one;
- b. It was discussed that Dr Stigter's approach is unique and therefore future progression with another consultant was unlikely;
- c. Dr Stigter's email of 12 June 2017 indicated that a long-term engagement had been discussed and considered;
- d. Dr Stigter had previously participated in a similar project for FENZ during Commissioner Baxter's tenure where the engagement was long term.<sup>37</sup>

The investigation report identifies that one of the issues raised at the time of the initial engagement of Dr Stigter was that '[t]here was evidence that a long-term engagement of Dr Stigter was foreseeable and considered at this time'.<sup>38</sup> This should be considered in the circumstance of an email from Dr Stigter to Deputy Commissioner \_\_\_\_\_ dated 12 June 2017, where Dr Stigter states 'as promised to you and the Commissioner, I will forward an annual retaining proposal for next 2 years'.<sup>39</sup> This statement does not seem to have been considered in this context by the investigation report but it provides further evidence that a long term engagement was not only foreseeable but requested by Commissioner Baxter.

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<sup>36</sup> Ibid pp21 & 59.

<sup>37</sup> Ibid pp19-20.

<sup>38</sup> Ibid p19.

<sup>39</sup> App 17 Email from Marc Stigter 12 June 2017 (emphasis added).

### Circumvention of Procurement Rules

The investigation report makes clear that under the leadership of Commissioner Baxter FRNSW circumvented NSW Government procurement policies and procedures in order to avoid procurement thresholds triggering a competitive process. In particular, the investigation found that the splitting of work across multiple invoices was 'indicative of order splitting'.<sup>40</sup> The investigation report identifies two instances where multiple purchase orders were submitted simultaneously for the same work.<sup>41</sup> ICAC describes splitting of contracts as a 'red-flag for corruption' and notes in 2018 that it is a common feature of its investigations.<sup>42</sup>

During this time Dr Stigter was engaged separately at least four times to conduct different stages of the same body of work. The investigation report also documents at least three occasions where approved contract amounts were extended without the appropriate governance.<sup>43</sup>

Most concerning, the report finds that Dr Stigter, in consultation with FRNSW, structured proposals to 'avoid a competitive tender process'. The investigator suggests that Dr Stigter had a potential, if not perceived, financial interest in 'avoiding a competitive tender process' in these circumstances.<sup>44</sup>

These proposals are alleged to have been provided to FRNSW soon before the work was due to commence and seemingly after a decision to approve the engagement was made. For example, Dr Stigter was engaged to provide a two-day strategy workshop for the Executive Leadership Team and Directors at the Fairmont Resort, Leura on 13 and 14 June.<sup>45</sup> A proposal was only provided to FRNSW on 12 June which costed the work at \$30,000. However, in a June 8 email to staff attending the workshop, Commissioner Baxter provides an agenda for the workshop created by Dr Stigter, four days before the proposal of the work is submitted to FRNSW for approval.<sup>46</sup>

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<sup>40</sup> App 1 OCM Investigation Report p53.

<sup>41</sup> Ibid.

<sup>42</sup> <https://www.youtube.com/watch?v=c833XAx8HEs>; Independent Commission Against Corruption, 'Corruption and Integrity in the Public Sector: an assessment of current trends and events' (Report, December 2018) p50.

<sup>43</sup> App 1 OCM Investigation Report p46.

<sup>44</sup> Ibid p18-19.

<sup>45</sup> Ibid p13.

<sup>46</sup> App 2 Email and Agenda date 8 June 2017; App 17 Email from Marc Stigter 12 June 2017.

The investigation report finds that Stigter provided an ‘unsolicited discounted rate’ so that the proposal cost could be ‘the highest value before FRNSW procurement thresholds require three (3) written quotes.’<sup>47</sup> This engagement is separate and in addition to an initial engagement that is said to begin on 25 May 2017.

#### 9 November 2017 Briefing to the Commissioner

On 9 November 2017 Commissioner Baxter approves a briefing that is said to detail a further engagement of Dr Stigter to provide ‘cultural workshops’ at a cost \$66,000. The amount was approved for payment by staff in the Office of the Commissioner across multiple purchase orders, totalling \$84,000 (ex-GST). The investigation found no record of any approval for the additional expenditure.<sup>48</sup>

The briefing document has not been provided to the FBEU in FRNSW GIPA searches and is currently subject to administrative review proceedings in NCAT.

#### 28 March 2018 Briefing to Commissioner and purchase of Dr Stigter’s book

The second Briefing to the Commissioner, dated 28 March 2018, approved a further 25 days of consulting at a cost of \$150,000 and is signed by the Commissioner.<sup>49</sup> It is timely to recall that \$150,000 is the limit in the *FRNSW Procurement Manual* before a full tender process is required. Expenses totalling \$4,382.46 related to the second Briefing’s engagement were paid via an invoice dated 27 June 2018 and included the purchase of 27 copies of Dr Stigter’s book ‘Solving the Strategy Delusion’ for a cost of \$1,028.50.<sup>50</sup>

## **Engagement Period 2**

### Engineered Tender Process

On 1 June 2018, \_\_\_\_\_ Director Project Management Office, emails Commissioner Baxter, as ‘project sponsor’, to seek his approval for an RFQ scope to manage ‘the Plus Plan strategy review’. Mr \_\_\_\_\_ assures Commissioner Baxter that, ‘The RFQ will enable us to go out

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<sup>47</sup> App 1 OCM Investigation Report p19.

<sup>48</sup> Ibid p66.

<sup>49</sup> App 7 Briefing to Commissioner 28 March 2018.

<sup>50</sup> App 10 Expenses 27 June 2018.

to the market (3 providers we select) and seek their responses to the proposal. On [sic] of the candidates will be Marc Stigter.<sup>51</sup> acknowledges that this process will provide 'a great deal more flexibility to engage based on 'need' as opposed to our current predicament where we have had a \$150k cap that we have had to vary'. He also states that '[t]he evaluation criteria has been weighted towards non-price so that we can ensure we select a candidate who can carry on and build upon the solid foundation laid down over the first 12 months.' The arrangements are promptly supported by Commissioner Baxter in writing.<sup>51</sup>

As part of administrative review proceedings in NCAT, a Tender Evaluation Report was produced for this process and provided to the FBEU. On the page titled 'concurrence with recommendation' two signatures from the Tender Evaluation Committee (TEC) are missing, that of Assistant Commissioner Regional Operations and Director Strategic Procurement. The document is also undated.<sup>52</sup>

The investigation report identifies that in September 2018, the NSW Audit Office requested but were not provided with an evaluation report related to FRNSW's engagement with Dr Stigter.<sup>53</sup>

### **The Commissioner's Involvement in Engagement(s)**

Without the authorisations of Commissioner Baxter, it is difficult to understand how the engagement proceeded legally. Nonetheless, at various points of the investigation report it is stated that there is no evidence to suggest that Commissioner Baxter was aware of some (but not all) of the engagements of and payments to Dr Stigter.

That position is at odds with the following summary of the facts described above:

- The Commissioner states at the same budget estimates hearing that he 'brought [Dr Stigter] on originally for a couple of strategy sessions'<sup>54</sup>;
- In an email to the FRNSW Senior Leadership Team on 8 June 2017, Commissioner Baxter states that he had personally engaged Marc Stigter;<sup>55</sup>

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<sup>51</sup> App 11 Email dated 1 June from to Commissioner (emphasis added).

<sup>52</sup> App 15 Tender Evaluation Report p13.

<sup>53</sup> App 1 OCM Investigation Report p61.

<sup>54</sup> Budget Estimates Transcript (n 7) p39.

<sup>55</sup> App 2 Email and Agenda date 8 June 2017.

- Dr Stigter's expenses between 7-16 June 2017, paid by FRNSW, detail a \$122.00 expense titled 'FRNSW Dinner Commissioner' on 7 June 2017;<sup>56</sup>
- The Commissioner has known Dr Stigter since at least 2013;
- The Commissioner has previously engaged Dr Stigter for a similar long-term project at FENZ;
- The Commissioner terminated a RFQ process that was underway and instead recommended Dr Stigter;
- The engagement of Dr Stigter at FRNSW lasted for four years and cost over \$750,000;
- Commissioner Baxter was informed via emails and Briefings to the Commissioner of the work Stigter was undertaking;
- Several invoices and purchases orders were paid by staff within the Office of the Commissioner.
- The email dated 12 June 2017 from Marc Stigter to Deputy Commissioner stating 'as promised to you and the Commissioner, I will forward an annual retaining proposal for next 2 years';
- As the head of the agency, Commissioner Baxter has significant policy framework and reporting lines to ensure due diligence with regards to audit and risk

Some documents provided to the FBEU through GIPA do not appear to have been made available to OCM during their investigation, according to the FRNSW documents referenced in both investigation plan and in the investigation report. It is unclear to the FBEU whether such documentation was withheld from the investigation or whether investigators did not the request relevant documentation which was available at the time.

The FBEU's copy of the investigation report has been heavily redacted by FRNSW. Nonetheless,

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<sup>56</sup> App 6 Expenses 28 June 2017.

and despite the circumstances laid out above, the report appears to find none of the allegations against Commissioner Baxter were substantiated.<sup>58</sup>

## **Conclusion**

Whether circumstances such as these are systemic across this agency and the broader public sector should be interrogated by this committee.

In the example provided in this submission, the serious issues of probity and the appropriate use of public money have occurred within an agency framework which claims to have appropriate checks and balances. However, it seems these checks and balances are easily circumvented leading to the expenditure of taxpayers' money with little oversight. As the increasing instance of fire fatalities demonstrates this diversion of funds and focus from core operations can have serious consequences.

Kind regards,

Leighton Drury

State Secretary

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<sup>58</sup> Ann 1 OCM Investigation Report nn62-69