

INVESTIGATION INTO THE CONDUCT OF A THEN MANAGER AND A FORMER CONTRACTOR AT CANTERBURY-BANKSTOWN COUNCIL

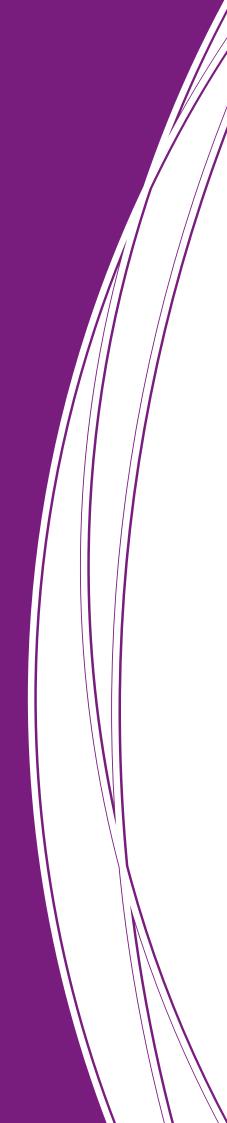
### (OPERATION MANTIS)

# I·C·A·C



NEW SOUTH WALES

#### ICAC REPORT DECEMBER 2024



#### Cover image:

The image on the cover of this report comprises a photograph of a Toyota Kluger that Pietro Cossu texted to Benjamin Webb on 20 October 2021. On that date, Mr Cossu purchased a Toyota Kluger for \$57,990 for Mr Webb to use. Various text messages were exchanged between Mr Cossu and Mr Webb about this purchase.



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(OPERATION MANTIS)

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# 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 conduct of a then manager and a former contractor at Canterbury-Bankstown Council (Operation Mantis).

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

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

The Hon Helen Murrell SC Commissioner

### Contents

Chapter 1: Overview	7
Background to the investigation	7
Why the Commission investigated	7
The allegations	8
Conduct of the investigation	8
The public inquiry	9
Time within which this report was completed	9
Credibility of witnesses in the public inquiry	9
The recruitment scheme	10
The procurement arrangement	11
Recommendations for corruption prevention	12
Recommendation to make the report public	15
Chapter 2: People and entities in this report	16
Chapter 4: The recruitment scheme	16
Chapter 5: The procurement arrangement	17
Chapter 3: Mr Webb and Mr Cossu's roles and Council's Code of Conduct	18
Mr Webb's employment at Council	18
Mr Cossu's engagement at Council	19
Council's Code of Conduct and disclosure of conflicts of interest	21

Chapter 4: The recruitment scheme	
Council's contingent-hire workforce	24
PMLV and the general operation of the recruitment scheme	26
Mr Webb's knowledge of the recruitment scheme and how it benefitted PMLV	28
Mr Vanji's knowledge of the recruitment scheme	29
The commencement of the PMLV recruitment scheme	30
Sourcing workers and Mr Webb's involvement in sourcing	31
The employment contracts of PMLV contingent workers	32
How PMLV contingent workers were recruited and paid	32
Mr Cossu recorded his anticipated profit share	42
The October 2021 spreadsheet, showing "labour costs" and a net income split 50/50	43
Extension of purchase orders for agency workers	44
Mr Webb resigned from Council in 2022	44
Mr Webb's later involvement with PMLV and The W Project	45
What benefit did Mr Cossu/PMLV gain through the recruitment scheme?	46
What benefits were received by Mr Webb and associated people and entities?	47
Why did Mr Webb receive benefits from PMLV and Mr Cossu (the Progetto explanation)?	51

Corrupt conduct in relation to the recruitment scheme	53
Section 74A(2) statements	58
Chapter 5: The procurement arrangement	59
Jeremy Clarke, GWAC and Council	59
Council's procurement process	60
The evidence of Mr Cossu and Mr Clarke about the early days of their arrangement	62
Bankstown Library and Knowledge Centre (July 2020)	64
Non-destructive digging works for The Appian Way (October 2020)	66
Northcote Park amenities block upgrade (November 2020)	68
Mr Clarke's "company project cost tracker" and Mr Cossu's spreadsheet on a USB (late 2020 )	68
Belmore Stadium demolition works (November 2020)	) 69
Belmore Stadium fencing upgrade (March 2021)	69
Abandoned project: Milperra Drain clearing and grubbing	69
Leslie Street Depot cleaning project (August 2021)	70
Ewen Park Outdoor Learning timber salvage (August 2021)	70
Vale of Ah dog-off-leash area project (October 2021)	70
Ewen Park folded lawn (November 2021)	72
Belmore stadium roof temporary works and scaffolding (December 2021)	72

The "light pole project" (February 2022)	72
Belmore Sports Ground – box gutters and roof repair (March 2022)	rs 73
North Terrace Culvert hoarding and statue removal (August 2022)	73
Undercliffe retaining wall project (December 2022)	73
Sefton Golf Course shed (late 2022)	73
The Appian Way stormwater upgrade project	73
Financial dealings between Mr Clarke and Mr Cossu	88
Mr Clarke and Mr Cossu's arrangement concerning GWAC and Council projects	91
Did Mr Cossu or Mr Clarke declare the arrangement or disclose any conflict of interest?	92
Was Mr Webb part of the procurement arrangement	? 94
Corrupt conduct in relation to the procurement arrangement	96
Section 74A(2) statements	98
Chapter 6: Corruption prevention	100
Introduction	100
Part 1: Corruption risks in the recruitment of Mr Webb and the PMLV contingent workers	101
Part 2: Corruption risks in the procurement and management of capital works	109



Appendix 1: The role of the Commission	
Appendix 2: Making corrupt conduct findings	119
Section 8 of the ICAC Act	119
Section 9 of the ICAC Act	120
Section 13(3A) of the ICAC Act	120
Section 74BA of the ICAC Act	122
How the Commission determines findings of corrupt conduct	122
Standard of proof	123
Appendix 3: Responses to proposed adverse findings	125
Appendix 4: Recruitment tables	126
Appendix 5: Council capital works projects awarded to GWAC by request for quote	130



### **Chapter 1: Overview**

#### **Background to the investigation**

This investigation by the NSW Independent Commission Against Corruption ("the Commission") centred around the conduct of former senior Canterbury-Bankstown Council (Council) employee Benjamin Webb and his close friend, former Council contractor Pietro Cossu, whom Mr Webb recruited on a temporary contract in 2020 to provide project-management services to Council.

Mr Cossu was friends with Jeremy Clarke, the director of General Works and Construction Pty Ltd (GWAC). From July 2020 to November 2022, GWAC was awarded numerous Council projects.

Mr Cossu was the director of PMLV Invest & Const Pty Ltd (PMLV), a company that, between 2020 and 2022, provided contingent (temporary contract) workers to Council. The workers were employed by PMLV, which subcontracted them to Spinifex Employment Agency Pty Ltd ("Spinifex") or Randstad Pty Ltd (Randstad), recruitment agencies that had contracts with Council to supply contingent workers. The employment agencies supplied the PMLV workers to Council under their contracts with Council.

In October 2022, one of these contingent workers first raised with Council concerns about the way in which some workers were engaged at Council.

On 17 November 2022, Council's chief executive officer made a mandatory report to the Commission of suspected corrupt conduct in relation to the supply of PMLV staff, pursuant to s 11 of the *Independent Commission Against Corruption Act 1988* (NSW) ("the ICAC Act"). This section of the ICAC Act imposes a duty on a principal officer of a public authority, such as Council, to report to the Commission any matter that the person suspects on reasonable grounds concerns, or may concern, corrupt conduct. The report concerned the engagement of temporary staff through PMLV in circumstances where Mr Cossu had not made any declaration to Council regarding his interest in that company.

Following that report, on 6 December 2022 the Commission determined to conduct a preliminary investigation, as there were indications of corruption.

After the Commission began to investigate the engagement of temporary staff through PMLV, the investigation was expanded to investigate the award of Council projects to GWAC.

#### 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, 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 Commission's approach in determining whether corrupt conduct has occurred.

The Commission has jurisdiction to investigate allegations concerning the conduct of public officials that constitutes or involves the dishonest or partial exercise of their official functions or that constitutes or involves a breach of public trust. As addressed in detail below, for the purposes of the ICAC Act, Council is a public authority and Mr Webb and Mr Cossu were public officials while engaged by Council. The Commission also has jurisdiction to investigate allegations concerning any conduct of any person (whether or not they are 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. In this case, the conduct reported to the Commission suggested that others may have engaged in conduct that had adversely affected or had the capacity to have adversely affected the honest or impartial exercise of official functions.

### Mr Webb and Mr Cossu were public officials

Among other things, the Commission is tasked with investigating, exposing and preventing corruption involving or affecting "public authorities" and "public officials".

The Council is a "public authority" because it is a local government authority, pursuant to subparagraph (e) of the definition of "public authority" in s 3(1) of the ICAC Act.

At the relevant time, Mr Webb was a "public official" within s 3(1) of the ICAC Act because he was an employee of a "public authority". His official functions as manager of the Works and Projects Unit included identifying resourcing requirements, hiring workers to carry out the capital works program, approving their pay rates and recommending extensions of their contracts. In relation to procurement, he exercised a significant financial delegation, approved or recommended the approval of contractors and exercised overall supervision of capital works project delivery.

It was submitted by Mr Cossu that he was not a public official.

The Commission rejects that submission. While he was working at Council, Mr Cossu was a "public official"; he was "an individual having public official functions or acting in a public official capacity" within subparagraph (m) of the definition of a "public official" in s 3(1) of the ICAC Act. He lacked a financial delegation but otherwise, on a day-to-day basis, there was little difference between his responsibilities and those of a Council employee in an equivalent position. In relation to Council staff, he could recommend their hire and pay rates, and he supervised staff. In relation to Council procurement, his functions included participating in the evaluation of quotes and tenders, making recommendations concerning the need for contract variations, and generally managing projects as a project manager and supervisor's representative. His duties were to be undertaken on behalf of Council.

In connection with their Council responsibilities, Mr Cossu and Mr Webb had a duty to act in the public interest,

uninfluenced by other considerations, especially personal financial considerations (see *Berejiklian v ICAC* [2024] NSWCA 177 per Bell CJ and Meagher JA at [151]).

#### The allegations

As ultimately framed, the allegations that the Commission investigated were:

- Whether, between May 2020 and December 2022, then Council contractor Mr Cossu and/or then Council employee Mr Webb partially or dishonestly exercised their official functions by obtaining financial benefits by using and/or attempting to use PMLV to undertake recruitment subcontractor services through Council recruitment contractors in circumstances where Mr Cossu and/or Mr Webb failed to disclose their pecuniary interest in PMLV and/or pecuniary benefits that they anticipated receiving in connection with the use of PMLV ("the recruitment scheme").
- Whether, between July 2020 and December 2022, then Council contractor Mr Cossu and/or then Council employee Benjamin Webb partially or dishonestly exercised their official functions to favour GWAC by attempting to influence the award of Council contract/s to GWAC and/or using or attempting to use PMLV to undertake subcontractor services in respect of GWAC contracts with Council to benefit themselves and/or others ("the procurement arrangement").

#### **Conduct of the investigation**

The preliminary investigation suggested that Mr Webb was aware of Mr Cossu's interest in PMLV, and that Mr Cossu may have provided pecuniary benefits to Mr Webb.

On 2 March 2023, the Commission escalated the matter to a full investigation.

On 1 November 2023, the Commission expanded the scope of the investigation to include GWAC.

During the investigation, the Commission:

- issued one notice under s 21 of the ICAC Act (requiring production of a statement of information)
- issued 71 notices under s 22 of the ICAC Act (requiring production of documents or other things)
- issued two combined notices under s 21 and s 22 of the ICAC Act

- issued two summonses under s 35 of the ICAC Act (requiring an appearance to produce documents)
- executed four search warrants
- forensically examined laptops, tablets and mobile telephones that it had seized
- interviewed 37 witnesses
- conducted nine compulsory examinations.

#### The public inquiry

On 12 March 2024, the Commission determined that it was in the public interest to hold a public inquiry in connection with the Operation Mantis investigation. Among other considerations, the Commission had regard to the importance of general deterrence, the desirability of encouraging others to come forward, and the fact that the allegations raised important questions about laws, workplace practices and procedures affecting local government.

The Hon Helen Murrell SC, Commissioner, presided at the public inquiry. Georgia Huxley and Hannah Ryan appeared as Counsel Assisting the Commission. The public inquiry occupied 11 days between 3 and 20 June 2024. Twelve witnesses were called.

Following the public inquiry, the Commission received written submissions about possible corrupt conduct in private.

Counsel Assistings' submissions were provided to all relevant parties on 8 July 2024.

Written submissions in response were received by 2 August 2024.

While preparing this report, additional potential adverse findings were identified beyond those raised during the public hearing and in Counsel Assistings' submissions. Relevant parties were advised of the potential adverse findings affecting them and provided with an opportunity to make submissions in response.

The last submissions in response were received on 11 November 2024.

The Commission's Corruption Prevention Division prepared submissions and provided them to the relevant parties on 12 July 2024. Written submissions in response were received on 31 July 2024.

All submissions have been taken into account in preparing this report. Relevant parties were invited to request that a summary of their response to the identified possible adverse findings be included in the report if the Commission made such findings. No party accepted that invitation.

# Time within which this report was completed

Section 74E(3) of the ICAC Act requires the Commission, in each report prepared under s 74 of the Act, to:

a) report on the Commission's performance against the time standards in relation to preparing the report and providing the report to the Presiding Officer of each House of Parliament, and

b) give reasons for any failure to comply with the time standards in relation to the preparation of the report.

The Commission's time standard for preparing and providing its reports under s 74 of the ICAC Act to the Presiding Officers of Parliament is that at least 80 per cent of reports:

- for a public inquiry of five days or less, will be furnished to the Presiding Officers within 80 days of the receipt of final submissions, and
- for a public inquiry of more than five days, will be furnished to the Presiding Officers within 180 days of the receipt of final submissions.

At the time of writing, this report was scheduled to be furnished to the Presiding Officers on 5 December 2024. This is 125 days after 2 August 2024, the date of receipt of final substantive submissions. This falls within the timeframe of 180 days for a public inquiry of more than five days.

During the preparation of this report, the Commission wrote to a small number of affected persons to notify them of potential additional corrupt conduct findings and s 4A(2) statements being considered by the Commission, and to provide them with an opportunity to respond, to ensure procedural fairness has been afforded. The last response was received on 11 November 2024. The Commission has not relied upon this date in calculating the time taken to complete this report due to the discrete nature of the issues covered in those letters.

# Credibility of witnesses in the public inquiry

Chapter 2 sets out the roles and connections of people and entities mentioned in this report.

Here, the Commission addresses the credibility of important witnesses who gave evidence at the public inquiry.

In general, the Commission assessed the credibility of witnesses by reference to contemporaneous records and consideration of what was reasonable and plausible.

The documentary evidence against Mr Cossu was overwhelming and could not realistically be disputed. Generally, Mr Cossu accepted the evidence. However, where the evidence tended to implicate Mr Webb, often against considerable odds Mr Cossu attempted to exonerate Mr Webb from involvement in the recruitment scheme and the procurement arrangement. His motivation for doing so may have been the long-standing friendship between the men. The Commission placed little reliance on his evidence tending to exonerate Mr Webb, preferring to rely on contemporaneous records and a commonsense view of events.

In relation to the recruitment scheme, the documentary evidence against Mr Webb was strong and consistent. On critical issues, Mr Webb's evidence was implausible. Importantly, he attempted to explain the substantial sums he received from Mr Cossu as Mr Cossu's investment in the development of a software program known as Progetto. The Commission has found that there was no such venture; rather, the evidence of Mr Webb and Mr Cossu on this matter was a hastily constructed recent invention. From the outset of his engagement with Council, Mr Webb displayed a casual attitude towards the truth; in his application for the position at Council, he claimed a tertiary gualification that he did not have. However, even he did not contend that he had disclosed Mr Cossu's profit from the recruitment scheme, (a key matter that demanded disclosure to Council). As a witness, Mr Webb appeared evasive, claiming to have no recall of matters that would have raised "red flags" if Mr Webb was not a party to the recruitment scheme, or offering explanations that conflicted with common sense. The Commission did not accept Mr Webb's evidence except where he made concessions against interest, or his evidence was consistent with other, reliable evidence.

Mr Clarke presented as pleasant but disorganised. He too appeared to be trying to distance Mr Webb from events. The Commission approached his evidence with caution.

Nosakhare Dankaro was a temporary worker hired through PMLV who was involved in The Appian Way culverts upgrade project, which was important to the procurement scheme. He presented as essentially honest. His answers were forthright, and he made many concessions against interest. With one minor qualification (see chapter 5), the Commission accepted his evidence.

Faiza Bhuiyan, the project manager for The Appian Way works program, was straightforward and forthcoming as a witness. She was confused about some issues associated with GWAC's tender for that project (see chapter 5), but this appeared to be a genuine confusion dating back to the time of the tender. The Commission accepted her evidence. Anthony Vangi, Council's director of city assets, was a careful but reasonably forthright witness who made some concessions that tended to be against interest. He also seemed to be somewhat confused about one issue associated with the GWAC tender for The Appian Way culverts upgrade project, but the Commission concluded that his confusion probably arose from a failure to fully consider matters that assumed prominence in his mind only after the event. The Commission accepted his evidence.

There was no suggestion that Peter Anderson, the team leader at Council to whom Mr Cossu reported, was other than an honest witness.

#### The recruitment scheme

Between February 2021 and September 2022, Mr Cossu's company PMLV provided 26 contingent (temporary contract) workers to Council through Spinifex or Randstad, the recruitment agencies that Council used to provide contingent workers. PMLV had no arrangement with Council to provide such workers. Mr Cossu and Mr Webb recruited workers who were generally inexperienced in the Australian workforce and who would accept relatively low wages to gain experience. These workers were employed by PMLV, which provided them to Spinifex or Randstad, which provided them to Council. Council paid Spinifex or Randstad for the workers. After taking its commission, the recruitment agency paid PMLV. PMLV paid the worker and retained the balance, which was often about half the sum paid by Council.

As manager of the Works and Projects Unit at Council, Mr Webb had oversight of hiring for his unit and participated closely in the hiring of PMLV workers. In 2021 and 2022, Mr Cossu provided him with significant benefits, including sole access to a bank account from which Mr Webb withdrew approximately \$208,000 while he was employed at Council. Mr Webb was and remains a bankrupt. He did not disclose the receipt of these benefits to Council or his trustee.

The subcontractor arrangement was designed to make a profit for PMLV, and it did. The workers received significantly less than would have been the case had they been engaged directly by the recruitment agency. Excluding the money that Randstad paid to PMLV for Mr Cossu's engagement with Council (as it was the payroll service provider for his engagement), PMLV received a total of \$7,184,938. PMLV paid 26 contingent workers a total of \$2,677,605, resulting in a gross profit of \$4,507,332 from which insurances and other expenses were deducted.

Tables 5 and 6 in Appendix 4 set out, among other things, the pay rates for contingent workers, what the

recruitment agencies charged Council for each worker (per hour) and the gross mark up for PMLV. The Commission did not examine the recruitment of all the contractors listed in these tables in detail, but the tables allow comparison of how much of what Council was paying for the contingent workers went to their wages and how much went to PMLV.

All dollar amounts in this report exclude GST unless otherwise noted.

### Corrupt conduct findings in relation to recruitment

#### Mr Webb

The Commission found that Mr Webb engaged in serious corrupt conduct in connection with the recruitment scheme (see chapter 4) by:

- between about 1 January 2021 and 9 December 2022, misusing his public official functions as Council's manager of works and projects to facilitate the engagement of contingent workers through PMLV, a company run by his friend Mr Cossu, by approving their engagement and/or determining to add more workers to Council's Works and Projects Unit, in return for which he received approximately \$208,000 during the period that he worked at Council
- between about 1 January 2021 and 9 December 2022, in breach of the Council Code of Conduct, submitting false or misleading written returns of interest in which he failed to disclose:
  - the receipt of benefits from Mr Cossu and PMLV
  - his bankruptcy status and associated debts
  - the receipt of a gift or benefit under clause
     6 of the Code of Conduct.

#### Mr Cossu

The Commission found that Mr Cossu engaged in serious corrupt conduct in connection with the recruitment scheme (see chapter 4) by:

 between about 1 January 2021 and 20 December 2022, by arrangement with Mr Webb, supplying contingent workers to Council through his company PMLV, in return for which Mr Webb misused his public official functions as Council's manager of works and projects to engage and retain PMLV candidates at Council. Mr Cossu gave Mr Webb approximately \$208,000.

#### Section 74A(2) statement on whether the advice of the Director of Public Prosecutions should be obtained – recruitment

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:

#### **Benjamin Webb**

 for the criminal offence of corruptly receiving financial benefits from Mr Cossu or his company, PMLV, in relation to Council engaging PMLV candidates contrary to s 249B(1) of the *Crimes Act 1900* (NSW) ("the Crimes Act").

#### **Pietro Cossu**

• for the criminal offence of corruptly giving financial benefits to Mr Webb, an agent of Council, in relation to Council engaging PMLV candidates contrary to s 249B(2) of the Crimes Act.

#### The procurement arrangement

In July 2020, Mr Clarke incorporated a new company, GWAC. Between July 2020 and November 2022, GWAC was awarded numerous Council projects, including "request for quotation" (RFQ) projects and three tender projects, the largest of which was part of The Appian Way stormwater upgrade project.

The Commission did not fully investigate all Council projects awarded to GWAC, but it did investigate in detail some RFQ projects and the The Appian Way stormwater upgrade project.

As to the projects that were investigated, Mr Cossu assisted Mr Clarke in a variety of ways. For example, he:

- helped Mr Clarke to price jobs, including by providing him with information about other contractors' quotes or tenders
- assisted Mr Clarke with drafting documents relevant to the procurement process
- participated on evaluation panels that recommended the award of work to GWAC
- utilised his company (PMLV) as an intermediary between GWAC and a concrete culverts supplier, thereby enabling GWAC to bid for the valuable The Appian Way stormwater upgrade project.

During the period that Mr Cossu was employed at Council and simultaneously assisting GWAC, GWAC paid substantial monies to Mr Cossu or his company PMLV. Table 7, in Appendix 5, sets out key details about RFQs that were awarded to GWAC and that the Commission considered, either briefly or in some detail. The table details which of GWAC's quotes for these projects were sent to Mr Cossu before being submitted to Council, as well as the final quote figure submitted to Council after his review; many of these quotes were altered significantly after Mr Cossu's review and before they were submitted to Council.

Table 7 also details the cost of variations claimed by GWAC for contracts; often these variations took the total cost of the project well beyond Council's budget for the project and GWAC's initial quote.

The table also includes details of some competitor quotes for projects, which were rejected in favour of GWAC; in many instances, the multiple variations claimed by GWAC during the project elevated the final cost above what was quoted by competitors that GWAC had underbid during the RFQ process.

Finally, table 7 records that in two of the RFQs for which GWAC secured a contract with Council, Mr Cossu provided the reference check for GWAC.

### Corrupt conduct findings in relation to procurement

#### Mr Cossu

The Commission finds that Mr Cossu engaged in serious corrupt conduct in connection with the procurement arrangement (see chapter 5) by:

 between mid-2020 and late 2022, misusing his public official functions by assisting Mr Clarke and his company, GWAC, to win Council projects and maximise his financial gain from the projects (including through variations), by utilising the information and opportunities available to Mr Cossu through his position at Council. Mr Cossu did so for the purpose of improperly benefitting himself and his company, PMLV, which received over \$2 million from GWAC.

#### Mr Clarke

The Commission finds that Mr Clarke engaged in serious corrupt conduct in connection with the procurement arrangement (see chapter 5) by:

 between mid-2020 and late 2022, rewarding Mr Cossu for assisting Mr Clarke and his company, GWAC, to win Council projects and maximise GWAC's financial gain from the projects (including through variations). Mr Cossu did so by utilising the information and opportunities available to him through his position at Council. In return, Mr Clarke paid Mr Cossu's company, PMLV, over \$2 million.

#### Section 74A(2) statement on whether the advice of the Director of Public Prosecutions should be obtained – procurement

The Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of the following persons:

#### **Pietro Cossu**

 for the criminal offence of corruptly receiving financial benefits from Mr Clarke or his company, GWAC, in relation to GWAC being awarded projects at Council, contrary to s 249B(1) of the Crimes Act.

#### Jeremy Clarke

 for the criminal offence of corruptly giving financial benefits to Mr Cossu, an agent of Council, in relation to GWAC being awarded projects at Council, contrary to s 249B(2) of the Crimes Act.

# Recommendations for corruption prevention

Chapter 6 of this report sets out the corruption risks identified by the Commission during the investigation and the basis for its corruption prevention recommendations.

#### **RECOMMENDATION 1**

That Council adopts better-practice employment-screening measures that include:

- more extensive screening for higher-risk roles, in line with a risk-based approach
- confirmation where a position has been identified as requiring a criminal record check – that this check is completed and used to inform the hiring decision
- contact with issuing institutions to verify academic qualifications
- financial checks on candidates for managerial roles with financial delegations.

#### **RECOMMENDATION 2**

That Council retains documents from recruitment interviews and evidence justifying the selection of the preferred applicant.

#### **RECOMMENDATION 3**

That Council adopts better practice guidelines on contingent workforce management that incorporate:

- workforce planning
- a requirement to consider alternative recruitment solutions to fill roles
- controls to limit the tenure of contingent workers, including reviews to determine whether contingent roles should be converted to permanent appointments.

#### **RECOMMENDATION 4**

That Council adopts measures to address the risks associated with contingent labour, including:

- placing contingent labour on its risk register(s)
- performing a formal risk assessment to help inform when and how contingent labour should be used.

#### **RECOMMENDATION 5**

That Council implements measures to eliminate absolute control of hiring managers in the contingent-labour hiring and management process. In particular, Council should consider giving human resources a role in approving appointments.

#### **RECOMMENDATION 6**

That Council collects detailed and accurate financial and workforce data on contingent workers and shares this information with key stakeholders, including the Executive Leadership Team.

#### **RECOMMENDATION 7**

That Council:

- ensures it retains copies of price schedules for different job grades and bands
- instructs hiring managers and human resources staff to consider these price schedules in their recruitment processes
- embeds internal financial controls to ensure that contingent rates are justified

• confirms a contingent worker's rate of pay with the contingent worker when they are initially engaged.

#### **RECOMMENDATION 8**

That Council adopts measures to ensure that:

- it is notified of any proposed subcontracting arrangements involving contingent-labour suppliers, and approval for these arrangements is sought from senior levels within Council and not the business unit engaging the contingent worker
- panels, managed service providers, contingentlabour suppliers and subcontractors all have a robust assurance framework in place to ensure they can deliver services in line with the contract.

#### **RECOMMENDATION 9**

That Council requires managed service providers to:

- attest that they are not aware of any conflicts of interest involved in contingent hiring arrangements
- ensure all parties in the supply chain are provided with a conflict of interest definition
- place a requirement on all parties in the supply chain to attest that they are not aware of any conflicts of interest involved in contingent hiring arrangements.

#### **RECOMMENDATION 10**

That Council ensures that high-quality employment screening checks are performed on contingent workers and that Council periodically examines the quality of checks performed by suppliers involved in recruitment.

#### **RECOMMENDATION 11**

That Council provides:

- contingent workers with induction and ongoing training that explains what corruption is and how to report it
- contingent workers with the opportunity to raise concerns regarding workplace performance during an off-boarding process
- all staff, including contingent workers, with training on how to make and receive (where relevant) public interest disclosures.

Aspects of this recommendation may be modified for extremely short-term contingent labour.

#### **RECOMMENDATION 12**

That Council reviews its processes to ensure that the planning of capital works is based on finalised designs or detailed project briefs, robust cost estimates, scope-management plans and scopes of works that are commensurate with the size, risk and complexity of a project.

#### **RECOMMENDATION 13**

That Council reviews its procedures and processes for capital works procurement to ensure:

- compliance with procurement dollar thresholds, particularly in relation to the splitting of orders
- purchase orders are raised for the correct amount
- specifications and assessment criteria are:
  - complete and aligned with evaluation plans
  - explained in sufficient detail
  - adequate to assess key contract risks
  - internally consistent across documents
- closing dates are not extended to unfairly advantage potential contractors
- potential contractors are not unfairly excluded from procurement exercises and that reasons are provided for excluding bidders.

#### **RECOMMENDATION 14**

That Council adopts a robust contractor selection framework that includes:

- verifying claims made by potential contractors
- processes to follow up red flags in relation to the capability and capacity of potential contractors
- assessing project-delivery methodologies, including consideration of the capabilities and insurances of nominated subcontractors
- obtaining assurances regarding compliance with design and safety specifications.

#### **RECOMMENDATION 15**

That Council ensures that contractor selection reports contain adequate information to enable the approving officer to understand key issues. The information should include:

• a realistic and detailed assessment of key procurement and contract risks and the corresponding mitigation strategies

- any significant probity concerns that arose during the procurement exercise and how they were resolved
- any clarifications that were issued to tenderers.

#### **RECOMMENDATION 16**

That Council conducts a detailed risk assessment regarding information security related to procurement exercises and identifies and implements controls to enhance the security of information. The review should consider:

- the use of an electronic submission box for the receipt of all quotations and tender clarifications
- the timing of the release of this information by the Procurement Service Unit.

#### **RECOMMENDATION 17**

That Council implements a contract-variation process for capital works that requires:

- requests to proceed with project variations to be approved and supported by evidence, such as photographs and/or written requests from asset owners in advance of the proposed work being undertaken
- competitive quotations for changes to scopes of works above a certain amount or threshold (to be determined by Council) where the nature of the work allows
- requests for variations to be communicated in writing to contractors
- controls to identify when project variations exceed 15% of the original contract amount and aggregated periodic reporting to the director city assets of such situations.

An exception to the above requirements should be permitted for emergency situations where appropriate.

#### **RECOMMENDATION 18**

That Council enhances its project-management framework for large scale capital works to ensure:

- contractors making payment requests (including those related to the payment of variations) are required to provide documented proof of works such as receipts for materials, evidence of contractor hours and time stamped photographs of works
- quality checks are conducted at critical work stages and documentation collected on compliance with specifications

- a risk-management framework is implemented that complies with the principles in A/NZ ISO 31000:2018 Risk management – Guidelines
- there is monitoring and reporting of project budgets and the progress of work
- project debriefs are undertaken to identify key areas for improvement.

#### **RECOMMENDATION 19**

That Council amends its conflicts-of-interest procedures to ensure that:

- staff are prompted to declare conflicts of interest at the start of a procurement exercise, as well as after the tender box opening
- all conflicts-of-interest declarations are placed on its central register
- relevant management and staff are informed when people are removed from a procurement process due to a conflict of interest
- conflicts-of-interest management plans are established for staff excluded from a procurement process due to a conflict of interest with the selected contractor.

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 Council.

Section 111E(2) of the ICAC Act requires that Council informs the Commission in writing within three months (or such longer period as the Commission may agree to in writing) after receiving the recommendations, whether it proposes to implement any plan of action in response to the recommendations and, if so, details of the proposed plan of action.

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

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

# Recommendation to make the report public

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

# Chapter 2: People and entities in this report

**Canterbury-Bankstown Council** (Council) is a public authority, because it is a local government authority, pursuant to subparagraph (e) of the definition of "public authority" in s 3(1) of the ICAC Act.

Benjamin Webb was employed by Council as manager of the Works and Projects Unit, from 24 February 2020 to 9 December 2022. His direct supervisor was Anthony Vangi (the director of City Assets at Council), and his next level supervisor was Matthew Stewart (the general manager at Council). On 21 November 2022, Mr Webb resigned, effective from 9 December 2022. Mr Webb was responsible for, among other things, authorising Council charge rates for hiring contingent workers in the Works and Projects Unit via the recruitment firms Randstad and Spinifex. Mr Webb was an undischarged bankrupt.

Pietro Cossu, a civil engineer, was a longstanding and close friend of Mr Webb. Mr Cossu was contracted to work at Council through Randstad as a construction team leader in the Works and Projects Unit from 6 May 2020 to 20 December 2022. Mr Cossu's line manager was Peter Anderson (acting team leader of construction at Council), who reported to Mr Webb. Mr Cossu is also a longstanding acquaintance of Jeremy Clarke.

Ivan Webb is Benjamin Webb's father.

**PMLV Invest & Const Pty Ltd** (PMLV) is a company that Mr Cossu registered on 18 October 2013. He was the sole director, secretary and shareholder until 27 June 2023, when Mr Webb's father, Ivan Webb, became the sole director and secretary. Through Spinifex and Randstad, PMLV supplied contingent workers to Council. On several Council projects awarded to General Works and Construction Pty Ltd (GWAC), GWAC subcontracted to PMLV.

The W Project (NSW) is the business name for the company ACN 660 240 522 Pty Ltd. Since 17 June 2022,

Ivan Webb has been the sole director, secretary and shareholder of The W Project, which (on 27 June 2023) replaced Mr Cossu as the PMLV shareholder.

Asad Asaduzzaman was co-ordinator design, works and projects at Council during the period Mr Webb and Mr Cossu were at Council.

#### **Chapter 4: The recruitment scheme**

#### Spinifex

Spinifex Recruiting (or Spinifex) is the trading name for the recruiting agency JHA Recruitment & Staff@Work Pty Ltd. This agency was engaged by Council under the Local Government Procurement Pty Ltd (LGP) contract to supply contingent workers to the Works and Projects Unit at Council.

**Ben Trapman** was the regional manager of the Western Sydney team and then the manager of the Sydney Region team at Spinifex. He attended school in Dubbo with Mr Webb, although they had no contact between leaving school and Mr Webb commencing at Council. At Spinifex, he was involved in recruiting 22 PMLV contingent workers to Council between 29 January 2021 and 8 August 2022.

#### Randstad

**Randstad Pty Ltd** (Randstad) is a large international recruiting agency. The agency was engaged by Council under the LGP contract to supply contingent workers to the Works and Projects Unit at Council.

Noelle Kielty was a senior consultant in the Construction, Property and Engineering Section at Randstad. She was responsible for contingent and permanent labour hire to various councils. Ms Kielty was involved in recruiting Mr Cossu and three other PMLV staff to Council.



# Chapter 5: The procurement arrangement

Jeremy Clarke is the sole director and secretary of General Works and Construction Pty Ltd (GWAC; see below), Bulk Conveying Equipment Pty Ltd (BCE) and McGoo Civil Pty Ltd (McGoo). He was a longstanding acquaintance of Mr Cossu.

Faiza Bhuiyan was a project manager and subsequently a team leader of the Bankstown Ward at Council between May 2021 to December 2022. She was the project manager on some Council projects awarded to GWAC, including The Appian Way culverts upgrade project.

**General Works and Construction Pty Ltd** (GWAC) is a company registered on 7 July 2020. Clarke Services Proprietary Ltd is the sole shareholder (held by Mr Clarke and his wife). GWAC was incorporated in order to do work in Sydney. From 8 October 2020 to 10 August 2023, Council paid \$5,278,849.47 to GWAC in relation to various contracts.

**Obnova Concrete Constructions Pty Ltd** (Obnova) specialises in pre-cast concrete construction. It was registered on 20 May 2013. Miroslav (Mick) Davidovic is the sole officeholder. In 2022, Obnova was contracted by PMLV to fabricate concrete culverts for a Council project.

# Chapter 3: Mr Webb and Mr Cossu's roles and Council's Code of Conduct

This chapter considers:

- the roles held by Mr Webb and Mr Cossu at Council at the time of the alleged conduct the subject of this investigation
- their resulting obligations under Council's Code of Conduct.

#### Mr Webb's employment at Council

Mr Webb commenced at Council on 24 February 2020 as manager of the Works and Projects Unit, initially on a temporary contract to 20 August 2021. His friend, Mr Cossu, was nominated as a referee.

He resigned from Council on 21 November 2022 and departed from Council on 9 December 2022.

## Mr Webb included misleading information in his resume

Even before he commenced at Council Mr Webb displayed an ambivalent attitude to the truth in his dealings with Council. When applying for the Council position in February 2020, he submitted a resume asserting that he had attained a bachelor's degree of Architectural and Environmental Design from the University of Canberra. By doing so, he appeared to satisfy an essential qualification for the position, being a tertiary qualification in a relevant field. In fact, he had undertaken only one year of the nominated three-year degree course before withdrawing from it in 1996. In evidence, he said that he did not consider that this conduct was misleading. As addressed in chapter 6, during the application process for this role he also falsely claimed that he was completing a combined MBA and Master's of International Project Management through Torrens University in Adelaide. He did not enrol in the course until 2021, a year after he commenced employment at Council. He attempted one semester but failed all subjects.

#### Mr Webb was an undischarged bankrupt

Mr Webb was an undischarged bankrupt at the time he applied for employment at Council, having been declared bankrupt in November 2011 and again in February 2018. He will not be discharged from bankruptcy until at least 21 December 2026. At no stage did Mr Webb disclose his bankruptcy to Council. In evidence, he stated that he didn't consider it to be "relevant". For its part, Council delegated significant financial responsibility to Mr Webb but made no enquiries about Mr Webb's bankruptcy status.

#### Manager of the Works and Projects Unit

At the commencement of his employment with Council, Mr Webb's remuneration comprised a gross salary of \$182,300 per annum, and a taxable car allowance of \$16,894.98 per annum, which supported him to use his own vehicle.

The position description listed some of Mr Webb's accountabilities as:

- Lead a multidisciplinary team of staff to design, procure, administer and project manage the delivery of Council's capital works program.
- Identify resourcing requirements to ensure on-time completion of the program.
  - ...
- Lead the recruitment of permanent and contract staff as part of the approved realignment.
- Act as Superintendent to contract on all large value projects.
- Maintain Unit budget and expenditure including overseeing Project budget expenditure and transaction in accordance with Council's procurement policies...



At the start of Mr Webb's employment, the Works and Projects Unit comprised approximately 40 civil-design engineers, surveyors, project managers/officers, procurement personnel and administrative personnel. By the time he left Council, there were 70 to 80 staff in the unit.

Asad Asaduzzaman (co-ordinator design, works and projects) and Peter Anderson (acting team leader construction) reported to Mr Webb. The project officer responsible for delivering a particular project reported to Mr Anderson. On a larger project, they reported to both Mr Webb and Mr Anderson.

Mr Webb reported to Anthony Vangi (director, city assets). Mr Webb's next level supervisor was Matthew Stewart (general manager).

Between 2020 and 2022, Mr Webb's financial delegations were \$150,000 (authorisation of expenditure) and \$300,000 (authorisation of payment). Within the scope of his delegation, Mr Webb had a broad discretion to hire workers for the Works and Projects Unit, including contingent workers. He could authorise Council charge rates for the hire of contingent workers and approve rate increases. Payments beyond his delegation limits required Mr Vangi's approval.

As superintendent of Council's Works and Projects team, Mr Webb was responsible for the delivery of Council projects and approved expenditure within his financial delegation. On projects that were not large value projects, he could delegate this role to a superintendent's representative. It is the task of a superintendent (or their representative) to be an impartial and independent intermediary between Council and contractor, considering the views of both parties and making fair decisions. A common point of friction a superintendent may be expected to resolve is the need for cost-of-contract variations.

Prior to Mr Webb's employment, the Works and Projects Unit had failed to deliver capital works up to budget. Mr Vangi acknowledged that this deficiency may have been due to under-resourcing. During Mr Webb's employment, there was a dramatic expansion in the capital works program. By the time that Mr Webb left Council, the annual capital works program budget was about \$150 million. A further challenge Mr Webb faced during his employment was the COVID-19 pandemic (declared in March 2020). Undoubtably, these factors combined to exert pressure in relation to the delivery of projects.

Mr Webb was not an easy work colleague, but he was considered highly effective in delivering projects. Mr Anderson described him as "hard but direct" and project manager Faiza Bhuiyan said that he had "vision". He kept consultation to a minimum and his communication style was sub-optimal. His record for project delivery was excellent and he commanded the respect – if not the affection – of his team.

#### Mr Cossu's engagement at Council

From 6 May 2020 to 20 December 2022, Mr Cossu was engaged as a team leader construction, in Council's Works and Projects Unit, undertaking project management. He was engaged on a contingent basis. His duties included drafting design documentation, providing technical advice on assigned projects, managing the delivery of assigned projects and acting as superintendent's representative on assigned projects.

Mr Cossu was a civil engineer with considerable experience in the construction industry. From 2013 to 27 June 2023, he was director and shareholder of PMLV Invest & Const Pty Ltd (PMLV).

Mr Webb met Mr Cossu in about 2018, when both were working on the B-Line Bus Project on the Northern Beaches of Sydney. They became good friends. At the time of the public inquiry, they still worked together and remained close friends. At the public inquiry, Mr Cossu said that he spoke to Mr Webb every day.

Mr Cossu recalled that, sometime in 2020, Mr Webb told him that there was a role at Council.

Noelle Kielty was responsible for recruiting contingent hires to Council through the recruitment agency, Randstad Pty Ltd (Randstad). On 27 April 2020, she received a telephone referral from Mr Webb, who sent her Mr Cossu's resume.

Mr Webb did not undertake a competitive process before recruiting Mr Cossu.

Mr Cossu was engaged at Council through Randstad as an ABN contractor utilising his business, PMLV. Randstad invoiced Council for work done by PMLV (Mr Cossu) at a rate of \$125.56 per hour and Randstad then paid PMLV \$113 per hour, earning Randstad 10 per cent of the charge rate to Council. Between May 2020 and December 2022, Randstad paid Mr Cossu (PMLV) a total of \$691,729.50 in relation to his work for Council.

Although Mr Cossu had already been referred, on 29 April 2020, Mr Webb emailed Randstad seeking CVs for any suitable team leader construction candidates.

On 30 April 2020, Ms Kielty emailed Mr Cossu's CV to Mr Webb. The document attached to the email outlined Mr Cossu's skills, experience and other details. However, it was not a detailed CV; it contained no contact details for Mr Cossu and provided no referee details. Mr Webb had asked for CVs for any suitable candidate, but Randstad sent only Mr Cossu's application. Mr Webb did not pursue a request for other CVs.

Ms Kielty gave evidence that she had not interviewed Mr Cossu, as Randstad was providing a "payroll service", not a "recruitment service". According to Ms Kielty, a "payroll service" means that the client (Council) only wanted the agency to facilitate payrolling services for that contractor, so the agency would not interview the contractor for the position.

On 5 May 2020, Ms Kielty emailed to Mr Webb a client agreement ("independent contractor agreement") between Mr Webb (for Council) and Randstad (for contractor Mr Cossu), which proposed that Mr Cossu commence as a team leader construction the next day. Ms Kielty asked Mr Webb to confirm that he did not require references for Mr Cossu.

Mr Webb replied that he had already contacted Mr Cossu's referees. In the public inquiry, Mr Webb said that he "already knew" Cossu's referees, although he had not contacted them. Mr Webb said he told Mr Vangi that he had a friend with whom he had worked previously and who was being brought on board.

During the public inquiry, it was put to Mr Vangi that he had asked Mr Webb whether he knew anyone who could assist with delivering the works program. Mr Vangi denied that this had occurred. He denied that Mr Webb had identified Mr Cossu as someone who should be brought on board. He said he had first met Mr Cossu in the office when Mr Webb had introduced them. At that stage, Mr Webb said that they had worked together on the B-Line project. Mr Vangi said that, prior to this introduction, he had not met Mr Cossu and Mr Cossu had not come up in conversation. Mr Vangi "did not recall" Mr Webb mentioning in passing that he was friends with Mr Cossu.

Mr Cossu reported to Mr Anderson, acting team leader construction, and to Mr Webb. Like Mr Vangi, Mr Anderson was not aware of Mr Cossu's existence until he started, although Mr Cossu was to report to him. Mr Anderson said that this state of affairs was not unusual; Mr Webb approved other hires of whom he was unaware until the day that they started.

For the following reasons, the Commission rejects Mr Webb's evidence that he informed Mr Vangi that he was bringing a friend on board:

- Had Mr Vangi been aware of the significant friendship, he would have required Mr Webb to disclose the conflict and ensure that the recruitment followed an appropriate process, not the partial process that was in fact followed.
- Mr Webb was well aware of the requirement to disclose conflicts in writing (see below) but did not do so.
- Even Mr Anderson, Mr Cossu's immediate supervisor, was unaware of Mr Cossu's friendship with Mr Webb.

Mr Cossu had no financial delegation at Council, as he was an agency hire. However, he did identify and request quotes and/or tenders from contractors, evaluate quotes and make recommendations as to the most suitable contractor for a given project.

Mr Webb approved the first Randstad invoice for Mr Cossu's services. Most later invoices were approved by Mr Anderson. If the client (Council) approved the hours, Randstad paid Mr Cossu accordingly.

In September 2020, Mr Webb approved Mr Cossu claiming for weekend hours (overtime) "as required".

On Mr Webb's recommendation, Mr Cossu's contract was extended on several occasions. On 21 October 2021, Mr Webb recommended a six-month extension. On 8 December 2021, the recommendation was approved by Mr Vangi.

Mr Cossu finished working at Council on 20 December 2022.

# Council's Code of Conduct and disclosure of conflicts of interest

On 26 March 2019, Council adopted a Code of Conduct ("the Code") pursuant to s 440 of the *Local Government Act 1993* (NSW) ("the LGA").

#### Mr Webb's obligations under the Code

Mr Webb was bound by the Code during the time he was employed at Council. Mr Webb's position description stated that all staff were required to comply with the Code. This requirement was mandated by clauses 3 and 16.1 of his employment contract.

When Mr Webb commenced employment at Council in February 2020, the 26 March 2019 version of the Code applied. During the period of his employment, it went through two iterations, dated 25 August 2020 and 22 February 2022. All three shared the following features:

- Under the Code, Mr Webb was a "designated person" (clause 4.8) and was required to submit written returns of pecuniary interests in accordance with clause 4.21. A pecuniary interest in a matter was defined as "a reasonable likelihood or expectation of appreciable financial gain or loss to the person" (clause 4.1). The disclosure requirement extended to interests in real property, gifts, interests in corporations, sources of income and debts (described in the Code at Part 2 of "Schedule 1: Disclosures of Interests and other matters in written returns submitted under clause 4.21").
- Mr Webb was required to disclose a pecuniary interest in any Council matter with which he was dealing as soon as practicable after becoming aware of the interest (clause 4.10).
- Mr Webb was required to identify, disclose in writing and manage any non-pecuniary conflicts of interest, including one arising out of a personal relationship or business relationship (clause 5.5). For a significant non-pecuniary conflict of interest, the interest was to be managed by not participating in consideration of, or decision-making in relation to, the relevant matter (clause 5.9).

- Mr Webb was required to avoid situations giving rise to the appearance that a person or body was attempting to secure favourable treatment through the provision of gifts or benefits to him or someone personally associated with him (clause 6.3).
- Mr Webb was precluded from seeking or accepting a bribe or other improper inducement, seeking gifts or benefits, accepting any gift of benefit of more than token value, and accepting an offer of cash or a cash-like gift. He was required to promptly disclose the receipt of a gift or benefit of any value (clauses 6.5 and 6.6).
- Mr Webb was not to take advantage of his position with Council or his Council functions to obtain a private benefit for himself or any other person or body (clause 6.15).
- Mr Webb was to access Council information only as needed for Council business, not use the information for private purposes and only release the information in accordance with Council policies (clause 8.9).
- Mr Webb was to maintain the integrity and security of confidential information for which he was responsible, protect the confidential information and refrain from using it for the purpose of securing a private benefit for himself or any other person (clauses 8.10 and 8.11).

On 24 February 2020, the day that he commenced at Council, Mr Webb undertook an induction that included training on the Code.

In response to a request by Mr Webb, on 11 May 2020, Mr Anderson emailed the then current Code (March 2019 version) to Mr Webb. On 2 November 2020, Mr Webb completed an e-learning refresher course on the Code.

In evidence in the public inquiry, Mr Webb agreed it was likely that he had read the Code within three months of commencing at Council. He accepted he would have read the part concerning disclosure of pecuniary interests. He understood that he was not to misuse his position to obtain a private benefit and that a financial benefit had to be declared in writing. He knew that he had to submit written returns of interest and make disclosure within three months of becoming aware of an interest that had not been disclosed. The Commission is satisfied that, at all times Mr Webb was employed at Council, he understood his obligations under the Code in relation to these matters.

Mr Webb submitted financial disclosure returns on 1 September 2020 and 15 September 2021. They were respectively entitled "Disclosure of Interest Form" (unsigned) and "Disclosure of Pecuniary Interest Form" (signed), and each pertained to the previous financial year. In these disclosure returns Mr Webb disclosed no debts, and declared only his Council income and that he had income from a Family Trust. No return was located for the financial year ended 30 June 2022.

Mr Webb did not disclose:

- that he was receiving a benefit from PMLV
- that he was withdrawing substantial cash sums from an account opened by Mr Cossu
- that he was receiving funds from Mr Cossu, who was a close friend (for an equity stake in the development of project software, by way of loans or otherwise)
- that he received payments from Gunyama Park Aquatic and Recreation Centre (Gunyama)
- his status as an undischarged bankrupt or the associated debts.

Between 18 February 2020 and 1 February 2021, Gunyama made payments into Mr Webb's ANZ account ending 8052. Mr Webb had invoiced Gunyama through Structural Projects Holdings Pty Ltd, a company of which his father and brother were directors. Mr Webb gave evidence that, when he started working at Council, he was still completing an earlier work commitment, and that he had mentioned the commitment when interviewed. On 12 October 2020, Structural Projects Holdings invoiced for eight days' work undertaken by Mr Webb for Gunyama in September and October 2020.

In his evidence and submissions, Mr Webb acknowledged that during his employment with Council he obtained pecuniary benefits from Mr Cossu, in the form of monies given to him and payments made on behalf of him and his family. Mr Webb contended that the pecuniary benefits related to Mr Cossu obtaining an equity stake in a software business that was being developed by himself and his father, Ivan Webb. As to the funds received from Mr Cossu in relation to the equity stake in the project software, he said that he was "so busy at the time it never entered my mind".

In his evidence at the public inquiry, Mr Webb said he had understood that financial disclosure was required only in relation to financial benefits; he had not understood that he needed to disclose debts. However, he accepted that he should have done so as such disclosure was required by the disclosure return.

For the following reasons, the Commission rejects Mr Webb's evidence and submissions:

• The cash and other benefits that Mr Webb received from Mr Cossu and PMLV were of

substantial value, were received over an extended period and were the subject of many transactions; they could not have been overlooked by an intelligent person like Mr Webb.

- The Code is clear regarding the disclosure of debts and Mr Webb's status as a bankrupt would have impacted him frequently and substantially. It is implausible that he did not realise that he needed to disclose his status as a bankrupt.
- As discussed in chapter 4, Mr Webb was part of an arrangement to obtain benefits through the recruitment scheme, which was not known to Council. The obvious motive for failing to disclose the benefits and the arrangement was the belief that, if Council were aware of it, he and Mr Cossu could no longer profit from it.

It was submitted by Mr Webb that his failure to disclose his pecuniary interest in relation to Mr Cossu was an oversight because he did not think there was any need to do so, given the arrangement between them was a personal affair that did not relate to Council matters. Mr Webb also submitted that this arrangement never impacted either how he discharged functions as a Council employee or his decision-making.

The Commission rejects Mr Webb's submission. It is inconceivable that Mr Webb did not appreciate his "personal affair" with Mr Cossu was inconsistent with his obligation not to take advantage of his position or functions with Council to obtain a private benefit for himself or Mr Cossu. It is also implausible that the arrangement did not relate to Council matters, for the reasons set out in chapters 4 and 5. The Commission also rejects Mr Webb's assertion that the arrangement did not impact how he discharged his official functions or decision-making. As addressed in chapter 4, the arrangement between Mr Webb and Mr Cossu was facilitated by Mr Webb misusing his public official functions by approving the engagement of, and/or determining to add more, contingent workers to Council's Works and Projects Unit, of which he was the manager. The arrangement resulted in a financial gain to PMLV, which was then shared with Mr Webb. Part of the arrangement was that Mr Webb would not and did not disclose to Council that he and Mr Cossu expected to receive benefits because of this arrangement. This ensured their arrangement operated for as long as possible. It is plain Mr Webb did not separate the arrangement from the exercise of his public official functions.

The Commission is satisfied Mr Webb understood the nature of his disclosure obligations under the Code but deliberately failed to disclose them.

Chapter 4 of this report considers whether Mr Webb should have disclosed his receipt of benefits from Mr Cossu and PMLV, his bankruptcy status and his associated debts.

#### Mr Cossu's obligations under the Code

Although the Code did not in terms bind Mr Cossu, as he was a contractor, Mr Cossu signed the Code on 6 May 2020, the day he commenced at Council. It is important to note that even though Mr Cossu was not bound by the Code, he was still a "public official" at all times while he was employed at Council, for the reasons set out in chapter 1.

Mr Cossu said that he could not recall reading the Code, but he had a "general understanding" of it and understood that any conflict of interest should be reported to his supervisor, Mr Anderson.

Mr Webb arranged for some agency staff, including Mr Cossu, to attend training on the Code in November 2020.

Mr Cossu said he understood that a conflict could arise because of actual or intended loans, or gifts, or the anticipated receipt of money from a contractor. He also understood that he could not participate in evaluating tenders received if he had a conflict of interest. He accepted that he had to be impartial when evaluating quotes or tenders as part of Council's procurement process, as a member of the Evaluation Panel. He knew that, if a conflict were disclosed, he would be removed from the process to avoid the appearance of favouritism.

### **Chapter 4: The recruitment scheme**

This chapter examines the allegation relating to the recruitment of staff to the Works and Projects Unit at Council between 2020 and 2022 utilising Mr Cossu's company, PMLV, the roles of Mr Cossu and Mr Webb, and the benefits that each gained through the recruitment scheme.

# Council's contingent-hire workforce

Between 2020 and 2023, contingent (temporary contract) hires comprised a significant proportion of the Works and Projects Unit. Between February 2021 and November 2022, the percentage of contingent workers in the unit rose from 38% to 73%.

The Commission looked at 26 of these contingent workers, each of whom was employed by Mr Cossu's company, PMLV, which subcontracted them to Council through recruitment agencies used by Council.

### The benefits and risks of a contingent workforce

There are advantages and disadvantages to a contingent labour force. The strengths and weaknesses were articulated in Council's Unit Structure and Capability Review of June 2022, which was prepared by Mr Webb's unit.

From a hirer's perspective, a contingent workforce is more flexible than a permanent workforce. It is useful to fill capability gaps (including where a specialist is required) and where an organisation's future labour requirements are uncertain. However, such workers are more expensive, they may leave suddenly and deprive the organisation of its investment in training them, and they may have a primary allegiance to the recruitment agency, rather than the organisation for which they work.

24

From a worker's perspective, contingent workers are usually paid more than permanent employees. Contingent workers commonly receive a salary 25% greater than that paid to permanent employees. However, they are unlikely to receive the professional development opportunities and employment benefits offered to permanent employees, such as sick leave and holiday leave. They are subject to termination at any time, which limits their capacity to make complaints or demands of the organisation where they work.

Between 2020 and 2022, Council had some difficulties recruiting skilled workers; there was a boom in infrastructure projects and a shortage in labour to deliver them. Council was experiencing an expected peak in capital works projects after the COVID-19 lockdowns and required a flexible workforce to deliver them. The departure of over 500,000 temporary visa holders from Australia during the pandemic exacerbated skills shortages across the industry. Council was also undergoing a restructure (which, at the time of the public inquiry, was yet to be finalised), making it inadvisable to engage a substantial number of permanent employees.

### Council's process for hiring contingent workers

To engage contingent workers, Council primarily used the Local Government Procurement (LGP) panel, and approved recruitment agencies Spinifex Recruiting (the business name for J H A Recruitment & Staff@Work Pty Ltd) and Randstad Pty Ltd, which were engaged under the LGP contract "LGP 808 – 3 Human Resources – Permanent and Temporary Placements and Associated Services".

The agreement with each recruitment agency identified a charge rate for the supply of a worker, being the amount to be paid to the worker plus an agency fee (18% for Randstad and 14.5% for Spinifex, according to the pricing schedules provided by Randstad and Spinifex).



The LGP contract clause 4.1.1 provided that:

The Contractor may subcontract part or all of the performance of any of the Personnel ... under a Customer Contract to an authorised agent and/or subcontractor approved in writing by the Principal from time to time or identified in Schedule A.

Schedule A contained no approved subcontractors. The "Principal" was Local Government Procurement Pty Ltd.

A contingent worker supplied to Council under this framework entered an agreement with Randstad or Spinifex, which provided for their "pay rate". Spinifex or Randstad invoiced Council a "charge rate" in accordance with the LGP contract.

### Mr Webb's discretion in building a contingent workforce

As hiring manager, Mr Webb was responsible for identifying his unit's needs, and for sourcing, hiring, and managing the contingent workforce in his unit. He had broad discretion in hiring, including as to the screening and diligence checks that were undertaken for a particular role. There was no requirement to conduct interviews or retain documentation before hiring someone, although, where interviews were conducted, it was Council practice to retain the documentation. Mr Webb was primarily responsible for interviewing contingent hires to the unit. He was also responsible for negotiating their payrate.

When recruiting contingent hire workers, Mr Webb usually dealt with Ben Trapman (Spinifex's manager of recruiting for the Sydney Region) or Noelle Kielty (senior consultant in the Construction Property and Engineering Section of Randstad).

After Mr Webb approved a hire, associated financial matters were dealt with by others at Council. However, the Human Resources Unit had no oversight or visibility

of contingent workers. There was no supervision of Mr Webb's recruitment processes.

As hiring manager, Mr Webb was responsible for onboarding new recruits. Originally Peter Anderson, who was responsible for project delivery in the Works and Projects Unit, was involved in onboarding but from mid-2021 Mr Webb asked his executive assistant, Angela McEwen, to undertake onboarding for the unit.

Contingent staff were supposed to review, read, and confirm by signature their understanding of the Council's Code of Conduct, although they were not bound by it. When he onboarded a new recruit, Mr Anderson provided them with the Code. It is not known whether Ms McEwen adopted the same practice.

As hiring manager, Mr Webb could approve an extension to the engagement of a contingent worker if it fell within his financial delegation. If the extension exceeded his delegation, it required Mr Vangi's approval. In such a case, Mr Webb would request an extension via an email or memorandum and provide reasons.

Mr Webb was responsible for approving pay rates and pay increases for his unit, and for checking timesheets. Contingent workers had to complete two timesheets, which were checked by Mr Anderson to ensure that they coincided. One was for Council – to allocate costs against projects – and the other was for the recruitment company – to pay the employee.

Mr Anderson estimated that, between 2020 and 2022, five permanent employees and 18 contingent hires reported to him. However, he did not conclude that Mr Webb was advocating for a larger contingent workforce.

From 26 September 2022, Council contracted Comensura (a managed service provider) to provide recruitment services using the Comensura software platform. Under this new system:

- Council's talent management team worked with the Comensura platform to engage contingent workers
- Council implemented a Contingent Labour Leaders Guide and Contingent Labour Procedure.

# **PMLV** and the general operation of the recruitment scheme

#### The establishment of PMLV

In 2013, PMLV Invest & Const Pty Ltd was registered with the Australian Securities and Investments Commission (ASIC). Between October 2013 and 27 June 2023, Mr Cossu was the sole director, secretary and shareholder. PMLV's registered office and principal place of business was that of Mr Cossu's accountants. The business name 'PMLVCONSULTING' was registered by PMLV on 10 April 2019.

During the public inquiry, Mr Cossu said that PMLV was established as a construction business to do civil engineering work, primarily consulting.

PMLV had a business account with St George Bank.

#### The subcontracting arrangements between PMLV and the recruitment companies (Randstad and Spinifex)

From February 2021, PMLV subcontracted – through the LGP contract – to Spinifex and Randstad for the provision of contingent workers to Council.

The Randstad agreements that Mr Webb sent to Council's procurement unit did not identify Mr Cossu's connection with the candidate or PMLV.

Between February 2021 and September 2022, PMLV provided 26 contingent workers to Council through Spinifex or Randstad (four through Randstad and 22 through Spinifex).

Had it wished to do so, PMLV could not have provided contingent hire workers directly to Council, as it was not on the LGP panel of recruitment agencies. PMLV overcame this obstacle through the subcontracting arrangement, by supplying workers to Council via Randstad or Spinifex. However, it could not be overcome legitimately unless it complied with clause 4.1.1 of the LGP contract, which required LGP's written authorisation of the subcontractor. On behalf of Council, Mr Webb would contract with Spinifex or Randstad to supply a worker for the Works and Projects Unit. Both recruitment agencies asserted that they were providing a "payroll service" as opposed to a full "recruitment service", although the documentation did not refer to a "payroll service". The candidate had already been nominated by the client (Council). The agency invoiced Council the agreed hourly charge rate for a worker and, after deducting its commission, paid the remainder to PMLV. PMLV then paid the worker in accordance with the contract between PMLV and the worker, retaining the difference. PMLV was responsible for any training, leave entitlements and other costs.

Senior Randstad consultant Ms Kielty gave evidence that Randstad accepted a lesser margin than the maximum commission permitted under the LGP contract because it was only providing a payroll service and had not sourced the candidate. Mr Trapman did not give such evidence. The Commission has not fully investigated whether, in fact, a lesser margin was charged by either or both agencies.

#### Randstad

Ms Kielty said that PMLV contractors submitted their timesheets via the Randstad automated system until September 2022, when they began to submit timesheets via Council's Comensura platform. The timesheets were also submitted to Mr Cossu. They were approved by Mr Webb or Mr Anderson.

Prior to engaging with Mr Cossu and PMLV in relation to the first worker in question, Yavor Nikolaev, Ms Kielty had received all payroll service requests directly from the client (Council). She has not encountered this arrangement (that is, receiving payroll service requests via a third party) with other councils, before or since (as at the time of the public inquiry).

Ms Kielty obtained internal advice on the arrangement. She was advised that, for Randstad's internal purposes, she needed confirmation that Council was aware and authorised Randstad to subcontract through PMLV. On 8 March 2021, Ms Kielty sought this assurance from Mr Webb. In that email she indicated Randstad would invoice Council and PMLV would invoice Randstad for Mr Nikolaev's services. Mr Webb responded that he was aware that Mr Nikolaev was employed by PMLV and was its candidate and that the process was agreed.

After Ms Kielty received this response from Mr Webb that, with the benefit of hindsight, was less than satisfactory (Mr Webb's response did not state that Council was aware of the arrangement and had approved it), on 12 March 2021, LGP approved Randstad adding PMLV as an authorised subcontractor. Council was notified of this amendment on 6 April 2021. It is not known what, if any, enquiries LGP made before granting approval, as LPG was unable to produce any relevant documentation to the Commission. LGP gazetted the Randstad/PMLV subcontracting arrangement on 6 April 2021.

#### **Spinifex**

As mentioned, PMLV dealt primarily with Mr Trapman and Spinifex. Mr Trapman had attended high school with Mr Webb, although thereafter the two had not maintained contact. Having commenced at Council, Mr Webb advised Mr Trapman of his role. Later, he connected Mr Trapman with Mr Cossu.

On 17 February 2021, Mr Trapman emailed Spinifex colleagues and copied Mr Cossu, saying that in future Mr Cossu would receive timesheets and Mr Webb would approve them. Mr Webb was the primary approver for future candidates through PMLV.

In relation to six of the 22 PMLV contractors engaged through Spinifex, Mr Trapman provided Mr Webb with the candidate's CV and two comparable CVs. However, it seems that the comparable candidates were not interviewed and did not receive genuine consideration; sometimes their CVs were provided after the PMLV candidate had effectively been hired. The process of obtaining the CVs of comparable candidates was window-dressing and inconsistent with the concept of a "payroll-only" service.

Mr Trapman gave evidence that, when he spoke to PMLV candidates, he told them PMLV would be their employer, and that Spinifex undertook a "payroll only service". He did not offer candidates the option of contracting directly with Spinifex for a higher casual rate, rather than the rate offered by PMLV.

Mr Trapman said that the arrangement with PMLV was the only subcontracting arrangement with which he was involved, and he has not had one since. Mr Trapman did not know (and did not enquire) whether Spinifex was obliged to advise LGP of the subcontracting arrangement.

Mr Cossu said that Mr Trapman told him that he had asked the Spinifex legal department whether the recruitment agency could subcontract. This proposition was neither raised by nor put to Mr Trapman, and there was no documentary evidence supporting it. In those circumstances, no finding on that issue can be made safely.

Mr Trapman said that Spinifex/PMLV contractors submitted their timesheets to Mr Cossu (PMLV). Mr Cossu submitted the hours to Spinifex, which submitted them to the Council hiring manager (Mr Webb) for approval. The Commission notes three further matters relating to Mr Trapman:

- Faiza Bhuiyan, a project manager at Council, gave evidence that when she became aware that some staff were being contracted to Council through Mr Cossu, who was a member of her team at Council, she spoke to Mr Trapman and he reassured her that it was completely above board.
- 2. Mr Trapman saw the PMLV contract with Mohamad El Halabi when Mr El Halabi asked him to review it, as it was his first Australian contract. Mr Trapman saw that PMLV would receive almost double what the worker received. However, he merely advised the worker that the superannuation percentage was out of date. He "didn't know what PMLV was doing to justify [receiving almost double what the worker received]".
- Mr Trapman facilitated a meeting on 24 October 2022 between his managing director and Mr Cossu to discuss the possible sale of PMLV's recruitment business to Spinifex.

### Who profited from the subcontracting arrangement?

It is not suggested that Mr Trapman or Spinifex inappropriately benefitted from the arrangement. However, they did benefit. For each worker recruited to Council, Spinifex made the margin that was permitted under the LGP contract. Mr Trapman earned a bonus on reaching certain targets. Because he engaged so many PMLV workers, his bonuses were considerably enhanced.

The subcontractor arrangement was designed to make a profit for PMLV, and it did. The workers received significantly less than would have been the case had they been engaged directly by the LGP recruitment agency. Excluding the money that Randstad paid to PMLV for Mr Cossu's engagement with Council, PMLV received a total of \$7,184,938 from Randstad and Spinifex. PMLV paid 26 contingent workers a total of \$2,677,605, resulting in a gross profit of \$4,507,332 from which insurance and other expenses were deducted.

Mr Cossu stated in evidence that PMLV's net profit was considerably less than the gross profit; he estimated the net profit to be about 12%. Having regard to the gross profit earned, the Commission considers that this must be a significant understatement.

In cross examination, Mr Cossu said that he did not send the workers whom he identified straight to the LGP recruitment agencies "because [he] could make a profit as a middleman". He agreed that he should not have misused his position to obtain a private benefit and should have disclosed a likelihood of obtaining a financial gain.

It may be thought that the arrangement was beneficial to many. Council secured workers in a difficult market. The recruitment agencies earned their margin and Mr Trapman earned his bonus. PMLV made a profit. Generally, the workers were inexperienced in the Australian market and were prepared to work for low rates to gain experience that would secure their employment future.

However, this perspective ignores the fact that only the intermediaries knew what was occurring. Council had no understanding of the subcontracting arrangements and Mr Cossu's involvement in them; consequently, it had no capacity to ensure appropriate expenditure of public funds. Most of the workers had a limited understanding of normal practice in the Australian workplace; they were in no position to advocate for a more equitable and merit-based employment arrangement.

Further, Council was the client of the recruitment agency, and the recruitment agency was required to work in the best interests of its client. At least in the case of Spinifex, on many occasions the agency appeared to prioritise the interests of PMLV over those of their client. Mr Trapman "couldn't say" whether Council was getting value for money through the recruitment scheme.

Finally, it was submitted by Mr Webb that Ms Kielty and Mr Trapman gave evidence that the process of engaging contingent workers through a separate entity (like PMLV) was commonplace in the construction industry. The Commission does not accept that submission. Even if the practice were commonplace in the construction industry, Ms Kielty and Mr Trapman's evidence was that they had not previously experienced the arrangement in their dealings with Council. The Commission accepts that evidence. The Commission is satisfied Mr Webb and Mr Cossu designed the subcontractor arrangement to make a profit for PMLV.

#### Mr Webb's knowledge of the recruitment scheme and how it benefitted PMLV

The Commission rejects Mr Webb's evidence that he had little knowledge of the recruitment scheme involving Mr Cossu and PMLV:

- Mr Webb gave inconsistent evidence about his knowledge of PMLV and his disclosures to Mr Vangi about Mr Cossu's role in providing workers.
- Mr Webb accepted that, in an email to him on 25 January 2021, Mr Trapman referred to an

28

arrangement whereby up to five project managers would be contracted to Council through PMLV and payrolled through Spinifex (as detailed later in this chapter). Mr Webb maintained that he had not given it much thought.

- Mr Webb accepted that in August 2022, he knew Mr Cossu was supplying workers through PMLV.
- PMLV is clearly identified in the engagement agreements and other documents between the recruitment agencies and Mr Webb in his role at Council, including an email dated 25 January 2021 relating to the first PMLV recruit, Melanie Chaparro (as detailed later in the chapter). On 29 January 2021, in relation to Mr Nikolaev, Ms Kielty sent Mr Webb a Randstad agency agreement that referred to PMLV. The assignment sheets that Mr Webb signed and forwarded to procurement noted "PMLV" beside the worker's name.
- According to Mr Nikolaev, after he was interviewed by Asad Asaduzzaman, co-ordinator design works and projects at Council, in December 2020 and January 2021, Mr Cossu told him that Mr Webb was involved in the employment arrangement, but Mr Asaduzzaman wasn't part of the arrangement and "didn't need to know everything" (this is discussed in more detail later in this chapter). The Commission takes this evidence into account, noting that it is not an admission by Mr Webb of his involvement.
- In an email exchange between Ms Kielty and Mr Webb on 8 March 2021 in which Ms Kielty sought Council's authorisation to subcontract Mr Nikolaev through PMLV, Mr Webb stated, "I am aware that Yavor is employed by PMLV and is there [sic] candidate" (see the section on Mr Nikolaev later in this chapter).
- Mr Webb conceded that he knew of PMLV and its connection to Mr Cossu well before Mr Cossu commenced working at Council. Prior to Mr Cossu commencing at Council, Mr Webb's family company, Structural Projects Group, had recommended that a Sydney Zoo contract be awarded to PMLV.

The Commission rejects Mr Webb's evidence that he did not know that PMLV candidates were receiving significantly less than the sum paid to PMLV and finds that he was aware there was a significant difference, which yielded a significant profit to PMLV:

 On 10 February 2021, Mohammed Qutubuddin emailed to Mr Webb and Mr Cossu a signed employment contract between himself and PMLV, under which he was to be paid \$38 per hour (details of Mr Qutubuddin's recruitment are discussed later in this chapter).

- On 2 August 2021, Mr Cossu sent Mr Webb a spreadsheet stating the rates paid to candidates and associated gross profit to PMLV, and Mr Webb responded "okay" (see figure 2).
- On 12 August 2021, when Mr Cossu referred Sarmad (Sam) Haddad as a candidate to Mr Webb, he told Mr Webb, "he won't come for \$35 per hour", and Mr Webb responded, "That's ok work out rates" (Mr Haddad's recruitment is discussed in more detail later in this chapter).

Mr Webb's assertions are inconsistent with the above evidence and further evidence set out below, which shows that – from the outset – Mr Webb supported and promoted the recruitment scheme, and deliberately concealed its existence from Council.

# Mr Vanji's knowledge of the recruitment scheme

In evidence, Mr Webb and Mr Cossu said that they had discussed the difficulty of finding staff and the possibility that Mr Cossu could "find people" to fill vacancies. They claimed there was no discussion about how the recruitment would work in practice, and no direct mention of PMLV.

Both Mr Webb and Mr Cossu sought to distance Mr Webb from the scheme; both maintained that Mr Webb was not part of an arrangement through which both would benefit from PMLV supplying workers to Council.

Mr Cossu said that, when Mr Webb expressed frustration at being unable to find suitable workers, Mr Cossu offered to find people through PMLV. Mr Cossu asked Mr Webb whether this would be acceptable to Council and Mr Webb said that he would ask Mr Vangi. Later, Mr Webb told Mr Cossu that it was "ok", and Mr Cossu assumed that Mr Webb had informed Mr Vangi or another senior person at Council. He believed that people at Council "must have known"; he was "certain" that Mr Webb had disclosed the PMLV subcontracting arrangement to Council. Mr Cossu did not give evidence that Mr Webb told him that he had disclosed to a supervisor that Mr Cossu would be making money from the arrangement. On 25 November 2020, Mr Cossu emailed Mr Nikolaev's CV to Mr Webb's personal email. Mr Cossu said that it must have been prior to that date that he had spoken to Mr Webb and asked him whether he would like Mr Cossu to assist with recruitment through Mr Cossu's company.

Mr Webb gave evidence that he told Mr Vangi that Mr Cossu could source workers. He did not recall whether he told Mr Vangi that PMLV was Mr Cossu's company. At later fortnightly meetings with Mr Vangi, Mr Webb would say of a new worker: "the guy works for Pietro" or "X is coming onboard and he works for Pietro". According to Mr Webb, he made such remarks "a number of times". He did not tell Mr Vangi that Mr Cossu (or he himself) was making money from the hires.

Mr Webb said that, following the initial discussion, there were times when Mr Cossu presented people to him as candidates for employment. At other times, Mr Webb reached out to prospective workers himself, some of whom he referred to Mr Cossu; the referrals were workers who wanted permanent work rather than contract work. Mr Webb "didn't think" that Mr Cossu had mentioned PMLV, but Mr Cossu had said that the workers would be engaged through a company that he owned. Mr Cossu didn't mention his "take", but Webb assumed that Mr Cossu would make a profit. He knew little about the arrangement between PMLV and the recruitment companies and did not know what the workers would be paid.

Mr Webb's counsel put to Mr Vangi that, shortly after Mr Cossu commenced working at Council (in May 2020), there was a discussion about program delivery in which Mr Webb said, "Pietro Cossu can get some people" and Mr Vangi replied, "Whatever you can do, make it happen. I am under pressure to get the projects delivered."

In response, Mr Vangi agreed that the two men did discuss project delivery and the need for resources; there was always pressure to deliver. However, he strenuously denied the remainder of the alleged conversation. He said that Mr Webb had disclosed no pecuniary or non-pecuniary interest in relation to Mr Cossu and agency workers. Had Mr Webb done so, Mr Vangi said he would have had a discussion with Mr Webb and he would have escalated the issue. Mr Vangi said that he was unaware that PMLV was supplying contingent workers to Council or that Mr Cossu had an interest in PMLV. He said he learned that Mr Cossu had been supplying contingent hire workers in late 2022, when the scheme was brought to his attention by Council's director of corporate. He said that, after the event, he reviewed the CVs of the PMLV workers and concluded that many were unsuitable for the positions they occupied.

It was submitted by both Mr Webb and Mr Cossu that Mr Vangi was aware that Mr Cossu was providing contingent labour to Council through PMLV because Mr Webb had informed Mr Vangi as much.

The Commission does not accept this submission or the evidence relied upon to support the submission.

For the following reasons, the Commission finds that Mr Webb deliberately did not disclose to Mr Vangi that Mr Cossu had proposed a recruitment scheme:

- The Commission accepts Mr Vangi's evidence. He impressed as a punctilious employee and witness. He would not have tolerated shortcuts; had it been drawn to his attention that Mr Cossu or his company was in the business of supplying workers to Council for a profit, he would have escalated the matter. For reasons discussed in chapter 1, the Commission finds Mr Webb and Mr Cossu to be unreliable witnesses. The Commission is satisfied that they fabricated their evidence that Mr Vangi was informed of the scheme.
- Neither Mr Cossu nor Mr Webb disclosed in writing that they had a conflict of interest in relation to the provision of contingent workers, although each understood that to be the correct process.
- Throughout the period that the scheme operated, Mr Cossu and Mr Webb were careful to conceal its existence, utilising WhatsApp and personal or company email addresses (as opposed to their Council email addresses) to communicate.
- Senior staff at Council did not know that PMLV, or Mr Cossu, were providing workers to Council. Mr Anderson, who was Mr Cossu's supervisor and the team leader, did not know.
- In late 2022, when the scheme was uncovered, Council took immediate steps to remedy the situation; such action is inconsistent with prior knowledge.

# The commencement of the PMLV recruitment scheme

It is likely that the arrangement for the recruitment scheme was first discussed between Mr Cossu and Mr Webb before 25 November 2020, the date on which Mr Cossu sent to Mr Webb's personal email address a CV for Mr Nikolaev (the first PMLV worker to be employed through Randstad).

It must have been discussed prior to 25 January 2021. After Mr Webb shared Mr Trapman's contact details with Mr Cossu, they spoke by telephone and then met. Subsequently, on 25 January 2021, Mr Cossu called Mr Trapman, who then emailed Mr Webb advising that Mr Cossu's company had "I starter as of Wednesday and up to 5 Project managers coming up in total". Mr Trapman stated: PMLV Consulting will be the "ABN contractor with multiple candidates" and CB City the client, payrolled and invoiced through Spinifex ... Would you prefer we maintain the manual timesheets as per usual process or would you prefer electronic timesheets? I'll be guided by you.

Mr Webb responded, "Let's transition everyone including the existing to the electronic timesheets".

Mr Trapman then emailed Mr Cossu, advising that he would "issue a contract", that Mr Webb would prefer electronic timesheets and that Mr Webb would approve each fortnightly timesheet. Mr Trapman also advised that Mr Webb had confirmed a payrate (to PMLV) of \$84.85 per hour plus GST.

In evidence, Mr Webb reluctantly conceded that he "probably" had introduced Mr Cossu to Mr Trapman, although he said that it was by way of a general introduction, not for the purpose of Spinifex facilitating the PMLV recruitment arrangement. However, the chronology strongly supports the inference that the introduction was for the purpose of Spinifex facilitating the arrangement.

The contract template that PMLV used to employ agency workers was adapted from a template provided by Mr Webb to Mr Cossu. In December 2018, Mr Webb (working at Structural Projects Group) had acquired the contract template.

In evidence, Mr Cossu said that he "must have" asked Mr Webb whether he had a template employment contract that could be used; they exchanged many documents.

Mr Webb said that Mr Cossu had asked him for a template for an employment contract, but he had not understood that the template was to be used "specifically" in relation to PMLV workers engaged at Council. Mr Webb submitted that, given their close personal friendship, an available inference was that Mr Webb was assisting Mr Cossu with conducting his business.

The Commission rejects this evidence and Mr Webb's submission. The inescapable inference is that the template was provided by Mr Webb to be used in the recruitment scheme:

- The template provided by Mr Webb was identical to the contract signed by each of the PMLV contractors.
- On Mr Cossu's laptop Commission investigators located the employment contract template. The document was last modified by Mr Webb on 28 January 2021, the day before Mr Nikolaev signed his PMLV contract on 29 January 2021.

Mr Nikolaev was the first PMLV contractor to sign a contract.

In relation to Mr Nikolaev (whose engagement with PMLV is discussed in more detail later in this chapter), on 8 March 2021 Ms Kielty emailed Mr Webb regarding "Yavor – PMLV", seeking confirmation that Council was aware of the subcontracting arrangement through PMLV and approved those arrangements. On the same day, Mr Webb responded:

I am aware that Yavor is employed by PMLV and is there [sic] candidate. The process below is agreed.

Mr Webb did not state that Council was aware of the subcontracting arrangement with PMLV.

On 1 February 2021, Mr Webb emailed Mr Trapman referencing "PMs" (project managers):

[Mr Webb]:	Is Mat Rafla still available. If so, could we interview. [sic]
[Mr Trapman]:	If successful would he go through PMLV or through our previous contracting arrangement?
	We've got Melanie Chaparro signed up so far with more expected this week through PMLV Consulting
[Mr Webb]:	No, this fellow is your staff so will be through your contract

On 26 February 2021, Mr Trapman emailed Mr Cossu inviting him to provide greater or lesser rates for PMLV candidates if he saw fit (for example, because of the candidate's experience). Mr Trapman's email noted, "Ben gave me the OK for both pay and charge rates ... These rates will remain the same unless you instruct otherwise". The Commission infers that "Ben" was a reference to Mr Webb.

# Sourcing workers and Mr Webb's involvement in sourcing

PMLV candidates were recruited through various avenues, including:

- direct contact by the candidate with Mr Webb

   as was the case for Ms Chapparo and Mr Qutubuddin
- initial contact from Mr Trapman who then referred the candidate to Mr Cossu (PMLV) – as was the case for Lionel Kools, Ngoc Tuan Hoang (Leo Hoang) and Sadaat Tareen.

 contact with Mr Cossu who then suggested the candidates to Mr Trapman – as was the case with James Magispoc.

Most of the 26 PMLV workers were identified by Mr Cossu or Mr Webb.

Mr Webb gave evidence that, from time to time, Mr Cossu provided CVs of proposed workers to him.

Mr Trapman said that, prior to his introduction to Mr Cossu, Mr Webb had referred some workers to Spinifex and Spinifex had contracted with them. Mr Trapman did not believe that Mr Webb had referred candidates to Spinifex after PMLV became involved. Mr Webb disagreed; he thought he had referred some workers directly to Spinifex.

Generally, Mr Webb was made aware that a candidate was a PMLV candidate. In relation to candidates who came through Randstad, the connection to PMLV was disclosed on the assignment agreement document that was sent to Mr Webb. In relation to candidates who came through Spinifex, some were identified by Mr Trapman as connected with PMLV (sometimes the connection to PMLV would be included in the name for the CV attachments in the email) and the only quote provided was for the PMLV candidate. In other instances, Mr Cossu informed Mr Webb that they were PMLV candidates or sent their CVs to Mr Webb.

Mr Webb submitted that Counsel Assistings' assertion that Mr Webb preferenced PMLV workers failed to recognise the uncontested fact that Mr Webb rejected some PMLV candidates or terminated their employment.

The Commission does not accept Mr Webb's submission. Such conduct by Mr Webb was rare. The Commission is satisfied that Mr Webb did preference PMLV candidates. For example, in a 9 August 2021 WhatsApp exchange Mr Webb enquired as to the identity of the PMLV candidates (see the discussion of Asfia Jahan and Najee Sumreen's recruitment later in this chapter). He asserted in evidence that he just wanted to understand who they were. In the Commission's view, it was no coincidence that two of the candidates were ultimately engaged by Council. The third could not be engaged because he refused a COVID-19 vaccination. On at least one occasion, Mr Webb preferred PMLV candidates without seeing their CVs. On 12 August 2021, Mr Cossu wrote a WhatsApp message to Mr Webb, advising that he had found another engineer who was happy to "join us", saying, "I will send to your private email his CV". Mr Webb responded, "Just send to Trapman and get him to submit"

• referral by another contractor

# The employment contracts of **PMLV** contingent workers

The employment contracts between PMLV and the contingent workers shared the following features:

- PMLV Consulting was the employer.
- The employee was required to "promote the interests of the Employer" and "not act in conflict with the interests of the Employer" (clause 3.5 (a) and (c)).
- PMLV was to pay superannuation contributions capped at 9.5% of the employee's ordinary time earnings up to a prescribed limit (clause 5, schedule).
- There were leave entitlements (clause 7).
- The employment was to cease "at the completion of the Specified Task on the Project" or otherwise as per the schedule.
- The "project" was described as "Canterbury Bankstown council" or similar and the schedule did not refer to a specified task.
- The type of employment was described as "full-time, fixed term for duration of Project".
- The place of work was "Bankstown Council and other locations as directed".
- The notice period was one month.
- The hourly rate was expressed to be "gross, including superannuation contribution".
- The "reporting manager" was Mr Cossu, except in the cases of Mr Nikolaev (Mr Webb), Mr Vescio (Mr Webb and Mr Asaduzzaman) and Ehsan (Omid) Goharinasab (Mr Webb and Mr Cossu).
- The contract showed neither the pay rate to PMLV nor the charge rate to Spinifex.

# How PMLV contingent workers were recruited and paid

Between February 2021 and September 2022, 26 contingent workers were recruited to Council through the recruitment scheme. As noted earlier, four of these workers were recruited through Randstad and 22 through Spinifex, under subcontracting arrangements with PMLV.

### Melanie Chaparro's engagement through Spinifex

Ms Chaparro gave evidence at the public inquiry.

She was a reliable witness. She presented as extremely forthcoming and readily volunteered information. Her credit was not challenged.

Ms Chaparro was the first candidate recruited through the PMLV subcontracting process.

She was contacted by Mr Webb via a message on LinkedIn. He was looking for a person to manage Council's project management office. She had experience in such a role in Colombia, South America.

On 19 January 2021, Mr Webb, in his capacity as manager of the Works and Projects Unit, emailed Ms Chaparro seeking her CV. She sent her CV, references and visa conditions to Mr Webb.

Mr Webb gave evidence that he "thought" he had offered Ms Chaparro the option of contract work or permanent work, and had explained that, as a contract worker, she would not have the benefit of sick leave or annual leave, and that Ms Chaparro had responded that she wanted permanent work (full-time, with leave entitlements). He identified that as the reason he had directed her to Mr Cossu, as he was offering these entitlements under PMLV employment contracts (as detailed earlier in this chapter).

Mr Cossu also maintained that Ms Chaparro had wanted permanent work so that she could return to her home country for holidays.

However, Ms Chaparro denied expressing any preference. She said that, since leaving Council, she has had a permanent position. At the time of writing, she had a contract position. She was not offered the option of working directly through Spinifex. She said that, had the offer been made, she definitely would have taken it and foregone leave entitlements.

On 25 January 2021, Mr Trapman emailed Mr Cossu regarding setting up the PMLV arrangement for the employment of Ms Chaparro. Mr Trapman told Mr Cossu that each fortnight's timesheet had to be approved by Mr Webb for payment and Mr Webb had approved a pay rate (to PMLV) of \$84.85 per hour.

On 28 January 2021, Mr Cossu forwarded a contract to Ms Chaparro. Under the contract, she was to be paid \$40 per hour, including superannuation. Although she had a master's degree in engineering, as well as project and international experience in contract management and administration, she was prepared to sign the contract because she had experienced considerable difficulty getting a job in Australia. She had been searching for a job for 18 months.

On 29 January 2021, Mr Cossu emailed Mr Trapman regarding Ms Chaparro starting with Council on the following Monday. Mr Cossu provided Ms Chaparro's details, saying: "this is the first candidate to start on Monday. I will let you have two more shortly."

During the period that Ms Chaparro worked at Council, she took paid leave. She received no training.

### Mohammed Qutubuddin's engagement through Spinifex

On 18 January 2021, Mr Qutubuddin emailed Mr Webb, providing his CV and stating that he was doing so "with reference to the discussed Scheduler role on LinkedIn".

Mr Webb gave evidence that he understood Mr Qutubuddin was seeking permanent employment for visa reasons. Mr Cossu also stated that he understood Mr Qutubuddin wanted permanent work "because of his visa or something like that". This evidence was inconsistent with the fact that, on 11 February 2021, Mr Qutubuddin sent to Mr Trapman, Mr Webb (Council email) and Mr Cossu (PMLV email) a copy of his visa and that of his wife, noting that he had full working rights.

On I February 2021, Mr Cossu sent an email from his Council email to his PMLV email with subject "ta", attaching scans of two Council position descriptions: one for a project management officer (PMO) and the other for a projects scheduler. Mr Cossu then emailed Mr Qutubuddin from his PMLV email attaching Council's position description for the projects scheduler and a PMLV employment agreement.

Having accepted the position, on 10 February, Mr Qutubuddin emailed to Mr Cossu (PMLV email) and Mr Webb (Council email) his CV "and contract for your reference". The contract stated that his ordinary rate of pay was \$38 per hour, including superannuation.

On 11 February 2021, Mr Cossu emailed Mr Trapman, advising "this is the other candidate to start next Monday" and providing Mr Qutubuddin's contact details.

On 9 July 2021, Mr Qutubuddin asked Mr Cossu to implement the tax-free threshold on his weekly payment. Mr Cossu sent the request to Mr Webb, who replied, "Yes". Mr Cossu agreed Mr Webb assisted him with interactions with candidates.

### James Magsipoc's engagement through Spinifex

Mr Cossu knew Mr Magsipoc prior to engaging him on Council projects.

On 11 February 2021, Mr Magsipoc emailed Mr Cossu attaching his CV.

On 25 February 2021, Mr Webb emailed Anthony Luu (Council's contract administrator) regarding "Replacement for Vishal", and asked Mr Luu to raise an order to Spinifex for Mr Magsipoc. Mr Webb stated that, for the purchase order, "Rate is 96 per hour and 6 months @ 40 hrs".

The next day, Mr Cossu emailed Mr Magsipoc a PMLV employment contract, which Mr Magsipoc signed and returned that day. Mr Magsipoc was employed by PMLV as "Project Officer".

On 1 March 2021, after the contract was signed, Mr Cossu emailed to Mr Trapman a CV and Spinifex registration document for Mr Magsipoc.

On 13 July 2021, Mr Cossu sent Mr Webb the following WhatsApp message:

Ben, any chance to get an increase for James. Maybe similar to Mohammed. Not to pass on.

In evidence, Mr Webb said that he did not know what was meant by "not to pass on".

On 25 August 2021, Mr Webb approved an increase to the Council charge rate for Mr Magsipoc to \$115.18 per hour. No part of this increase was passed on to Mr Magispoc.

### Yavor Nikolaev's engagement through Randstad

Mr Nikolaev gave evidence at the public inquiry.

He was a reliable witness. He presented as open and honest. His credit was not put in issue.

In January 2021, Mr Nikolaev was the first PMLV candidate whom Mr Cossu referred to Randstad.

Mr Nikolaev and Mr Cossu had known each other since 2018, when Mr Nikolaev came to Australia, and both stayed in the same accommodation. Mr Cossu was then working on the B-Line bus project. Thereafter, they maintained occasional contact.

Mr Nikolaev gave evidence that Mr Cossu called him to say he had a Council job offer for him. They met at a café. Mr Nikolaev was employed at the time, but it was not in a senior surveyor role. Mr Cossu said there was a position at Council for a senior surveyor. They discussed a rate of \$60 per hour. Mr Cossu said that he himself was a project manager at Council. Mr Cossu told Mr Nikolaev that the work at Council would be through Mr Cossu's company.

On 25 November 2020, Mr Nikolaev emailed his CV to Mr Cossu. Mr Cossu forwarded Mr Nikolaev's CV to Mr Webb's personal email account.

Mr Webb "couldn't say" why his Council address had not been used; he denied that it was to disguise an arrangement between himself and Mr Cossu. Mr Cossu gave evidence that he had sent Mr Nikolaev's CV to Mr Webb "to see if he was suitable".

On 23 December 2020, Mr Cossu emailed Mr Asaduzzaman, attaching Mr Nikolaev's CV. Mr Asaduzzaman replied, "Thanks Pietro, I will call him". Mr Nikolaev was contacted by Mr Asaduzzaman, who interviewed him. Mr Nikolaev said that Mr Asaduzzaman appeared to be unaware of the prior discussion of \$60 per hour, and they agreed on a figure of \$55 per hour. On the same day, Mr Asaduzzaman introduced Mr Nikolaev to Mr Webb.

Mr Nikolaev gave evidence that, after the interview with Mr Asaduzzaman, Mr Cossu told him Mr Webb was involved in the employment arrangement, but that Mr Asaduzzaman was not part of the arrangement and "didn't need to know everything". Several times, Mr Cossu said: "Speak to Ben if you want to" and "Asad is not as important as Ben". However, Mr Nikolaev didn't believe he was being cautioned against disclosing who he worked for, if asked.

On 25 January 2021, Mr Cossu emailed Ms Kielty at Randstad attaching Mr Nikolaev's CV, stating, "please find attached the CV of Yavor, he had a site interview already and good to go. Let me know what you need from me."

On 27 January 2021, Ms Kielty emailed Mr Webb with the subject "Surveyor", attaching Mr Nikolaev's CV for his consideration.

On the same day, Ms Kielty informed Mr Cossu that she had sent the CV to "Ben" and that "we will be paying PMLV Invest and Const \$90 per hour plus GST". She stated that she would await confirmation from "Ben".

Mr Nikolaev said he wasn't offered the option of working directly through Randstad; Mr Cossu didn't mention it. He would have preferred to work directly through Randstad, given the financial considerations, regardless of leave and other entitlements attaching to a permanent PMLV employment contract.

On 29 January 2021, in relation to Mr Nikolaev, Ms Kielty sent a Randstad agency agreement to Mr Webb. It referred to PMLV. In evidence, Mr Webb said he did not turn his mind to the arrangement, but he did understand that Mr Cossu was sourcing people for recruitment, whether through PMLV or otherwise.

Mr Nikolaev commenced at Council as a quantity surveyor on 1 February 2021.

On 2 March 2021, Mr Cossu emailed Ms Kielty confirming that no reference check was required for Mr Nikolaev.

On 8 March 2021 (as discussed earlier in this chapter), Ms Kielty sent the following email to Mr Webb:

I require an email for internal compliance purposes confirming that Canterbury Bankstown City Council are aware and authorise Randstad to subcontract Yavor Nikolaev through PMLV. Randstad will invoice Canterbury Bankstown Council and PMLV will invoice us for Yavor [sic] services. Yavor will be paid by PMLV.

If you could please respond confirming the above .

On the same day, Mr Webb responded:

I am aware that Yavor is employed by PMLV and is there [sic] candidate. The process below is agreed.

On 20 September 2021, Ms Kielty emailed Mr Webb saying that Mr Cossu had requested a pay increase for Mr Nikolaev. Mr Webb approved an increase of \$10 per hour, but no increase was passed on to Mr Nikolaev.

## Sarmad (Sam) Haddad's engagement through Spinifex

On 12 August 2021, Mr Cossu and Mr Webb exchanged the following WhatsApp messages:

COSSU:	Hi Ben got another engineer, he works for Downer roads, at the moment and he is happy to join us. he lives Campbeltown [sic] area and suit him better Bankstown. I will send to your private email his CV.
WEBB:	Just send to Trapman and get him to submit
COSSU:	He will not come for \$35/h
WEBB:	That's ok work out rates
COSSU:	ОК

Mr Haddad was an engineer who worked for Downer Roads.

Mr Cossu forwarded Mr Haddad's CV to Mr Trapman, saying, "please find attached the CV of the guy

I mentioned to you please give me a call will need to negotiate his rate".

On the same day, 12 August 2021 at 6:30 pm, Mr Trapman emailed Mr Webb, with the subject line "quote + CVs Sam Haddad–Project Engineer/PMLV Consulting", attaching for Mr Webb's review three candidate CVs (including Mr Haddad's CV) and a Spinifex quote for recruiting Mr Haddad only. The quote refers to the position as "*Project Engineer – PMLV Consulting – Sam Haddad*" and lists the rate as \$115.18. Later that day, Mr Webb forwarded the email to his executive assistant, Angela McEwen, asking her to work with Mr Trapman to onboard Mr Haddad.

There is no record that Mr Haddad or anyone else was interviewed for the role.

On 16 August 2021, Mr Trapman emailed Mr Webb attaching the same three CVs, including Mr Haddad's, and an amended Spinifex quote, noting, "Amended quotation attached for your review ... Please let me know if approved and start date." The amended quotation was for the position of "Project Engineer – PMLV Consulting – Sam Haddad (amended 160821)" and the ordinary charge rate was listed as \$120.90. Mr Webb replied, "That's fine. Thanks".

On 21 August 2021, Mr Cossu emailed a PMLV employment contract to Mr Haddad.

On 30 August 2021, Mr Cossu sent a WhatsApp message to Mr Webb attaching an image of Mr Haddad's contact details as recorded in the Council system. Mr Cossu had circled a reference to Mr Haddad being a PMLV consultant, commenting, "I think Angela made a mistake". Four minutes later, Mr Webb responded, "I just spoke to her".

In evidence, Mr Cossu asserted that the "mistake" was that the reference should have been to Spinifex. Mr Webb gave evidence that he did not know what the "mistake" was but had not asked Mr Cossu to clarify his message.

This evidence is rejected. The Commission infers that the messages reflected the mutual concern of Mr Webb and Mr Cossu to conceal the role of PMLV in supplying workers to Council.

Mr Haddad worked at Council between 23 August 2021 and 21 October 2022. He received \$70 per hour. An increase in the hourly rate paid to PMLV was not passed on to him.

Mr Haddad was the fifth of the 26 workers engaged under the recruitment scheme. The role played by Mr Webb in Mr Haddad's recruitment aids an understanding of Mr Webb's involvement in the recruitment scheme as at August 2021, and gives context to his subsequent actions:

- Mr Cossu spoke of Haddad "[joining] us".
- In noting that Mr Haddad "[would] not come for \$35/h", Mr Cossu was informing Mr Webb of the low rate he had contemplated paying to Mr Haddad and/or seeking Mr Webb's approval to negotiate a higher rate. It should be recalled that Mr Webb was aware of the rates paid to PMLV by Spinifex and Randstad.
- Mr Webb replied to the above advice concerning pay expectations by delegating the pay-rate negotiation to Mr Cossu.
- Critical communications between Mr Cossu and Mr Webb were via WhatsApp or Mr Webb's private email.
- Without reviewing a CV, let alone comparable CVs, Mr Webb instructed Mr Cossu to "submit" Mr Haddad to Mr Trapman.
- No Council interviews were conducted during recruitment for the role and no comparable candidates were considered; the provision of comparable CVs was by way of window-dressing, as the only quote submitted was for Mr Haddad.
- Mr Cossu advised Mr Webb that Council employee Ms McEwen had made a "mistake" in recording in the Council system that Mr Haddad was a "PMLV consult", prompting Mr Webb to "speak to" her about it.

#### Engagement of Asfia Jahan and Najee Sumreen through Spinifex

As stated above, on 11 February 2021, Mr Qutubuddin emailed to Mr Trapman, Mr Webb and Mr Cossu Mr Qutobuddin's own visa and that of his wife, Asfia Jahan.

On 19 April 2021, Mr Qutubuddin forwarded Ms Jahan's CV to Mr Cossu and Mr Cossu sent it to Mr Webb.

On 18 July 2021, Najee Sumreen emailed his CV to Mr Cossu.

On 21 July 2021, Mr Webb sent a WhatsApp message to Mr Cossu, saying, "You were going to send me some CVS" (sic). Mr Cossu replied, "Yes got the first one just now. Will call the other now" and Mr Webb responded, "OK". Mr Cossu then forwarded Mr Sumreen's email to Mr Webb.

On 26 July 2021, Mr Webb sent a WhatsApp message to Mr Cossu, "Can you get that young boy to Ben Trapman so he can send through".

Mr Cossu emailed Mr Trapman attaching Mr Sumreen's CV and writing, "for a new recruit". Mr Trapman replied:

When do you expect Najee to start and will she [sic] be like James, Melanie and Mohammed where her [sic] timesheets go to you for approval? I will send her [sic] the registration forms once I have the below.

Position?

Period?

Pay rate?

On that same day (26 July 2021), Mr Cossu sent a WhatsApp message to Mr Webb, "Should I send the young man the contract or wait for Trapman". Mr Webb replied, "You can send". Mr Cossu then sent a WhatsApp message to Mr Webb, "Question from Ben", followed by a copy of the email he received from Mr Trapman earlier that day. Mr Webb replied, "Contract Administrator 12 months Same as you started Mo".

Mr Cossu conveyed this information to Mr Trapman, who replied, "Got it. But Najee will be one of your [sic] for your invoices?" to which Mr Cossu responded, "Yes."

Mr Trapman emailed Mr Cossu confirming the PMLV pay rate for Mr Sumreen.

On 29 July 2021, Mr Trapman emailed Mr Webb attaching "Spinifex Recruiting–Temp Quote–CBCity– Contract Administrator–PMLV Consulting–Najee Sumreen.pdf" with a charge rate. No CV or competitive CV/quote was provided.

On that same day (29 July 2021), Mr Cossu emailed Mr Sumreen a PMLV contract, which Mr Sumreen signed.

On 30 July 2021, Mr Trapman emailed Mr Webb following up on his earlier email with an attached Spinifex quote for recruiting Mr Sumreen, writing:

Same quotation and rates for Ilhan's role Ben. Let me know if the pay rates need adjusting as I am guided by Pietro on pay rates for these candidates.

On 6 August 2021, Mr Cossu and Mr Webb had the following WhatsApp exchange regarding "Mo's wife":

WEBB:	Is Mo's wife still looking?	employment co
COSSU:	Let you know shortly	Mr Webb forw Ms McEwen, s
	Spoken to Mo's wife. She will send	onboard Mr Su
	me the CV updated. She asked what she will be doing to adapt the CV	On 14 Novem message to Mr
WEBB:	Commercial / Contracts and Finnacial [sic] helping Anthony Luu	\$10 increase?" more than som

In evidence, Mr Cossu explained that Mr Webb always "keeps a tab on everything".

Mr Webb submitted that the inference to be drawn from this and similar evidence was that he was seeking properly skilled workers to deliver the capital works program, as Council was under significant pressure to ensure delivery.

On 8 August 2021, Ms Jahan emailed her CV to Mr Cossu, who sent it to Mr Trapman, asking, "can we start a process for this candidate".

The next day (9 August 2021), Mr Trapman emailed Mr Webb regarding Ms Jahan, attaching a Spinifex "Temp quote" and stating:

Pietro requested me to onboard Asfia on the same rate as James Magsipoc. As attached. Do we require competitive CVs for this role?

That same day (9 August 2021), Mr Cossu and Mr Webb had the following WhatsApp exchange:

WEBB:	Who are the people you have ready. Ben Trapman sent me 5 are they all from you
COSSU:	No I have 3, the 2 boys and the girl (Mo wife) [sic]
WEBB:	Send me the names
COSSU:	Najee Sumreen
	Ilhan Alijagic
	Asfia Jahan (Mo wife) [sic]

I am waiting for 1 more CV

On 10 August 2021, Mr Webb sent a WhatsApp message to Mr Cossu, advising, "He has sent them to me but only quotes. I need him to send me the CVS [sic] with the quote".

Later on 10 August 2021, Mr Trapman emailed Mr Webb a Spinifex quote and comparative CVs for both Ms Jahan and Mr Sumreen. There is no record of the PMLV candidates or the other candidates being interviewed.

On 12 August 2021, Mr Cossu emailed Ms Jahan an employment contract and Ms Jahan signed it.

Mr Webb forwarded Mr Trapman's emails to Ms McEwen, asking her to work with Mr Trapman to onboard Mr Sumreen and Ms Jahan.

On 14 November 2021, Mr Cossu sent a WhatsApp message to Mr Webb: "is it possible t [sic] give Asfia \$10 increase?" Mr Webb replied, "No" and "She is on more than some engineers. I can't approve it". Mr Webb did approve later increases in the amount paid to PMLV for Ms Jahan's services, and a small proportion of the increases was passed on to Ms Jahan.

Of the three candidates identified in the WhatsApp exchange of 9 August 2021, Mr Sumreen and Ms Jahan were engaged at Council through PMLV. The third candidate was not engaged as he declined to have a COVID-19 vaccination.

# Nosakhare Dankaro's engagement through Spinifex

Nosakhare Dankaro gave evidence at the public inquiry. He was a reliable witness. He appeared to be forthright and made significant concessions against his own interest (in relation to the procurement arrangement).

Mr Dankaro had worked for Ivan Webb, Mr Webb's father, as a site assistant in 2018.

On 30 August 2021, Mr Dankaro emailed Ivan Webb attaching his CV and certification documents.

On 26 September 2021, Ivan Webb forwarded the email to Benjamin Webb, writing, "This is guy [sic] I was telling you about".

Mr Cossu called Mr Dankaro and briefly interviewed him. Mr Dankaro understood that Mr Cossu's company, PMLV, would hire him, and that he would undertake Council work.

On 4 October 2021, Mr Cossu emailed Mr Trapman attaching Mr Dankaro's CV.

The next day (5 October 2021), Mr Trapman enquired, "What role would you have Nosa do? Also let me know the pay rate to PMLV and I'll shoot through a quote for Ben". Mr Cossu replied, "\$, Same of [sic] the others for starters, then will decide. As a role suggest project officer...".

Mr Trapman emailed Mr Webb, with subject "application– Project Officer–Nosakhare Dankaro", attaching Mr Dankaro's CV, two comparative CVs and a quote for Mr Dankaro's charge rate.

On 6 October 2021, Mr Cossu sent WhatsApp messages to Mr Webb:

Hi Ben, what should I offer to Nosa?

Same of [sic] the others or a bit more?

In evidence, Mr Webb said that he did not know why Mr Cossu would ask him those questions.

Mr Dankaro gave evidence that, prior to starting at Council, Mr Cossu had told him that he should not

mention that he worked for PMLV; if anyone asked, he was to say that he had been engaged through Spinifex.

Mr Dankaro "could tell" that some other Council workers had been engaged through PMLV, as Mr Cossu spent more time with them.

Mr Dankaro gave evidence that, after leaving Council, he worked for PMLV as a project manager. He left PMLV in December 2023.

# Muhammad Zahid Shafique's engagement through Spinifex

On 22 September 2021, Mr Cossu emailed Mr Trapman attaching Muhammad Zahid Shafique's CV and noting, "Still negotiating, but I think is ours".

On 23 September 2021, Mr Trapman emailed Mr Webb attaching Mr Shafique's CV, two comparative CVs and a Spinifex quote for recruiting Mr Shafique only (charge rate of \$115.18 per hour). There is no record of Mr Shafique or either of the other candidates being interviewed by Council for the role.

# Ali Istanbouli's engagement through Spinifex

On 15 September 2021, Ali Istanbouli emailed Mr Sumreen attaching his CV. Mr Sumreen forwarded the email to Mr Cossu.

On 16 September 2021, Mr Cossu sent Mr Istanbouli's CV to Mr Webb via WhatsApp. Mr Webb replied, "I'll have a look".

Later on 16 September 2021, Mr Cossu emailed Mr Trapman attaching Mr Istanbouli's CV and writing, "A new starter Ben". Mr Trapman replied, "As discussed, I'll put Ali in as a Project Officer at the same rate as Najee @ \$100.59 per hour + GST...".

In an email from Mr Trapman to Mr Cossu that day (16 September 2021) concerning Mr Istanbouli and other potential recruits, Mr Trapman wrote:

Let me know what you think of Saif Kalhoro if you want me to run him through our recruitment process and present to Ben – he is happy with a lower rate so there's plenty of room for PMLV.

Mr Trapman gave evidence that, by the expression "there's plenty of room for PMLV", he meant there was more opportunity for profit by PMLV.

On 17 September 2021, Mr Trapman emailed Mr Webb with subject "Ali Istanbouli–Project Officer", attaching a Spinifex CV for Mr Istanbouli and writing, "Please find Ali's application attached for your review". On 23 September 2021, Mr Webb instructed Mr Trapman "Please proceed".

Later on 23 September, Mr Trapman emailed Mr Webb, copying Ms McEwen, stating "Please find Ali's and 2 competitive CVs for your records along with a quotation for the role". He attached Spinifex CVs for Mr Istanbouli and two other candidates, and a Spinifex quote for recruiting Mr Istanbouli only.

There is no record that Mr Istanbouli or either of the two comparable candidates were interviewed for the role at Council.

### Mayra Rodrigues Miranda's engagement through Spinifex

On 27 November 2021, Mayra Rodrigues Miranda accepted a LinkedIn invitation from Mr Cossu.

On 30 November 2021, Mr Cossu emailed Mr Trapman regarding "Architect", writing, "Ask Ben if he wants engage [sic] her as a cadet 20h a week. Cheers".

On I December 2021, Mr Trapman replied, "...How much are we paying PMLV and when will Mayra want to start? I'll put together a quote for Ben when I send through Mayra's CV".

Mr Trapman emailed Mr Webb regarding "application– Cadet Architect–Mayra Miranda–Part time", attaching a Spinifex CV and a Spinifex quote for recruiting Ms Miranda for Mr Webb's review. No comparable CVs were provided.

Mr Webb replied that he would like to interview Ms Miranda.

Mr Trapman forwarded Mr Webb's email to Mr Cossu stating, "We are on mate".

On 3 December 2021, Mr Trapman emailed Mr Webb, seeking his thoughts on Ms Miranda following the interview. Mr Webb replied that they would proceed with engaging Ms Miranda. He asked Ms McEwen to onboard her.

On 22 December 2021, soon after she commenced in the role, Ms Miranda emailed Mr Cossu complaining that the tax deduction on her pay record was too high.

The next day (23 December 2021), Mr Cossu sent to Mr Webb via WhatsApp a screen capture of a text message from Ms Miranda about this issue. Eight minutes later, Mr Webb provided Mr Cossu with a draft response:

Mayra, I employ many people and I have never had an issue such as this. What you are disputing is the amount of Tax that has been paid. That is paid to the Australian Taxation Department it is not money that I keep. This has nothing to do with wether [sic] you are foreign or not. These tax schedules are set up by our accountant and we do things exactly as per the law. I will give you the difference in the payment, this amount though will need to be claimed by you at tax time. My accountant tells me that normally it is adjusted in the next pay cycle but you have made it clear you cannot wait. The money will be adjusted and when you file your tax return you can return it to me. If your lawyer needs to speak to me he can call me any time and I can place him in touch with my lawyer.

Mr Cossu's evidence was that he had asked Mr Webb to compose a response to Ms Miranda's complaint because his English "wasn't the best". The Commission rejects this evidence; in other respects, Mr Cossu demonstrated no particular sensitivity when communicating with PMLV workers in English.

Mr Webb submitted that his assistance to Mr Cossu reflected their friendship and Mr Webb's desire to ensure workers were recruited and retained; Mr Webb simply wanted Council's projects to be delivered.

If this were an isolated case of Mr Webb becoming involved in PMLV's recruitment arrangements, Mr Webb's account may be plausible. However, it was not an isolated case.

The Commission concludes that Mr Webb's involvement in resolving the dispute is consistent with him having a stake in PMLV.

# Aline Medeiros' engagement through Spinifex

On 7 December 2021, Aline Medeiros emailed Mr Cossu attaching her CV and writing, "My friend Mayra Miranda recommended I contact you regarding employment..."

On 8 December 2021, Mr Cossu emailed Mr Trapman attaching Ms Medeiros' CV and stating, "New one d". Mr Trapman replied writing: "Looks good..."

On 9 December 2021, Mr Trapman emailed Mr Webb attaching Ms Medeiros' Spinifex CV and a quote, advising "Please find Aline's application attached for your review". No comparative CVs were provided.

Later, Mr Trapman emailed Mr Cossu regarding "Aline Medeiros", writing, "Still waiting for Ben to approve".

There is no evidence that Ms Medeiros was interviewed before she commenced work at Council.

### Noor Wiss' engagement through Spinifex

On 9 December 2021, Noor Wiss emailed her CV to Mr Haddad, who forwarded it to Mr Cossu. Ms Wiss was a civil engineering graduate, although her employment experience was in retail and customer service.

On 10 December 2021, Mr Cossu emailed Mr Trapman twice, sending CVs for Ms Wiss and a second contractor. Mr Trapman replied:

These are for the Project Officer roles I imagine. Having looked at both candidates they are junior. Unsure if Ben will accept the \$ rate for inexperienced people. Let's talk before I present them to Ben as I need to supply comparative CVs to satisfy Council procurement rules and my comparisons will be much more experienced on paper.

That afternoon, Mr Trapman emailed Mr Webb regarding "[The second contractor] + Noor Wiss", attaching their Spinifex applications and a Spinifex quote for recruiting a Council project officer. He said:

Please find applications and quote attached for your review. Let me know if we need to review the rates in line with experience. Both [the second contractor] and Noor are available and keen for interview.

No competitive CVs were provided.

On 13 December 2021, Mr Trapman emailed Mr Cossu that Ms Wiss and the second contractor's placements were "sitting with Ben for approval at \$100.59 per hour + GST".

On 14 December 2021, Mr Webb responded to Mr Trapman's email, asking, "Ben can we interview this week".

On 16 December 2021, Mr Webb interviewed Ms Wiss via Microsoft Teams.

On 6 January 2022, Ms McEwen emailed Hannah Borg (Spinifex), stating:

Ben would like me to onboard Noor Wiss, [the second contractor] and Lionel Kools. Would you be able to send me a CV for Lionel so I can raise a PO [purchase order] and also the quotes for the 3 roles and 3 x competitive applications CV's [sic] per role?

### Lionel Kools' engagement through Spinifex

On 30 November 2021, Mr Trapman emailed Mr Cossu and Mr Kools suggesting that they connect "for potential future collaboration". On 7 January 2022, Mr Trapman replied to an email from Ms McEwen (copying Mr Webb), stating:

We don't have rates for Lionel or [REDACTED] yet so we'll need approval from Ben before moving ahead. If easier I can quote on each candidates [sic] expectations to give Ben something to review. Let me know on this.

On 10 January 2022, Mr Trapman emailed Mr Cossu:

Angela has requested rates for Lionel, Noor and [REDACTED] and Ben wants to onboard them for 17th Jan start ... Lionel Kools Team Leader Architect, Pay PMLV = to be confirmed ... You previously indicated pay rate \$110 per hour + GST to PMLV but this is well below what this role would get anywhere else ... I previously gave Angela an indicative pay rate of \$1700 per day + GST ... I understand we don't want to overprice and ensure it's on going [sic] for procurement purposes, however we simply can't pay a Team Leader Architect what a PM [project manager] gets... I suggest a minimum \$1300-\$1400 per day + GST to PMLV (you'll take care of Lionel) ... Awaiting your confirmation on the above

Following further correspondence concerning an appropriate rate for Mr Kools, Mr Trapman emailed Ms McEwen on 20 January 2022 (copying Mr Webb) attaching a Spinifex quote for recruiting Mr Kools. Mr Trapman noted, "…I'll send through 3x competitive CVs by tomorrow". No competitive quotes were sent.

# QuratulAin Butt's engagement through Spinifex

On 20 January 2022, QuratulAin Butt emailed Mr Cossu and attached her CV. Mr Cossu sent Ms Butt's CV to Mr Webb via WhatsApp.

On 21 January 2022, Mr Cossu emailed Mr Trapman regarding "new engineer", attaching Ms Butt's CV. Mr Trapman emailed Ms Butt, attaching Spinifex registration documents.

On 4 February 2022, Ms Butt was interviewed remotely by Mr Webb. Mr Webb emailed Mr Asaduzzaman (co-ordinator design at Council) and attached Ms Butt's resume, writing, "I met this lady this morning, she was quite impressive. Could you please meet her."

On 10 February 2022, Mr Trapman emailed Mr Asaduzzaman, copying Mr Webb, with subject "reviewed quote – QuratulAin Butt–Jnr Design Engineer", attaching a Spinifex quote and CV for Ms Butt and writing: Please find our revised quote attached for QuratulAin based on our discussion today. Note, this charge rate is based on her pay rate expectations and commensurate with qualifications, skills and experience on projects. QuratulAin is happy to demonstrate her modelling skillset to confirm her value should it be necessary. Available for immediate start.

# John Paul Sullano's engagement through Spinifex

On I February 2022, John Paul Sullano emailed Mr Dankaro regarding "Application–Facilities Management Officer", attaching his CV, cover letter, Engineers Australia Certificate and White Card.

On 4 February 2022, Mr Dankaro forwarded Mr Sullano's email to Mr Cossu, who forwarded it to Mr Trapman, writing, "I haven't spoken with Ben as yet, sending to you first. Just in case we need someone else. Let me know what you think". Mr Trapman replied, "Looks very strong Pietro ... Let's snap him up now".

On 9 February 2022, Mr Trapman emailed Mr Webb, attaching Mr Sullano's Spinifex CV and a Spinifex quote for recruiting Mr Sullano.

On 17 February 2022, Mr Sullano was interviewed by Mr Webb.

On 14 March 2022, Mr Sullano was employed at Council, but he resigned on 15 April 2022.

### Peter Bell's engagement through Spinifex

On 3 March 2022, Peter Bell emailed Mr Cossu attaching his CV.

On 4 March 2022, Mr Cossu emailed Mr Trapman with subject "New starter", attaching Mr Bell's CV and writing, "Hi Ben, see attached CV Please organise interview ASAP".

On 8 March 2022, Mr Trapman emailed Ms McEwen (copying Mr Webb) attaching Mr Bell's Spinifex CV and a Spinifex quote for recruiting Mr Bell.

On 15 March 2022, Ms McEwen emailed Mr Trapman:

ask Peter to come into the office Monday morning for 9am ... Can you please send me 2 x competitive CV's so I can raise a PO [purchase order] for him too?

Mr Bell commenced at Council on 21 March 2022.

40

# Mohamad El Halabi's engagement through Spinifex

On 14 January 2022, Mr Trapman emailed Mr Cossu attaching Mohamad El Halabi's CV, noting:

Interviewed Mohamad today. Smart young guy ... I won't float to Ben, up to you if you want to put him in the mix. If you don't have anything for him I'll find him a home elsewhere – but no hurry from my part.

On 14 February 2022 and again on 31 March 2022, Mr Trapman emailed Mr Cossu promoting Mr El Halabi as a good worker.

On 4 April 2022, Mr Trapman emailed Ms McEwen, copying and addressing Mr Webb, attaching a Spinifex CV for Mr El Halabi.

On 7 April 2022, Mr Webb interviewed Mr El Halabi.

On 8 April 2022, Mr Trapman emailed Ms McEwen (copying Mr Webb) with subject "new starters Spinifex …", attaching the Spinifex CV and quote for Mr El Halabi.

# Franklin Ozoemena's engagement through Spinifex

On 13 March 2022, Mr Dankaro emailed Mr Cossu attaching Franklin Ozoemena's CV. Mr Cossu forwarded the email to Mr Webb. On 16 March 2022, Mr Cossu emailed Mr Trapman with subject "New starter", attaching Mr Ozoemena's CV.

On 17 March 2022 at 10.18 am, Mr Trapman replied:

Please confirm the following before I start our rego process with both Franklin and submit to Ben W:

Role: Project Manager Night Works – can we really call him a Project Manager based on his CV?

Rate: ?

Hours: what are the expected start and finish hours at night?

Qualifications: I don't see any building/construction quals

On 17 March 2022, Mr Cossu responded to Mr Trapman:

Role: Project Manager Night Works – can we really call him a Project Manager based on his CV? <u>More</u> <u>like Construction Supervisor Night Works</u>

Rate: ? 105 probably more "night shift work"

Hours: what are the expected start and finish hours at night? <u>8h start and finish will be determined by the</u> <u>work</u> Qualifications: I don't see any building/construction quals Let's base ourselves on the experience and will have him on a trial period...

On 21 March 2022, Mr Trapman emailed Mr Webb (copying Ms McEwen), attaching a Spinifex CV and Spinifex quote for recruiting Mr Ozoemena.

Mr Ozoemena commenced at Council on 4 April 2022.

## Sadaat Tareen's engagement through Spinifex

On 6 May 2022, Mr Trapman emailed Mr Cossu regarding "new potential candidates", listing four individuals and providing their resumes, including one for "Sadaat Tareen – Project Engineer".

On the same day, Mr Webb emailed Mr Trapman and Ms McEwen, asking Ms McEwen to arrange interviews for all four.

On 12 May 2022, Mr Webb interviewed Mr Tareen.

On 17 May 2022, Mr Trapman emailed Mr Tareen and Mr Cossu:

As discussed earlier with you both, I am connecting you two to discuss employment options directly with PMLV Consulting. Sadaat, Pietro is the MD for PMLV Consulting and he can be reached on ... The initial role in question is an assignment with the City of Canterbury Bankstown in a Project Officer or Management position within the Works and Projects division which you interviewed for last week Sadaat. I will circle back and speak with you both before end of day once you have had a chance to talk among yourselves.

The next day, Mr Trapman emailed Mr Webb attaching Spinifex client quotes for Mr Tareen and another person.

That evening, at 8:18 pm, Mr Cossu emailed Mr Tareen attaching a PMLV Employment Agreement stating:

Sadaat, please find attached contract the amount offered is \$138,320.00 [sic] because by law you will work 38h per week. In reality you will be paid \$145,600.00 because I will pay you 40h per week. We have a flat rate contract with the council this will mean that you will be paid a flat rate for any extra hours...

On 19 May 2022, Mr Webb approved the engagement of Mr Tareen.

#### Ahmed Said Abdelhalim Mohamed Abdelhalim (Ahmed Halim)'s engagement through Spinifex

Ahmed Said Abdelhalim Mohamed Abdelhalim (aka Ahmed Halim) was the last PMLV worker engaged through Spinifex.

On 4 July 2022, Mr Qutubuddin emailed Mr Cossu attaching Mr Abdelhalim's CV. On 8 July 2022, Mr Cossu forwarded the email to Mr Webb.

On 8 July 2022, Mr Cossu emailed Mr Abdelhalim's CV to Mr Trapman, stating, "...present this guy asap".

On 13 July 2022, Mr Trapman emailed Mr Webb attaching a Spinifex CV and quote for Mr Abdelhalim.

On 18 July 2022, Mr Webb interviewed Mr Abdelhalim.

Mr Abdelhalim commenced at Council on 8 August 2022.

# Mario Vescio's engagement through Randstad

Mr Cossu had known Mario Vescio for some years. On 8 April 2022, Mr Vescio emailed Mr Cossu attaching his CV.

After several further communications, on 14 July 2022, Mr Vescio emailed Mr Cossu advising that he had tentatively booked two traffic-management courses for \$550 and \$850. He asked Mr Cossu to pay for the courses, and Mr Cossu agreed to do so. Subsequently, Mr Vescio emailed various traffic qualifications to Mr Cossu. The attainment of the traffic qualifications enhanced Mr Vescio's employability.

On 28 July 2023, Mr Cossu contacted Ms Kielty at Randstad with the subject "New candidate Mario Vescio", attaching Mr Vescio's resume.

On 31 July 2022, Ms Kielty informed Mr Cossu she had contacted Mr Vescio, writing, "I will let you know once the onboarding is complete and when Mario can start with CBC [Canterbury-Bankstown Council]".

The same day, Mr Vescio submitted to Ms Kielty Randstad registration forms in which he listed his referees as Mr Cossu and Mr Magsipoc. When Mr Cossu was sent a link by Randstad to complete a reference check, he forwarded this to Mr Vescio so that he could complete his own reference check.

Mr Vescio was an inexperienced candidate who expressed doubt about his capacity to fulfill the role. Nevertheless, he was engaged as a project manager and commenced at Council on 8 August 2022.

# Nameer Maleko's engagement through Randstad

On 30 April 2022, Nameer Maleko emailed Mr Haddad (who had been engaged through the scheme in August 2021) attaching his CV. On 27 May 2022, Mr Haddad forwarded Mr Maleko's email and attached CV to Mr Cossu.

On 28 May 2022, Mr Maleko emailed Mr Cossu attaching his CV, seeking an "architect position". Later that day, Mr Cossu emailed Mr Trapman regarding "Architect".

On 6 June 2022, Mr Trapman emailed Mr Webb (copying Ms McEwen and blind copying Mr Cossu), regarding employment for Mr Maleko as a landscape architect. In that correspondence, Mr Trapman did not identify Mr Maleko as a PMLV candidate. Mr Webb forwarded this email to Mr Kools but Mr Kools was not interested in engaging Mr Maleko, because he lacked relevant experience.

On 13 June 2022, Mr Trapman sent a text message to Mr Cossu, writing, "your architect Nameer rejected by Ben". Mr Cossu responded to that message with the "laughed at" emoji reaction and further responded, "I didn't have a chance to talk to him, and I will not brake [sic] my leg in a hurry".

However, within two months and after he was identified as a PMLV candidate, Mr Maleko was engaged at Council.

On 26 July 2021, Mr Webb sent a WhatsApp message to Mr Cossu, writing, "Can you get that young boy to Ben Trapman so he can send through".

On 1 August 2022, upon receipt of Mr Maleko's resume, Mr Cossu sent it to Ms Kielty at Randstad – not to Mr Trapman.

On 3 August 2022, Ms Kielty emailed Mr Webb regarding, "Contractors for PMLV". She attached "CBC Randstad Client" agreements for Ehsan (Omid) Goharinasab, Mr Vescio and Mr Maleko. She wrote:

I believe Pietro has kept you in the loop in regards to engaging contractors through Randstad from PMLV. Please attach client agreements for the three candidates for signature...

After he was engaged, Mr Maleko submitted his timesheets via the Randstad portal.

42

# Ehsan (Omid) Goharinasab's engagement through Randstad

On 2 August 2022, Mr Goharinasab emailed Mr Cossu, stating that he had spoken to "Sam" and was interested in working at Council. Mr Cossu then emailed Ms Kielty, "please find attached another candidate", referring to Mr Goharinasab's resume.

Mr Goharinasab submitted his timesheets via the Randstad portal, and they were approved by Mr Webb.

# Mr Cossu recorded his anticipated profit share

On 2 August 2021 at 6:18 pm, Mr Cossu emailed three tables from his PMLV account to his iCloud email account (see figure 1).

These tables listed four names (Mel, Mo, James and Yavor) and the associated "pay per/h", "charge" and "difference".

The bottom of each table lists the "Gross income per week = ".

The second and third tables include additional rows for unnamed persons, with "\$95.00" listed under the "charge" column (highlighted in yellow in the original tables).

With the addition of each of these rows (that is, each additional person), there is an increase to the total under "Gross income per week = " (increasing from \$6,000 to \$10,800 to \$13,200, also highlighted in yellow).

# Figure 1: Tables Mr Cossu emailed himself, showing a gross income per week that increases with each additional person

we	Have 4	people	e, and	this is the g	ross wi	thout lax
	pay	per/h		charge		difference
1 Mel	\$	55.00	\$	95.00	\$	40.00
2 Mo	\$	55.00	\$	100.00	\$	45.00
3 James	\$	55.00	\$	85.00	\$	30.00
4 Yavor	\$	55.00	\$	90.00	\$	35.00
5 eng					\$	-
6 eng					\$	-
7					\$	-
8					\$	-
		t	otal \4=	\$ gross income p	erh \$	37.50
people	Нл	week		total h/w		tal hours per nvoice per 2 weeks
4		40		160		320
					\$	37.50
				of 320h per 2 wee		12,000.00
			Gro	ss income per we	ek = \$	6,000.00
V	Vith 6 p	people, a	and th	is is the gros	s with	
	1	per/h		charge		difference
1 Mel	\$	55.00	\$	95.00	\$	40.00
2 Mo	\$	55.00	\$	100.00	\$	45.00
3 James	\$	55.00	\$	85.00	\$	30.00
4 Yavor	\$	55.00	\$	90.00	\$	35.00
5 eng	\$	35.00	\$	95.00	\$	60.00
6 eng	\$	35.00	\$	95.00	\$	60.00
7					\$	-
8					\$	-
		t	otal \4=	\$ gross income p	erh \$	67.50
people	ΗΛ	week		total h/w	to	tal hours per
					i	nvoice per 2
						weeks
4		40		160		320
					\$	67.50
				of 320h per 2 wee		21,600.00
			Gro	ss income per we	ek = \$	10,800.00
v			ina th	is is the gros		
		per/h		charge		difference
	\$	55.00	\$	95.00	\$	40.00
1 Mel		55.00	\$	100.00	\$	45.00
2 Mo	\$		1.4	85.00		30.00
2 Mo 3 James	\$	55.00	\$		\$	
2 Mo 3 James 4 Yavor	\$ \$	55.00	\$	90.00	\$	35.00
2 Mo 3 James 4 Yavor	\$ \$ \$		\$ \$		\$ \$	
2 Mo 3 James 4 Yavor 5 eng	\$ \$	55.00	\$	90.00	\$	35.00
2 Mo 3 James 4 Yavor 5 eng 6 eng	\$ \$ \$	55.00 35.00	\$ \$	90.00 95.00	\$ \$	35.00 60.00
2 Mo 3 James 4 Yavor 5 eng 6 eng 7 eng	\$ \$ \$ \$	55.00 35.00 35.00	\$ \$ \$	90.00 95.00 95.00	\$ \$ \$	35.00 60.00 60.00
2 Mo 3 James 4 Yavor 5 eng 6 eng 7 eng	\$ \$ \$ \$	55.00 35.00 35.00 35.00	\$ \$ \$ \$	90.00 95.00 95.00	\$ \$ \$ \$ \$	35.00 60.00 60.00
2 Mo	\$ \$ \$ \$ \$	55.00 35.00 35.00 35.00	\$ \$ \$ \$	90.00 95.00 95.00 95.00	\$ \$ \$ \$ \$ \$ er h <b>\$</b>	35.00 60.00 60.00 60.00 -
2 Mo 3 James 4 Yavor 5 eng 6 eng 7 eng 8	\$ \$ \$ \$ \$	55.00 35.00 35.00 35.00	\$ \$ \$ \$	90.00 95.00 95.00 95.00 <b>\$ gross income p</b>	\$ \$ \$ \$ er h \$ to	35.00 60.00 60.00 - - 82.50
2 Mo 3 James 4 Yavor 5 eng 6 eng 7 eng 8	\$ \$ \$ \$ \$	55.00 35.00 35.00 35.00	\$ \$ \$ \$	90.00 95.00 95.00 95.00 <b>\$ gross income p</b>	\$ \$ \$ \$ er h \$ to	35.00 60.00 60.00 - <b>82.50</b> tal hours per

 total of 320h per 2 weeks =\$ 26,400.00

 Gross income per week =\$ 13,200.00

On 2 August 2021, at 6:40 pm via WhatsApp, Mr Cossu sent the first image of one of these tables to Mr Webb. He had made minor amendments, including changing the title from "we Have 4 people..." (sic) to "People I have now...".

# Figure 2: Table Mr Cossu sent to Mr Webb, showing a gross income per week for four people

		pa	y per/h		charge	d	ifference	
1	Mel	\$	55.00	\$	95.00	\$	40.00	
2	Mo	\$	55.00	\$	100.00	\$	45.00	
3	James	\$	55.00	\$	85.00	\$	30.00	
4	Yavor	\$	55.00	\$	90.00	\$	35.00	
_			total \4= \$ g	ross i	ncome per h	\$	37.50	
	people	н	/week		total h/w		al hours per voice per 2 weeks	
	4		40		160		320	
_						\$	37.50	
			total of a	320h	per 2 weeks =	\$	12,000.00	
	Vol 30.1		Gross	incor	ne per week =	Ś	6,000.00	without tax

Mr Webb replied a minute later, saying, "OK".

Mr Cossu's explanation for this exchange was that he had probably sent the information to Mr Webb because Mr Webb would be happy he was successful.

Mr Webb claimed he could not recall seeing the document; Mr Cossu sent him "a lot of things" and he "[didn't] often ask" about them, inferentially because they were of no interest to him, and possibly because they were often nonsense. As to his response of "OK", Mr Webb said he meant nothing by it. He agreed the document showed the differences between the PMLV pay rate and the amount paid to the four workers who were then engaged by PMLV, a matter of which he was aware at the time.

The Commission rejects the evidence of Mr Cossu and Mr Webb and adopts the commonsense interpretation of the exchange; that is, that Mr Webb was acknowledging the anticipated profits from a 50/50 partnership with Mr Cossu in relation to the four PMLV workers who were then engaged at Council.

#### The October 2021 spreadsheet, showing "labour costs" and a net income split 50/50

When Mr Cossu's laptop was seized by the Commission during the execution of the search warrant on 20 April 2023, it contained an Excel "spreadsheet for labour cost". The file was created on 2 August 2021 (the same date as the tables set out in figures 1 and 2), and last modified by Mr Cossu on 9 October 2021.

The file contains five sheets; each sheet contains a table with a list of names (matching the first names of 10 PMLV contractors) alongside dollar amounts, under the

82.50

categories "pay per/h", "charge" and "difference". The table also includes calculations of gross income per week from all contractors.

Sheet 3 of the file (see figure 3) lists the first names of the 10 PMLV contractors who were working at Council as at 9 October 2021. The 10th entry is "nosa". On 8 October 2021, Mr Trapman had emailed Mr Cossu confirming Nosakhare Dankaro's PMLV pay rate of \$100.59. Mr Dankaro commenced on 14 October 2021, receiving \$48 per hour (see table 5 in appendix 4).

#### Figure 3: Mr Cossu's spreadsheet detailing "labour cost" for PMLV contractors and a 50/50 split for net profit

_		wwittin /				ross without		
			pay pe			charge		fference
	Mel	\$		55.00	\$	95.00	\$	40.00
	Мо		\$	55.00	\$	100.00	\$	45.00
_	James		\$	55.00	\$	85.00	\$	30.00
	Yavor		\$	55.00	\$	90.00	\$	35.00
5	asfia		\$	35.00	\$	100.00	\$	65.00
	najee		\$	35.00	\$	100.00	\$	65.00
7	sam	\$	ŝ	55.00	\$	100.00	\$	45.00
8	ali		\$	35.00	\$	100.00	\$	65.00
9	muhamad		\$	35.00	\$	100.00	\$	65.00
10	nosa		\$	48.00	\$	100.00	\$	52.00
							\$	-
				tota	al \7= \$ gro	ss income per h	\$	72.43
	people		H/we		t	otal h/w		al hours per e per 2 weeks
	7		40			280		560
					total of 32	:0h per 2 weeks =	\$ \$	72.43
					Gross in	come per week =	\$	20,280.00
wi	thout tax \$ net per year \$ 50% \$	506,1 <b>253,0</b>	88.80 <b>94.40</b>	0.4 \$ 4	421,824.00	insurances	0.12	\$ 126,547.20
	50% Ś	253,0	94.40					

The rates shown in figure 3 approximately accord with the amount that PMLV was paying to the relevant worker in late 2021 (the exception being Sam Haddad, who was receiving \$70 per hour).

Asked why the "net per year" amount was divided into two equal shares of \$253,094.40 (50% of \$506,188.80), Mr Cossu ultimately said he was unable to provide a reason, although he initially suggested one share of \$253,094.40 represented a tax liability.

Mr Webb said that Mr Cossu had never mentioned a business partner in relation to the recruitment scheme.

The Commission notes that the weekly amount of \$4867.20 projected in figure 3 (representing a 50% share) approximates payments of \$5,000–\$5,500 that, on most weeks between 29 December 2021 and 6 February 2023, were deposited into one of Mr Cossu's bank accounts (account number ending in 5404 with the Commonwealth Bank of Australia (CBA)). This account was accessed only by Mr Webb, using a key card provided by Mr Cossu. While these deposits are slightly higher than the \$4,867.20 shown in figure 3, after October 2021, PMLV employed further workers to undertake Council work.

Mr Cossu claimed to have "no clue" concerning the subject matter of the "tax" amounts in the spreadsheet.

# Extension of purchase orders for agency workers

On 25 October 2022, Mr Webb recommended that Mr Vangi approve the extension of purchase orders for 17 Council agency workers of whom six were PMLV contingent workers. Mr Webb told the Commission that in doing so he would not have considered whether the staff member in question was engaged through PMLV.

# Mr Webb resigned from Council in 2022

In August/September 2022, Richard Osborne, a contract worker with Council's Human Relations Unit who was not employed through PMLV, conducted a review of how Council captured timesheet information for contingent workers. He noticed inconsistency in pay rates.

When Council's new Comensura payment system went live on about 26 September 2022, PMLV workers could see the large disparity between PMLV's charge rate and their earnings.

Mr Osborne began to interview staff and became concerned about Mr Cossu's conduct.

Mr Anderson – who was responsible for project delivery in the Works and Projects Unit and was Mr Cossu's supervisor – raised the staff complaints with Mr Webb, who said that he would "look into it". Mr Anderson raised the disparity in the pay and charge rates on a second occasion, just prior to Mr Webb's departure, and got the same reply. It was not until much later that Mr Anderson learned of the allegation that Mr Webb was involved in Mr Cossu's scheme.

Mr Webb's account of the interaction was that he and Mr Anderson met with concerned staff to explain leave entitlements after Mr Anderson raised with him that "some of the staff, or 'boys' to his words, were not happy ... because they believed there was a discrepancy in their pay rate to what they were getting paid". When Counsel Assisting asked him why this was not something for Mr Cossu, their employer, to address, initially Mr Webb answered that it was because he (Mr Webb) was their manager. When pressed, he said he was "sure" that he had advised them to speak to Mr Cossu.

On 5 October 2022, the manager human resources at Council emailed Mr Webb:

[Richard Osborne] has also approached Sarah (Team Leader Talent) concerned about a "deal" he has uncovered with another agency team member getting a commission from an agency for getting other agency workers employed by Council. We have asked him to raise this with you for discussion and action but I thought to give you the heads up as he has rang [sic] Sarah 2 times to advise of the same issue, I have asked Sarah to put it into an email to you. Please me [sic] let me know what I can do to support on this.

Mr Webb replied that he would "look into it and speak with him [Mr Osborne] in the morning".

In the public inquiry, Mr Webb's recollection of the proposed meeting was that Mr Osborne "didn't turn up".

At the time, Susan Lyell held the position of project officer – governance. She reported to Mr Webb and he allocated tasks to her. On 6 October 2022, she emailed Mr Webb to advise:

Spoke to Noelle [Kielty] at Randstad ... to advise Richard [Osborne] has completed his contract assignment with CBC [Canterbury-Bankstown Council] and you will be informing him tomorrow. Confirming it is a 1 day notice period.

In evidence at the public inquiry, Mr Webb maintained that he had little recall of the circumstances in which Mr Osborne departed Council. He said that he did not recall instructing Ms Lyell to ascertain Mr Osborne's notice period, although he could not explain why she would inform him of the notice period if he had not asked her to make the enquiry. He said that he was unhappy about Mr Osborne distributing a review report on which Mr Osborne had been working without his approval, but he had not had the opportunity to raise his concern because Mr Osborne "didn't show up again".

On 7 October 2022, Mr Webb notified the Works and Projects Unit that Mr Osborne would be leaving them that day. In the public inquiry, Mr Webb said that he could not recall whether he was the one who had made the decision to terminate Mr Osborne but he did not think it was Ms Lyell.

The Commission accepts Counsel Assistings' submission that it was Mr Webb who terminated Mr Osborne.

At the time, Mr Osborne had completed a Unit Structure and Capability Review Report, prepared in the context of the proposed Council restructure. Prior to obtaining approval from Mr Webb, Mr Osborne provided this report to several managers. Mr Osborne was aware that, as he had completed this major task, his employment may be terminated. Nevertheless, he was annoyed to be dismissed on a day when he was taking pre-planned leave from Council for the purpose of attending his graduation ceremony.

Having regard to the chronology and the peremptory way in which Mr Webb dismissed Mr Osborne, the Commission infers that, in doing so, Mr Webb was motivated either by the desire for retribution or the desire to minimise exposure of the recruitment scheme.

On 15 November 2022, Shaun Naidoo (the former manager, works and projects) emailed Mr Webb (copying Mr Anderson and Mr Asaduzzaman (the co-ordinator design works and projects at Council), stating:

all current recruitment for any positions in Works and Projects Unit will need to be placed on hold, until further notice...

Mr Webb said that he was not told, nor did he ask, why recruitments had been put on hold indefinitely.

On 17 November 2022, Council reported the matter to the Commission under s 11 of the ICAC Act.

On 21 November 2022, Mr Webb emailed Mr Vangi, resigning with effect from 9 December 2022. It is unclear whether, by that stage, anyone had contacted Mr Webb to discuss the allegations.

Mr Webb gave evidence that he resigned because he was interviewing for other roles; although he hadn't secured a role, he was confident of doing so. Soon after leaving, he was engaged through Randstad and The W Project (his father Ivan Webb's company, which – as discussed in the next section – bought PMLV from Mr Cossu in 2023) to undertake work at Northern Beaches Council.

# Mr Webb's later involvement with PMLV and The W Project

#### **Draft PMLV Consulting tender document**

Mr Webb was asked about a draft tender document that PMLV Consulting prepared for Transport for NSW (TfNSW), which was signed by Mr Cossu and addressed the provision of construction surveillance services for the M12 Motorway Project. The document was created on 10 September 2022 (three months before Mr Webb left Council) and listed "Ben Webb" as the CEO, providing an email address of ben@PMLVprojects.com.

When shown this document, Mr Webb's initial reaction was "that's not me". He stated that he had never had that

email address. He then agreed that the mobile telephone number on the document was his number, albeit one he claimed that he had ceased using once he commenced employment with Council. He said that he "[could not] explain how this document came to be prepared" and pointed out that it had not been submitted to TfNSW, nor was any work done for TfNSW. He did not explain how he had learned that the document had not been submitted, given that he denied knowledge of its creation and could not recall when he first saw it.

The Commission does not accept that Mr Webb was ignorant of the draft tender document created during his employment at Council. This was another aspect of the evidence that reflected poorly on his credit.

#### The W Project's purchase of PMLV

"The W Project (NSW)" is the business name of the company ACN 660 240 522 Pty Ltd, which was registered on 17 June 2022. Ivan Webb (Benjamin Webb's father) is director and sole shareholder. Benjamin Webb cannot hold a directorship because he is bankrupt. Although he is the sole shareholder, Ivan Webb regards it as a family company. He said that it is the vehicle through which he undertakes construction work, and his son performs project management.

On 27 June 2023 (about two months after the execution of search warrants on Mr Cossu and Mr Webb's residences on 20 April 2023), Mr Cossu sold PMLV to The W Project. The agreement for sale of shares nominated Mr Cossu as the vendor and The W Project as the purchaser. Under the agreement, Mr Cossu was to receive a \$120,000 employment package plus superannuation. The \$500,000 purchase price for the shares was to be paid by monthly instalments of \$13,888 over a period of 36 months, incurring interest of 10% on unpaid sums.

On 27 June 2023, Mr Cossu ceased to be the director, secretary and shareholder of PMLV and Ivan Webb was appointed sole director and secretary. Since then, Mr Cossu has worked for The W Project.

Ivan Webb said that he heard of PMLV through his son prior to December 2022, while his son was still working at Council. Ivan Webb said that his son told him that he (Benjamin Webb) was looking to eventually acquire the company from Mr Cossu, who owned it. His son had led him to understand that the company undertook project management, consulting work and recruitment. However, Ivan Webb was unaware that PMLV had placed workers at Council.

Mr Cossu said that the sale of PMLV was first discussed in 2023, not 2022.

According to Mr Webb, the purchase price of \$500,000 was agreed between himself, Ivan Webb and Mr Cossu based on the number of PMLV employees and tax liabilities. As at 27 June 2023, seven PMLV workers remained at Council, generating significant income for PMLV.

Ivan Webb's understanding was that The W Project made three instalment payments to Mr Cossu for the purchase of PMLV before his son spoke to Mr Cossu about putting further payments "on hold". At the time of the public inquiry, Ivan Webb was unsure of the position regarding the purchase; in this, as in other matters, he seems to have trusted his son to attend to affairs.

Mr Cossu gave evidence that none of the purchase price of \$500,000 has been paid to him and he has neither sought nor been given an explanation for the non-payment. Mr Webb said that some instalments were paid, but payment had ceased because of a dispute about undisclosed items, which Mr Webb said he had raised with Mr Cossu. There is no evidence that any instalment of \$13,888 was paid.

# What benefit did Mr Cossu/PMLV gain through the recruitment scheme?

The gross hourly mark up for PMLV from placing its 26 workers at Council is detailed below in table 1.

Randstad paid PMLV for Mr Cossu's services during his engagement at Council, from May 2020 to December 2022. Between March 2021 and June 2023, Randstad paid PMLV for four other contractors engaged by Council.

Spinifex made payments to PMLV between February 2021 and June 2023, which covered the period during which the 22 PMLV contractors were engaged by Council through Spinifex.

As the tables in appendix 4 illustrate, in most cases PMLV paid its workers less than half of the pay rate that it received from Council through the recruiting companies, allowing for potential profit margins of well over 50%. Mr Webb rather disingenuously said that he did not know whether a 50% margin was a lot for a recruiter.

Mr Cossu said that the scheme was designed to make a profit, and it did generate a profit. He said that, after paying about \$5 million in expenses (wages, tax, leave entitlements, superannuation and the like), the real profit margin was about 12% of the total funds PMLV received, or \$600,000 over 2.5 years. He had a recollection that he discussed this margin with Mr Webb.

If this was the real profit margin, it was substantial, averaging about \$240,000 per year (over 2.5 years) or \$4,500 per week.

Company making payments	No. of staff supplied by PMLV	Funds received by PMLV (\$)	Funds paid by PMLV to contractors (\$)	Net funds retained by PMLV (\$)	Percentage of funds retained by PMLV (%)
Randstad**	4	750,904.00	291,277.53	459,626.47	61.21
Randstad**	1	691,730.00	N/A	N/A	N/A
	(Mr Cossu)	(Mr Cossu's salary)			
Spinifex***	22	6,434,034.56	2,386,327.39	4,047,706.17	62.91

#### Table 1: Gross funds received and net funds retained by PMLV through the recruitment scheme\*

Notes:

\* This table does not include the profit made by Spinifex and Randstad.

\*\* Ms Kielty oversaw arrangements for these staff on Randstad's behalf.

\*\*\* Mr Trapman oversaw arrangements for these staff on Spinifex's behalf.

However, such a profit margin would have fallen well short of the high expectations reflected in the projections Mr Cossu shared with Mr Webb on 2 August 2021 (see figure 2) and the associated spreadsheet last modified by Mr Cossu on 9 October 2021. The spreadsheet calculated that, with only 10 PMLV contractors, the net profit after tax and expenses would be \$506,188.80 per year, which would be split 50/50, giving each of the two business partners the sum of \$4,867.20 per week.

The tax returns of PMLV for the financial years ending in 2021 and 2022, produced by Mr Cossu, declared the profit margin shown below in table 2.

# What benefits were received by Mr Webb and associated people and entities?

### Mr Webb's use of a CBA bankcard (March 2021 to January 2023)

On 19 March 2021, Mr Cossu opened a CBA account in his own name. One bankcard was issued. It was common ground between Mr Cossu and Mr Webb that it was provided by Mr Cossu to Mr Webb for his exclusive use. The account remained largely unused until 29 December 2021, when Mr Cossu sent Mr Webb a message showing the transfer of \$5,000 from the PMLV account into the CBA account. The reference was "Holiday Saving". Mr Cossu advised that he would "do the other in the morning". A second amount of \$5,000 referenced "Holiday" was paid 27 minutes later.

In early January 2022, Mr Webb made several substantial ATM withdrawals from the account while holidaying in far-north Queensland.

Thereafter, between 18 February 2022 and 6 February 2023, Mr Cossu made regular deposits from the PMLV account into the CBA account – approximately once a week – referencing the deposit as "Site costs". Each was a deposit of \$5,000, except one on 30 September 2022 for \$3,000. Five amounts of \$100, each described as "Site", were deposited between 11 May 2023 and 8 June 2023.

In total, \$253,500 was deposited into the account between 29 December 2021 and 8 June 2023. The total debits during that period were \$234,468.24.

During the period that Mr Webb was employed at Council (29 December 2021 to 9 December 2022), the statements for Mr Cossu's CBA account recorded that PMLV deposited \$208,000. The total debits from the CBA account during that period were \$207,962.

#### Table 2: Profit and loss figures for PMLV, 2020–21 and 2021–22

Financial year	Total income (\$)	Total expenses (\$)	Net (\$)	Net as percentage of total income (%)
2020–21	660,091	623,061	37,030	5.61
2021–22	2,798,176	2,395,888	402,288	14.38

Mr Webb utilised the bankcard to make numerous ATM cash withdrawals from Mr Cossu's CBA account, and otherwise used it to pay for ordinary living expenses, such as takeaway food, supermarket purchases, airfares and cleaning services. From 31 December 2021 to 17 January 2023, the account was accessed 744 times, or almost daily.

## Payments to The W Project's NAB account 3028 (February 2023 to May 2023)

In the first half of 2023, Mr Cossu made deposits from the PMLV account ending in 1053 to The W Project account ending in 3028:

- Between 13 February 2023 and 6 April 2023, eight payments of \$5,500 were deposited, each referencing a The W Project invoice.
- On 14 April 2023, there was a ninth deposit for "The W Project invoice" in the sum of \$3,300.
- On 31 May 2023, a there was a deposit of \$13,000 to the account, which referenced "Tenders, Mgmt Prog".
- On 9 June 2023, a there was a deposit of \$49,000, referenced as "RTGS (STG-003826)".
   On the same day, The W Project drew a bank cheque on the account, paying \$50,000 to O'Brien Palmer, Mr Webb's bankruptcy trustee, which enabled Mr Webb to travel overseas.

In total, Mr Cossu (on behalf of PMLV) deposited \$109,300 to this account between 13 February and 9 June 2023.

The signatory for the account was Ivan Webb.

# Payments into The W Project's NAB account 9199 (June 2023)

In June 2023, there were two deposits to The W Project account ending in 9199 from the PMLV account ending in 0153, totalling \$91,000:

28 June 2023	Capital Transfer Pietro Cossu 106600	\$50,000
29 June 2023	Capital Transfer 2 Pietro	\$41,000

Cossu 106600

Mr Cossu said the sums related to taxes that were due. Mr Webb said they were transfers of a PMLV asset. The latter explanation is probably accurate; the transfers reflected transfer of a capital asset of PMLV that, upon execution of the agreement for sale of PMLV shares, belonged to The W Project. The transfer of PMLV's assets was not matched by payment for PMLV shares; as mentioned above, the purchase price of \$500,000 was not paid.

#### PMLV purchased vehicles for Mr Cossu, Ivan Webb and Benjamin Webb

On 20 October 2021, PMLV (through Mr Cossu) purchased a Toyota Kluger vehicle for \$57,990 for Mr Webb's use. Prior to doing so, Mr Cossu consulted Mr Webb.

On 7 January 2022, Mr Cossu and Mr Webb exchanged the following messages:

COSSU:	My car is on the last legs company's
	account okay? I will have to not pay tax
	for one payment "postpone" [sic]

WEBB: Absolutely.

Mr Cossu's evidence about these messages was that he was asking Mr Webb for advice about the tax implications of purchasing a car, rather than seeking his approval for any purchase. Mr Cossu said he thought Mr Webb would have a better understanding of such tax matters. When asked why he did not articulate his enquiry more clearly, Mr Cossu replied, "Maybe if I speak like you".

Mr Webb denied that Mr Cossu was asking for permission to use the company account to pay for a car and that his response gave his approval to do so.

Counsel Assisting submitted the Commission should find that Mr Cossu was seeking Mr Webb's approval before spending money from PMLV's accounts. Mr Webb submitted the Commission should reject the submission and take into account that English is not Mr Cossu's first language when assessing such documentary evidence.

Mr Webb's submissions are rejected as clearly inconsistent with the text messages. The texts plainly record Mr Cossu asking for Mr Webb's permission to buy a car using the company account and Mr Webb giving his approval to do so. The fact that Mr Cossu sought Mr Webb's approval for PMLV expenditure supports Mr Webb having a significant interest in PMLV. This was a simple communication and the Commission does not accept that it could have been affected by Mr Cossu's lack of proficiency in English.

On 20 July 2022, PMLV (through Mr Cossu) purchased a Mitsubishi Triton vehicle for use by Ivan Webb. The purchase was financed through a business vehicle loan.



Figure 4: Photograph of a Toyota Kluger that Mr Cossu texted to Mr Webb on 20 October 2021. On that date, Mr Cossu purchased a Toyota Kluger for \$57,990 for Mr Webb to use.

Date	Description	Bank voucher	Invoices paid on behalf of Ben Webb (\$)	Payments to Ben Webb ANZ 8044 (\$)	Payments/refund from Belle Property Trust to Ben Webb ANZ 8052 (\$)
26/03/2021	OSKO WITHDRAWAL 26MAR 15:38 Legal Watson Mangioni		11,811.29		
28/05/2021	TFR WDL BPAY INTERNET 28MAY 04:52 TO NSW RENTAL BONDS06100131496380		2,400.00		
27/07/2021	OSKO WITHDRAWAL 27JUL 10:35 Site I Ben Webb	From Account 0153 To Account: x8044–ANZ To (name): Ben Webb, "Site 1"		5,000.00	
27/07/2021	OSKO WITHDRAWAL 27JUL 10:38 Site 2 Ben Webb	From account 0153 To Account: x68044–ANZ To (name): Ben Webb, "Site 2"		2,000.00	
6/08/2021	OSKO WITHDRAWAL 06AUG 07:58 198375401 Insurance Icare insurance		2,312.50		
13/08/2021	OSKO WITHDRAWAL 13 AUG 12:08 Ben Webb	To Account: x8044–ANZ To: Ben Webb		1,200.00	
13/08/2021	OSKO WITHDRAWAL 13 AUG 12:55 63 Morrissett 63 Morrissett Professional	To Account: x3612–CBA To (name): Professionals Bathurst Details: "63 Morrissett"	1,200.00		
23/08/2021	TFR WDL BPAY INTERNET 23AUG 18:37 TO AGL SALES P/L70819810329409760305		1,022.54		
24/08/2021	OSKO WITHDRAWAL 24AUG 14:00 500002355 005,010 Storage King Homebush		4,416.95		

#### Table 3: Payments from PMLV Invest and Const Pty Ltd directly to Benjamin Webb or on his behalf

PMLV INVEST & CONST PTY LTD STG Freedom Business Account 112–879 x0153 Period between 10 February 2020 to 15 September 2023 Signatories: Pietro Cossu

8/12/2021

**OSKO WITHDRAWAL 08DEC 10:39** 

Professionals Bathurst

OSKO WITHDRAWAL 290CT II:21

29/10/2021

Storage King Homebush

**OSKO WITHDRAWAL 08DEC 09:31** 

8/12/2021

500002355 Storage King Homebush

OSKO WITHDRAWAL 23JAN 20:12

24/01/2022

Professionals Bathurst

-	CHAPTER 4: T	he recrui	tment sc	heme						
	Fable 3: conti									
	Payments/ refund from Belle Property Trust to Ben Webb ANZ 8052 (\$)									10,000.00
	Payments to Ben Webb ANZ 8044 (\$)									
	Invoices paid on behalf of Ben Webb (\$)	6,201.45	7,713.75	3,085.50	2,400.00	1,792.00	2,400.00	3,573.00	2,400.00	
	Bank voucher				To Account: x3612–CBA To (name): Professionals Bathurst		To Account: x3612–CBA To (name): Professionals Bathurst		To Account: x3612–CBA To (name): Professionals Bathurst	From Account: 0153 To Account:

Description

Date

50

46822 Client bill 46822 Watson Mangioni

OSKO WITHDRAWAL 25SEP 15:16

25/09/2021

47078 Client bill 47078 Watson Mangioni

**OSKO WITHDRAWAL 010CT 11:29** 

1/10/2021

47337 Client bill 47337 Watson Mangioni **OSKO WITHDRAWAL 060CT 14:38** 

**OSKO WITHDRAWAL 290CT 11:20** 

29/10/2021

6/10/2021

Professionals Bathurst

10,000.00

18,200.00

52,728.98

4

4

Frequency

Totals (\$)

10,000.00

182-222 x4992 (Macquarie Bank) Details: "40C Webb" Name: Webb

NTERNET WITHDRAWAL 03JUN 15:21

40C Webb

3/06/2022

OSKO WITHDRAWAL 06APR 15:02

6/04/2023

Services Ben Webb

#### PMLV made other payments to or on behalf of Mr Webb (March 2021 to April 2023)

Between 26 March 2021 and 24 January 2022, 17 payments were made from PMLV's St George bank account 0153 to Mr Webb or to other accounts to pay invoices on his behalf. Table 3 shows these payments.

Many of these payments were made after Mr Webb sent Mr Cossu the details for the payment through WhatsApp.

In 2021, three cash amounts totalling \$8,200 were paid from the PMLV account to Mr Webb's ANZ account ending in 8044. The descriptions on the first two amounts were "site 1" and "site 2".

On 6 April 2023, an amount of \$10,000 was paid from the PMLV account to Mr Webb's account 8044 with the reference "services Ben Webb".

On 3 June 2023, a payment of \$10,000 was made from PMLV's account ending in 0153 with a description "40C Webb" to a Macquarie Bank trust account nominated by Belle Property. On 5 August 2022, the \$10,000 payment was refunded from Belle Property to Mr Webb's ANZ account ending in 8052. It is possible that these sums of \$10,000 related to consulting services provided by Mr Webb after he left Council.

In addition, invoices totalling \$52,728.98 were paid from the PMLV account on behalf of Mr Webb. The payments included four payments to Mr Webb's lawyers (on 26 March, 25 September, 1 October, and 6 October 2021) totalling more than \$30,000, payment of a rental bond of \$2,400 (on 28 May 2021), and three payments of \$2,400 and one of \$1,200 to a real estate firm in Bathurst (between 13 August 2021 and 24 January 2022).

#### The purchase of the Dubbo property

On 9 May 2022, PMLV paid a \$43,000 deposit on a residential property in Dubbo. On 20 June 2022, Shardana Pty Ltd settled on the property. The total purchase price was \$430,000.

Shardana is owned and controlled by Mr Cossu.

The Dubbo property was the home of Mr Webb's parents until 2011, when it was sold following bankruptcy proceedings. Thereafter, Mr Webb's parents rented the property.

In February 2022, Ivan Webb learned that the owner wanted to sell the property and told his son. Mr Webb spoke to Mr Cossu about the property and Mr Cossu offered to purchase it. Mr Cossu gave evidence that, for about a year after the property was purchased, he received no rent from Mr Webb or his parents – who continued to live there – and by forgoing rent he increased his investment in Mr Webb's software business. According to Mr Cossu and Mr Webb, Mr Webb started paying rent for the property in about early 2024.

#### Why did Mr Webb receive benefits from PMLV and Mr Cossu (the Progetto explanation)?

Mr Cossu and Mr Webb gave evidence that the money and other benefits provided by Mr Cossu (often via PMLV) to Mr Webb, his family and The W Project were by way of an investment in Mr Webb's development of project-management software known as Progetto. For the following reasons, the Commission rejects this evidence.

- There is no written document recording an a) agreement for Mr Cossu to purchase a stake in any such business. It was submitted by Mr Webb that the fact the agreement was oral is of limited moment and is not exceptional for financial affairs. The Commission does not accept that submission. It is implausible that - however close the friendship or whether "the arrangement was underpinned by trust" – there would be no documentation whatsoever evidencing the agreement to invest heavily in a business allegedly valued at \$1.4 million. The absence of a written agreement stands in contrast to the fact that an agreement was entered into in relation to the sale of PMLV shares to The W Project.
- b) Credulity is further challenged by the lack of any document recording the amounts contributed towards the investment, such as would provide certainty as to the total amounts contributed at particular times. Mr Webb submitted that this was not an accurate reflection of the evidence. given Mr Cossu maintained the statements from the CBA account that recorded the repayments and "of more significance, it is apparent that this agreement was largely based on mutual trust between the parties". The Commission does not accept that submission. As demonstrated by the tables and spreadsheet that he compiled to project profits from the recruitment scheme. Mr Cossu was adept at compiling financial summaries. Unsurprisingly, Mr Webb was unable to say with precision the amount that Mr Cossu had invested in his business. Mr Cossu's evidence was also vague; he said that he gave Mr Webb around \$250,000-\$350,000 while they both worked at Council. Such contemporaneous documents as

do exist indicate that Mr Cossu provided money to Mr Webb for other purposes, such as "site costs". Similarly, messages the pair exchanged about the deposit of money made no reference to the asserted purpose of investment. The evidence is consistent with the existence of a secretive arrangement between Mr Cossu and Mr Webb for the provision of significant financial benefits to Mr Webb that had nothing to do with the purchase of an equity stake in Mr Webb's business.

- c) Mr Webb submitted that Progetto, his projectmanagement software business, is still in its development stage is of limited moment. The Commission does not accept that submission. The material produced to the Commission comprised mostly publicly available, generic documents. Despite the passage of many years since its alleged conception, any software business is, at most, in its nascent stages and does not reflect the injection of significant investment.
- d) The way in which the value of the business was determined was unusual. Mr Webb said the business was valued at \$1.4 million, on the basis that \$400,000 worth of work had been completed and "the valuation on top of that was another million dollars". The \$1 million valuation was also described as the "future" value". Mr Cossu's approach to valuation was just as cavalier; according to Mr Cossu, he accepted Mr Webb's assertion that Progetto was valued at \$1 million: "...Ben [Webb] convinced me that was the value". It was submitted by Mr Webb that it was unsurprising Mr Cossu was agreeable to the amount proposed and was not actively involved in the valuation process, given Mr Cossu's repeated concession in evidence that he deferred to Mr Webb on financial matters and he had limited understanding of the project. The Commission does not accept that submission. Mr Webb is obviously a clever person, and only the most naïve person would value the business in the manner that he suggested.
- e) The evidence of Mr Cossu and Mr Webb was inconsistent. Mr Cossu said he would acquire 35% of the business. Mr Webb said it was a 25% share. Mr Webb said that a 25% share was worth \$350,000.
- f) Initially, Mr Cossu said that he gave Mr Webb about \$250,000 to buy his share, but later he said that he paid \$350,000 for a 35% share of the business. Mr Webb submitted that Mr Cossu was confused. The Commission accepts this submission. However, this does not support a finding that there was a genuine investment

52

agreement; rather, it suggests that Mr Cossu was unsuccessfully tailoring his evidence in an effort to excuse the payments that he made to or for Mr Webb.

- g) Mr Cossu provided cash and benefits to Mr Webb and his family in a variety of ways, none of which was consistent with a business investment: key card access to cash in an account held by Mr Cossu; the provision of cars for Mr Webb and his father; the payment of rent for Mr Webb's parents; and the payment of other miscellaneous expenses. According to Mr Webb, he did not discuss with Mr Cossu the manner in which investment monies would be paid, except that Mr Cossu said that he wanted to pay progressively.
- h) The money with which Mr Cossu funded the "investment" was obtained from the recruitment and procurement schemes, in relation to which Mr Webb assisted him.
- i) Mr Cossu did not check that the money he provided was being spent on business development.
- Mr Webb failed to directly apply Mr Cossu's i) payments to the software business. Mr Webb gave evidence that the capital required to progress the business was in the range of \$200,000 to \$2 million and Mr Cossu's payments "assisted" with the development. However, the documents produced to the Commission do not support expenditure of any significant sum on advancing the business. Mr Webb has not engaged anyone to work on the business. Mr Webb accepted that most of the funds provided by Mr Cossu were not applied to the business; they were used for personal expenses and to pay the trustee in bankruptcy. It was submitted by Mr Webb that the fact the funds were not directly applied to the business is of limited relevance, given that: Mr Cossu trusted Mr Webb's judgment; the software business was not either man's primary employment or primary source of income; and it was, essentially, a "passion-project" between close friends. The Commission does not accept this submission, for the reasons set out above.

As to the payments of \$5,000 that were made into Mr Cossu's CBA account, and accessed by Mr Webb, and the payments of \$5,500 that were made to The W Project account from the PMLV account ending in 1053, the Commission finds that the benefits were conferred because of Mr Webb's involvement with Mr Cossu and PMLV:

- a) The timing of the financial benefits aligned with the commencement of the recruitment scheme. Although Mr Cossu and Mr Webb had been good friends for some years before 2021, the benefits did not commence until March 2021, soon after the first PMLV workers started working at Council in February 2021. In March 2021, Mr Cossu established the CBA account to which Mr Webb had sole access (albeit this access commenced in December 2021). In March 2021, PMLV made the first payment on behalf of Mr Webb, transferring \$11,811.29 to his solicitors.
- b) Regular payments were made to the CBA and The W Project accounts. From March 2021, there were regular payments of \$5,000 (to the CBA account accessed by Mr Webb, until the end of January 2023) or \$5,500 (to The W Project account, from 13 February to 6 April 2023). Mr Cossu gave evidence that he could not remember why (from February 2023) he started transferring to The W Project account rather than the CBA account used by Mr Webb but said it was "most probably" because, at that stage, Mr Webb had left Council. On 6 April and 3 June 2023, there were payments of \$10,000.
- c) Mr Webb's connection with PMLV continued after he left Council. According to Ivan Webb, the prospect that the Webbs would acquire PMLV was first raised when Mr Webb was still at Council. The June 2023 sale formalised the Webb family's ownership of PMLV. The draft tender document of 22 September 2022 also speaks of a connection between Mr Webb and PMLV at that time (two months before Mr Webb resigned from Council) and an intention to retain that connection.
- d) Communications between Mr Cossu and Mr Webb are consistent with them being partners in the recruitment scheme. In August 2021, Mr Cossu provided Mr Webb tables showing his expectations for profit from the PMLV recruitment scheme. The October 2021 spreadsheet showed a 50/50 split of profits (see figure 2). The evidence clearly points to Mr Webb as the business partner sharing these profits and suggests no one other than Mr Webb as a possible business partner.
- e) As a bankrupt, Mr Webb was required to disclose his financial affairs to his trustee. Common sense suggests that, with the support of his close friend, the recruitment scheme provided him with a convenient way to achieve significant secret financial benefit while avoiding disclosure to his trustee.

Having regard to the tables generated by Mr Cossu on 2 August 2021 (see figures 1 and 2) and the Excel spreadsheet last modified by Mr Cossu on 9 October 2021 (see figure 3), and the amount, timing and regularity of payments to Mr Webb, the Commission is confident that the regular payments of \$5,000 and \$5,500 were Mr Webb's share of the proceeds of the recruitment arrangement.

However, the Commission is not satisfied that other payments and benefits that were provided to Mr Webb from Mr Cossu (often via PMLV) formed part of the recruitment scheme; they may have been made or conferred for another reason.

# Corrupt conduct in relation to the recruitment scheme

### How the Commission makes findings concerning 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 ICAC Act. If they do, the Commission then considers s 9 of the ICAC Act and the jurisdictional requirements of s 13(3A).

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.

In determining the findings of corrupt conduct set out below the Commission has, in each case, applied the approach set out in appendix 2.

#### Mr Webb - the recruitment scheme

By arrangement between Mr Cossu and Mr Webb, between about 1 January 2021 and 9 December 2022, Mr Webb misused his public official functions as Council's manager of works and projects to facilitate the engagement of contingent workers through PMLV, a company run by his friend Mr Cossu, by approving their engagement and/or determining to add more workers to Council's Works and Projects Unit, in return for which he received approximately \$208,000 during the period that he worked at Council. The arrangement involved Mr Cossu engaging the workers through his company, PMLV, and Mr Webb exercising his hiring and supervisory functions to engage and retain PMLV candidates at Council.

This conduct on the part of Mr Webb comes within s 8(1)(b) of the ICAC Act, because it involved the

dishonest and partial exercise of his official functions. It also comes within s 8(1)(c) of the ICAC Act, because it was conduct of a public official that constituted or involved a breach of public trust. In addition, as discussed below, it was conduct that comes within s 8(2)(d) of the ICAC Act, as it was conduct that could adversely affect the exercise of Mr Webb's official functions and could involve obtaining secret commissions. That is, it could involve offences against s 249B(1) of the Crimes Act 1900 (NSW) ("the Crimes Act"). The following findings of the Commission show the dishonest exercise of Mr Webb's official functions; that is, that the exercise of the functions was dishonest according to ordinary standards. They also support a finding that Mr Webb must have known that the manner in which he exercised his official functions was dishonest by ordinary standards.

- From the outset, Mr Webb supported and promoted the recruitment scheme.
- Mr Webb deliberately did not inform Mr Vangi or Council generally that he was recruiting Mr Cossu, a close personal friend, although he was well aware that the Council's Code of Conduct required him to disclose such a conflict of interest in writing.
- Mr Webb deliberately did not disclose to Mr Vangi that Mr Cossu had proposed a recruitment scheme whereby Mr Cossu or PMLV would supply workers to Council for profit. During its operation, the two men deliberately concealed the scheme from Council.
- Mr Webb was aware that PMLV candidates were receiving much less than the sum paid to PMLV for their services, yielding a significant profit to PMLV, a company owned by his close friend Mr Cossu.
- Mr Webb deliberately did not disclose the very substantial benefits he was receiving from Mr Cossu and PMLV during the period that both were engaged at Council because he was party to an arrangement by which he and Mr Cossu shared profits from the recruitment scheme. At a minimum, Mr Webb had access to the sum of approximately \$5,000 per week that Mr Cossu deposited to a dedicated account commencing soon after the recruitment scheme commenced.

It was Mr Webb's duty to carry out his public functions in the best interests of Council by conducting recruitment in accordance with the policies and protocols of Council, which were designed to achieve merit-based recruitment and achieve value for money.

Mr Webb's conduct was partial because, in the exercise of his official function as hiring manager for his unit, he

54

preferred PMLV candidates over other candidates. He did not consider other candidates on their merits and, in most cases, he did not even interview PMLV candidates to ascertain their suitability. His motivation was the desire that he and his friend Mr Cossu obtain and maximise their personal benefit from the scheme.

Further, Mr Webb's conduct involved a beach of public trust pursuant to s 8(1)(c) of the ICAC Act. His public duty was to hire on merit. His conflicting and undisclosed private interest was his desire to financially benefit himself and his friend Mr Cossu through the profits that PMLV earned in the recruitment scheme. Because of his private interest, Mr Webb supported and promoted a recruitment arrangement that was not merit based and of which Council was unaware. The Commission has found that Mr Webb's conflicting private interest was not only capable of influencing the performance of his public duty; it did so.

For the purpose of s 9 of the ICAC Act, it is relevant to consider s 249B of the Crimes Act.

Section 249B(1) of the Crimes Act provides:

- 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.

Section 249B(2) of the Crimes Act provides:

- 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, or
- (iii) 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, 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 first mentioned person is liable to imprisonment for 7 years.

An "agent" includes any person employed by, or acting for or on behalf of, any other person (referred to as the principal): s 249A(a).

In this context, "corruptly" means that the payment was made in circumstances which would be regarded as corrupt according to standards of conduct that are generally held: *Mehajer v The Queen* (2014) 244 A Crim R 15 at [63], [197] and [198]. A payment to or receipt by an agent without the knowledge or consent of the principal for a purpose described in s 249B(1)(a) or s 249B(2)(a) of the Crimes Act or having the tendency to have the effect referred to in s 249B(1)(b) or s 249B(2)(b) of the Crimes Act would generally be regarded as corrupt according to such standards: ibid.

Section 249B(1) of the Crimes Act criminalises the corrupt receipt of benefits. "Corruptly receiving" a benefit means that, when the benefit was received, the recipient believed that the giver intended that it should influence them to show or refrain from showing favour or disfavour in relation to doing or refraining from doing a *particular act* – see s 249B(1)(a)(i) – or for favouring or disfavouring *particular person/s* – see s 249B(1)(a)(ii) – in relation to the principal's affairs or business: R v Gallagher [1986] VR 219 at 228, 231.

For the purpose of s 9 of the ICAC Act, the Commission is satisfied that Mr Webb's conduct could constitute or involve an offence against s 249B(1)(a)(ii) of the Crimes Act for the following reasons:

- Mr Webb was an "agent" of his employer, the Council.
- To Mr Webb's personal benefit, during his employment at Council, he received a total of approximately \$208,000 by withdrawing from Mr Cossu's CBA account monies that Mr Cossu had deposited into the account for Mr Webb's use.

- To Mr Webb's knowledge, the monies were received as a reward from Mr Cossu for Mr Webb showing favour to PMLV candidates.
- The monies were received corruptly; Mr Webb knew that they were intended by Mr Cossu to be a reward for him showing favour to PMLV candidates in relation to the affairs or business of Mr Webb's principal, the Council, and he deliberately failed to disclose the arrangement to his principal. Such conduct is corrupt by ordinary standards.

Further, the Commission is satisfied that Mr Webb's conduct could constitute or involve an offence against s 249B(1)(b) of the Crimes Act. for the following reasons:

- Mr Webb was an "agent" of his employer, the Council.
- To his personal benefit, during his employment at Council, he received a total of approximately \$208,000 by withdrawing from Mr Cossu's CBA account monies that Mr Cossu had deposited into the account for Mr Webb's use.
- To Mr Webb's knowledge, in paying the monies Mr Cossu intended to influence him to show favour to PMLV candidates in relation to the affairs or business of Mr Webb's principal, the Council.
- The monies were received corruptly; Mr Webb knew that they were intended by Mr Cossu to influence him to favour PMLV candidates in relation to the affairs or business of Mr Webb's principal, the Council, and he deliberately failed to disclose the arrangement to his principal. Such conduct is corrupt by ordinary standards.

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

For the purpose of s 74BA of the ICAC Act, the Commission is satisfied Mr Webb's conduct was serious corrupt conduct for the following reasons:

- The conduct occurred over a lengthy period.
- It was planned and relatively sophisticated.
- It concerned 26 workers and involved many actions.
- It caused Council to pay a significant sum of money to engage the 26 contract workers.
- It was motivated by the desire for financial gain, and it resulted in significant financial gain.
- Mr Webb was a senior staff member of Council.

#### Mr Webb - failure to disclose

Mr Webb's obligations under the Council's Code of Conduct have been addressed in chapter 3.

To recap, the Commission is satisfied Mr Webb understood his obligations under the Code of Conduct.

Apart from the monies withdrawn from the dedicated CBA account, the Commission cannot confidently say that all the benefits received by Mr Webb and his family were by way of reward for his participation in the recruitment scheme.

However, the receipt of many significant benefits from Mr Cossu – a close friend whom Mr Webb had engaged at Council and whom he supervised – was clearly capable of influencing him to favour Mr Cossu and his company PMLV in relation to Council's affairs generally.

It was in that context that, in breach of the Code of Conduct, Mr Webb submitted false or misleading written returns of interest in which he failed to disclose:

- the receipt of benefits from Mr Cossu and PMLV
- his bankruptcy status and associated debts (a matter that, among other things, may have reflected on his suitability to hold significant financial delegations)
- the receipt of a gift or benefit under clause 6 of the Code of Conduct.

Mr Webb's failure to declare the receipt of benefits from Mr Cossu and his bankruptcy status and associated debts is conduct that comes within s 8(1)(b) of the ICAC Act, because it is conduct on his part that constitutes or involves the dishonest or partial exercise of his official functions.

For the purpose of s 9 of the ICAC Act, Mr Webb's deliberate failure to disclose the receipt of benefits and bankruptcy debts was also conduct that "could constitute or involve" a disciplinary offence, and therefore comes within s 9(1)(b) of the ICAC Act.

In this context, a "disciplinary offence" includes any misconduct, irregularity, neglect of duty, breach of discipline or other matter that constitutes or may constitute grounds for disciplinary action under any law.

Throughout the period that Mr Webb was employed, Council had a Code of Conduct that had been adopted under s 440 of the *Local Government Act 1993* (NSW) ("the LGA") – with which members of staff were required to comply: s 440 (5) LGA. Breaches of the Code of Conduct could give rise to disciplinary action.

As a "designated person" under clause 4.8 of the Code of Conduct, Mr Webb was required to prepare and submit written returns of interests (in accordance with clause 4.21) and disclose pecuniary interests (in accordance with clause 4.10). The written return (schedule 2 to the Code of Conduct) required the disclosure of sources of income, gifts and debts. He also breached clause 6.6 of the Code of Conduct in that he failed to promptly disclose the receipt of a gift or benefit. He breached clause 6.15 of the Code of Conduct, which required that he must not take advantage of his position with Council or his Council functions to obtain a private benefit for himself or any other person or body.

This failure occurred in the context of an ongoing close friendship between Mr Webb and Mr Cossu that was not made known to Council, and the fact that Mr Webb had recruited and supervised Mr Cossu at Council. In these circumstances, the breach "could constitute or involve" a disciplinary offence, in that it was a substantial breach of the Code of Conduct: s 9(1)(b) and s 9(6) of the ICAC Act.

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

For the purpose of s 74BA of the ICAC Act the Commission is satisfied that Mr Webb's conduct in deliberately failing to disclose the substantial benefits that he and his family received from Mr Cossu or his company PMLV, and his bankruptcy debts during the period that he was employed at Council was serious corrupt conduct for the following reasons:

- Mr Webb understood his obligations under the Council's Code of Conduct.
- Mr Webb held a senior role at Council, as manager of works and projects.
- Mr Webb and his family received benefits of high value, individually and collectively.
- Mr Webb and his family received many different types of benefit.
- The benefits were received over a period of more than a year.
- During the period that the benefits were received, Mr Webb was required to lodge several disclosure forms and omitted to mention the benefits in the forms that he lodged. In addition, he failed to make disclosure by any other means.
- Mr Webb's bankruptcy debts and associated bankruptcy status may have been important to Council's decision to confer financial delegations.

#### Mr Cossu – the recruitment scheme

By arrangement between Mr Cossu and Mr Webb, between about 1 January 2021 and 20 December 2022, Mr Cossu supplied contingent workers to Council through his company PMLV and, in return, Mr Webb misused his public-official functions as Council's manager of works and projects to engage and retain PMLV candidates at Council. Mr Cossu gave Mr Webb approximately \$208,000.

This conduct on the part of Mr Cossu comes within s 8(1)(a) of the ICAC Act, because it was conduct that adversely affected, either directly or indirectly, the honest and impartial exercise by Mr Webb of his official functions. This is because:

- Mr Cossu included Mr Webb in the scheme; for example, by consulting him in relation to positions that may be available, who would be employed through PMLV and what they would be paid. The scheme operated so that workers were not hired on merit but because they could be hired through PMLV; one of Mr Webb's primary responsibilities in his role at Council was to recruit staff on merit.
- To secretly pay Mr Webb a share of profits or reward and incentivise Mr Webb's continued involvement with the scheme, Mr Cossu opened a dedicated account in his own name, regularly deposited monies into the account and provided Mr Webb with a key card so that he could have exclusive access to the account.
- Mr Cossu facilitated a continuation of the scheme by failing to disclose to Council that Mr Webb was involved or was receiving substantial benefits for his involvement.

Mr Cossu's conduct also comes within s 8(2)(d) of the ICAC Act because it was conduct that adversely affected, either directly or indirectly, the exercise of official functions by Mr Webb and could involve offering secret commissions.

It was submitted by Mr Cossu that he was not a public official. The Commission rejects that submission. For the reasons set out in chapter 1, Mr Cossu was a public official at all times during his employment at Council. However, there is no indication Mr Cossu was exercising any public official function in relation to the recruitment scheme.

For the purpose of s 9(1)(a) of the ICAC Act (whether conduct could constitute or involve a criminal offence) it is relevant to consider s 249B(2) of the Crimes Act.

Under s 249B(2)(a)(i) of the Crimes Act, the giver must intend a benefit to be an inducement to the agent to do or refrain from doing a *particular act* in relation to the principal's affairs: *Mehajer*. Section 249B(2)(a)(ii) requires that the giver intended the payment to be an inducement or reward for favouring or disfavouring *particular person/s* in relation to the principal's affairs: ibid. Under s 249B(2)(b) the giver must make the payment or offer knowing, believing, or intending that it would tend to influence the agent to show favour or disfavour in relation to the principal's affairs; it is not necessary to prove that the agent was actually influenced to show favour or disfavour, or that the result of any favour or disfavour was to the detriment of the principal: *Mehajer* at [66]–[67].

For the purpose of s 9 of the ICAC Act, the Commission is satisfied that Mr Cossu's conduct could constitute or involve an offence against s 249B(2)(a)(ii) of the Crimes Act because:

- Mr Webb was an "agent" of his employer, the Council.
- Mr Cossu gave Mr Webb benefits by making regular payments into an account to which he gave Mr Webb access and from which Mr Webb withdrew a total of \$253,000.
- When doing so, Mr Cossu intended the payment to be a reward for Mr Webb favouring PMLV candidates in relation to the affairs or business of Mr Webb's principal, the Council.
- The monies were given corruptly; by ordinary standards it is corrupt to attempt to reward an employee to favour one's business when recruiting and without the knowledge or consent of the employee's principal.

Further, Mr Cossu's conduct could constitute or involve an offence against s 249B(2)(b) of the Crimes Act, based on the following:

- Mr Webb was an "agent" of his employer, the Council.
- Mr Cossu gave Mr Webb benefits by making regular payments into an account to which he gave Mr Webb access and from which Mr Webb withdrew a total of \$253,000.
- Mr Cossu made the payments knowing, believing, or intending that they would tend to influence Mr Webb to show favour in relation to the recruitment of PMLV workers to work at Council.
- The monies were given corruptly; by ordinary standards it is corrupt to give a benefit to an employee that would tend to influence the employee to favour one's business when recruiting, without the knowledge or consent of the employee's principal.

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



For the purpose of s 74BA of the ICAC Act, the Commission is satisfied Mr Cossu's conduct was serious corrupt conduct, based on the following:

- The conduct occurred over a lengthy period.
- It was planned and relatively sophisticated.
- It concerned 26 workers and involved many actions.
- It caused Council to pay a significant sum of money to engage the 26 contract workers.
- It was motivated by the desire for financial gain, and it resulted in significant financial gain.
- Substantial payments were made for the benefit of Mr Webb, a senior staff member of Council.

#### Section 74A(2) statements

In making a public report, the Commission is required by 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:

- a) obtaining the advice of the Director of Public Prosecutions (DPP) with respect to the prosecution of the person for a specified criminal offence
- b) the taking of action against the person for a specified disciplinary offence
- c) the taking of action against the person as a public official on 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

58

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

In relation to the matters dealt with in this chapter, the Commission considers that Mr Webb and Mr Cossu are "affected" persons.

The evidence of Mr Webb and Mr Cossu was the subject of a declaration under s 38 of the ICAC Act and, in relation to each witness, his evidence cannot be used against him in criminal proceedings, except in relation to prosecution for an offence under the ICAC Act.

The Commission considers that there is ample admissible evidence to consider obtaining the advice of the DPP in relation to prosecution of Mr Webb and Mr Cossu. The admissible evidence includes the extensive contemporaneous documentary evidence (including financial records and text messages) and evidence from other witnesses.

The Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Webb for the criminal offence of corruptly receiving financial benefits from Mr Cossu or his company, PMLV, in respect of engaging PMLV candidates for employment at Council, contrary to s 249B(1) of the Crimes Act.

The Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Cossu for the criminal offence of corruptly giving financial benefits to Mr Webb, an agent of Council, in respect of engaging PMLV candidates for employment at Council, contrary to s 249B(2) of the Crimes Act.



### **Chapter 5: The procurement arrangement**

This chapter examines the allegation relating to procurement for capital works projects at Canterbury-Bankstown Council, between 2020 and 2023.

#### Jeremy Clarke, GWAC and Council

Jeremy Clarke is a generalist engineer with experience in heavy industry.

Mr Clarke met Mr Cossu in the 2000s, when they were working at the Port Kembla Steelworks. They were reacquainted in about 2018 when both were working on the Transport for NSW B-Line Bus Project on the Northern Beaches of Sydney. Thereafter, they kept in touch over coffee, email and by telephone.

Mr Clarke also met Mr Webb on the B-Line project. They were not on friendly terms; the relationship was strained because of historic interactions between them. In relation to the procurement arrangement, there is no evidence of direct engagement between Mr Webb and Mr Clarke between July 2020 and December 2022, other than evidence consistent with ordinary professional interaction.

#### Mr Clarke's company group (2020)

In 2020, Mr Clarke's company group comprised the following:

- Bulk Conveying Equipment Pty Ltd (BCE) a company that had business with high turnover in the past but which, in 2020, was being used as a holding company for equipment. It had a large bank facility and could make substantial payments.
- McGoo Civil Pty Ltd a company that undertook civil construction work as a subcontractor on very large projects on the South Coast of NSW. It had a limited bank facility.

- General Works and Construction Pty Ltd (GWAC) – the company that undertook work for Council.
- Clarke Services Pty Ltd a trustee company for the Clarke family trust. Mr Clarke and his wife were the directors and shareholders.

#### **GWAC** and its work for Council

GWAC was registered with ASIC on 7 July 2020. Mr Clarke was the sole director and secretary. Clarke Services held the two shares issued by the company. Mr Clarke established the company to keep his Sydney and South Coast businesses separate; from the outset he contemplated the possibility that he may wish to sell GWAC as a separate entity.

From July 2020 to November 2022, GWAC was awarded several Council projects and was busy with Council work. Mr Clarke estimated that Council projects comprised about 90% of GWAC business, saying that in this period GWAC did "close to zero" non-Council work. GWAC became the "go-to person for emergency works".

In total, Council awarded 15 projects to GWAC through requests for quotation (RFQs). Table 7 in appendix 5 of this report summarises the RFQ projects. In this chapter, some of these projects are considered in more detail.

GWAC was also awarded three projects through request for tender (RFT): The Appian Way stormwater upgrade project (tender number T55-22); the Greenacre Splash Park – structural concrete pad and installation of water play equipment project (tender number T65-22); and the Salt Pan Creek project (T23-23). The Commission did not review the Greenacre Splash Park or Salt Pan Creek projects.

Between 8 October 2020 and 10 August 2023, Council paid \$5,278,849.47 to Mr Clarke's CBA account ending in 4916 in relation to work performed by GWAC on

various Council projects. Most other payments into this account were loans from other bank accounts controlled by Mr Clarke.

Mr Clarke gave evidence that the profit range in the construction industry was about 10-50% (less for a common construction task and more for one requiring specialist skills).

# Mr Cossu's role in procuring GWAC for Council projects

In his role as a Council officer, Mr Cossu was involved in many of the projects awarded to GWAC, as superintendent's representative, project manager or project officer. Mr Clarke accepted that Mr Cossu had "assisted" him in relation to work undertaken for Council and that some of his payments to Mr Cossu were by way of a "kickback" in return for Mr Cossu helping GWAC to win Council work. He accepted that Mr Cossu had provided him with information regarding other tenders and that, on occasions, the information had allowed him to tailor his guote or tender. He agreed that Mr Cossu had assisted him in preparing his quotes. When pressed about whether Mr Cossu had changed some of the draft quotes that Mr Clarke had prepared for Council jobs so that Mr Cossu "could get his cut of the action", Mr Clarke replied: "I assume that was what he was doing, yes".

Mr Cossu initially resisted the proposition that Mr Clarke had made some payments to him as a "kickback" for helping GWAC to win work; ultimately, however, he accepted this to be true. He also accepted that he had amended quotes sent to him by Mr Clarke. He confirmed that he had increased the price that Council was to pay to GWAC so that he could pocket more money.

The term "kickback" has been understood as synonymous with offering inducements, soliciting, taking bribes, secret profits or secret commissions.

Mr Clarke estimated that, in 2020–2022, PMLV (Mr Cossu's company) invoiced him \$300,000–400,000. He said the payments increased as time went on.

In fact, the total sum of \$2,428,612 was paid by Mr Clarke (or GWAC) to Mr Cossu's (or PMLV) accounts:

- Between 2 November 2020 and 29 May 2023, \$1,247,376 was paid from Mr Clarke's CBA account ending in 4916 to Mr Cossu's (or PMLV) accounts.
- Further sums, totalling \$656,877.30 and \$524,358.70 were paid from BCE accounts to Mr Cossu's (or PMLV) accounts.

The largest project awarded to GWAC by Council was The Appian Way culverts upgrade project. As set out in more detail later in this chapter, Mr Clarke subcontracted the fabrication of the culverts on that project to PMLV, and PMLV subcontracted the fabrication works to Obnova Concrete Constructions Pty Ltd.

Of the of \$2,428,612 paid by Mr Clarke (or GWAC) to Mr Cossu's (or PMLV) accounts, PMLV paid its subcontractor, Obnova Concrete Constructions, a total of \$1,179,072.40 for the fabrication of culverts. PMLV retained the remainder of \$1,249,539.60.

#### **Council's procurement process**

The procurement process Council required for capital works projects varied depending on the estimated contract value or budget for the project. This was furnished by Council's City Assets team, and could significantly increase if there were changes in design or for other reasons. Figure 5 details Council's procurement expenditure matrix.

Where the Procurement Services Unit was involved, the confidentiality of quotes or tenders was protected in that they went to an e-tender (locked) box, accessible only to the Procurement Services Unit.

It would seem that, for lower-value work (up to \$227,271), there was a discretion to use the Local Government Procurement minor-works panel ("the LGP panel"). Under a panel arrangement, government entities like councils can choose from a list of suppliers (panel members) who have been appointed to supply goods and services under agreed terms and conditions, including agreed pricing. When Council did use the LGP panel, it tried to distribute the work between the members of the panel. GWAC was not a member of this panel.

An evaluation panel report was critical to Council's decision to engage a particular contractor. Peter Anderson (acting team leader construction at Council) said that "a lot of faith" was placed in evaluation panel members to perform checks on prospective contractors. The evaluation panel would draft a recommendation report, which was reviewed by Mr Anderson, who considered the pricing for the prospective contractors and whether they were capable of carrying out the work. Any approvals would be given by Mr Webb, unless the value of the work was within Mr Anderson's financial delegation. For projects valued over \$250,000, Anthony Vangi (director of city operations at Council) or the general manager assessed tender recommendations and approved or declined to approve them. Mr Anderson could not recall any occasion when an evaluation panel recommendation had not been accepted. Similarly, Mr Vangi could not recall an occasion when he had

TOTAL ESTIMATED CONTRACT VALUE EXCI. GST	MINIMUM REQUIREMENTS (if not available on existing contract)	OBTAIN Quote/Tender No. from PROCUREMENT Unit?	PROCUREMENT SERVICES TO REVIEW DOCUMENTS?	USE OF E- TENDERING METHOD	EVALUATION PANEL	PROCUREMENT SERVICES TO PROCESS REVIEW INCL. COUNCIL REPORT?
Under \$1500	1 verbal quotation	No	Optional	NA	1 Person	NA
\$1500 - \$4,999	Min 1 written quotation	No	Optional	NA	1 Person	NA
\$5,000 - \$24,999	Min 2 written quotations	No	Optional	NA	1 Person	NA
\$25,000 - \$49,999	Min 2 written quotations	Yes	Optional	NA	Minimum 2 persons	NA
\$50,000 - \$99,999	Min 3 written quotations FULL RFQ/RFT/EOI DOCUMENTS (SEE TEMPLATES) AND TENDER BOX REQUIRED	Yes	Preferred [Note 4]	Preferred [Note 4]	Minimum 2 persons	Yes
<b>\$100,00 -</b> <b>\$199,999</b> [Note 3]	Min 3 written quotations FULL RFQ/RFT/EOI DOCUMENTS (SEE TEMPLATES) AND TENDER BOX REQUIRED	Yes	Mandatory	Mandatory	Minimum 3 persons	Yes
\$ 227,272 and over	<b>OPEN PUBLIC TENDER</b> (Requirement of Local Government Act - See Act for exemptions)	Yes	Mandatory	Mandatory	Minimum 3 persons incl. 1 independent [Note 5]	Yes
Notes: (1) Pr (2) WN (3) As (4) WN (4) WN (5) Ar	<ol> <li>Process must be in accordance with Procurement Policy and Procedures and General Manager's approved delegations for entering into contracts.</li> <li>While above guidelines apply to general contracts, higher standards may apply to consultancy engagements depending on type and complexity.</li> <li>As a general rule, an open tender is strongly recommended, if the contract value is estimated at \$200K (ex GST) or above, to reduce the risk of having to go back to tender, if the \$250K (incl GST) threshold is breached following a quote process.</li> <li>While this is a preferred position, specific tender to be discussed with Procurement Services' officers.</li> <li>Mnide this is a preferred position, specific tender to be discussed with Procurement Services' officers.</li> </ol>	In Procurement Policy neral contracts, higher ris strongly recomm \$250K (incl GST) th becific tender to be dis officer from another b	n Procurement Policy and Procedures and General Manager's approved delegations for entering in neral contracts, higher standards may apply to consultancy engagements depending on type and co is strongly recommended, if the contract value is estimated at \$200K (ex GST) or above, to \$250K (incl GST) threshold is breached following a quote process. ecific tender to be discussed with Procurement Services' officers.	eral Manager's approved sonsultancy engagements alue is estimated at \$20 ewing a quote process. Services' officers. I person, depending on t	delegations for en s depending on typ 0K (ex GST) or ab ender type and cor	itering into contracts. e and complexity. <mark>ove, to reduce the ris</mark> mplexity.
Re <b>tion 34</b> 16			Data Drintad: 04/02/2024 1-56 DM	12/00/1-56 DM	19-1Q	

#### Figure 5: The procurement-expenditure matrix for Canterbury-Bankstown Council

Note: Emphasis in the original.

declined to approve an evaluation panel recommendation, although sometimes he had questioned the relevant project manager before approving.

A tender package would require the prospective contractor to identify subcontractors so that Council could assess whether they posed a risk to delivery.

In the case of tenders, to protect against conflicts of interest, Council adopted a "two envelope system". Once a tender closed and the respondents were known, panel members received and completed conflict of interest forms. An example of a conflict of interest and confidentiality declaration used at Council was tendered during the public inquiry; it includes guidance notes that refer to both pecuniary and non-pecuniary interests. After panel members furnished their conflict of interest forms, Procurement Services first provided the quality component of the tenders to the evaluation panel, then later provided the pricing.

In the case of RFQs, the procedure for declaring a conflict of interest was not formalised and there was no "prompt" for evaluation panel members to make such a declaration, as there was during the tender process. However, as Faiza Bhuiyan (a project manager and team leader at Council) understood it, any conflict should be self-declared to the Procurement Services Unit.

The thresholds that governed Council's procurement requirements were vulnerable to:

- order splitting; that is, splitting a project into smaller components to avoid the more rigorous requirements applicable to higher-value projects
- substantial project variations that may be unrelated to the original scope of work.

During his time at Council, Mr Webb acted as the superintendent of works for Council's capital works projects. In addition, for each project, there was a superintendent's representative (the project manager in charge of the project). The role of a superintendent of works (or their representative) was to be an independent representative of Council, overseeing the project, reviewing any issues that arise and "making the call on how to go forward," including, importantly, in relation to variations. In the interests of Council, they were expected to "push back" on variations that could not be justified and may increase the overall cost to Council.

Ms Bhuiyan gave evidence that, in the case of a tender, the project manager's role included: receiving the project design; collating any tender package; working with the Procurement Services Unit on the contract and assuming responsibility for contract documents; and facilitating the evaluation panel as chairperson. Once the contract was awarded, the project manager would onboard the contractor.

Between 2020 and 2022, Council's procedure in relation to variations followed the flowchart shown in figure 6.

The manager works and projects (who was Mr Webb from 24 February 2020 to 9 December 2022) was responsible for reviewing and endorsing each variation memorandum.

On 16 October 2020, Mr Webb emailed staff members reminding them that project officers must not approve variations without appropriate delegation. At that stage, the delegation of a team leader was \$50,000 and Mr Webb's delegations were \$150,000 (authorisation of expenditure) and \$300,000 (authorisation of payment). Mr Webb emphasised that variations would not be retrospectively approved. Prior to that date, some contingency staff had been approving variations without delegation.

#### The evidence of Mr Cossu and Mr Clarke about the early days of their arrangement

From mid-2020, Mr Clarke and Mr Cossu discussed a possible business arrangement.

Mr Clarke gave evidence that, prior to GWAC's involvement with Council and in the context of a proposed refurbishment of the Port Kembla Steelworks, Mr Cossu had enquired of him as to whether he would be interested in "going in with [him]" on engineering and project management work. In relation to the proposed business, they tossed around the name "Orsum Engineering".

Mr Clarke was concerned to have a shareholders' agreement for any such business. He had a precedent. On 15 June 2020 (three weeks before GWAC was registered and one month after Mr Cossu had started at Council), Mr Clarke emailed a "shareholders agreement – Orsum Engineering" to Mr Cossu. It proposed Mr Cossu as chairman and Mr Clarke as director. According to Mr Clarke, nothing came of it.

Mr Cossu claimed to have no recall of the shareholders' agreement. Nor did he recall forwarding it to Mr Webb's personal email address. Mr Cossu suggested he may have done so "for a laugh". Mr Webb said that he had "no idea" why Mr Cossu had sent the shareholders' agreement to him, he probably didn't open it, he couldn't recall seeing it and Mr Cossu "sent a lot of stuff".

According to Mr Clarke, before June 2020 he received a telephone call from Mr Cossu, who asked whether he

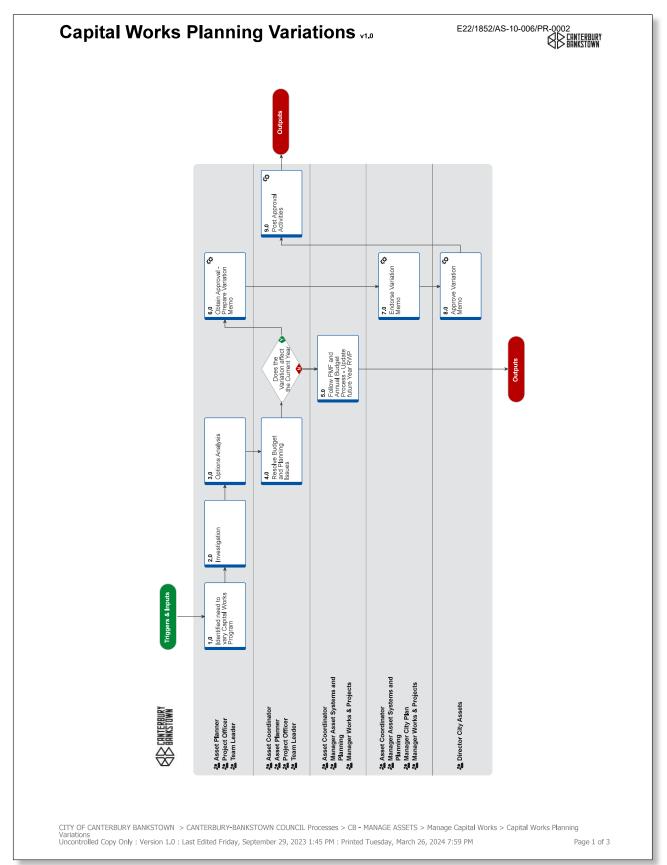


Figure 6: Flowchart showing Canterbury-Bankstown Council's process for assessing and approving variations to capital works projects (2020 to 2022)

was still working with shotcrete (spray on concrete) and whether he would be interested in undertaking shotcreting work for Council. In this call, Mr Clarke learned that Mr Cossu was working at Council. He assumed that Mr Cossu was a project manager. Later, Mr Cossu asked whether Mr Clarke was available as the Council budget was ramping up, there was a lot of work and Council needed people. Mr Clarke responded in the affirmative, as he was very interested in acquiring a government client.

Mr Clarke hoped that, with Mr Cossu's "guidance", he would obtain Council work and ultimately qualify for a panel, especially what Mr Clarke referred to as the "Minor Civil Construction Panel" (understood to be the LGP panel). Mr Clarke said that, by "guidance", he meant that Mr Cossu would "help" him, for example, to understand what Council was looking for, and where and how to obtain relevant information, such as information about applicable standards. As he wanted to get on the panel, Mr Clarke made it known to Mr Cossu that he would do "whatever work he [needed him] to do".

Mr Cossu claimed to have little recall of the circumstances in which Mr Clarke came to do work for Council. He recalled speaking to him about an opportunity to do work for Council; he had envisaged letting Mr Clarke know when projects were coming up and mentioning him to people at Council.

For reasons detailed in this chapter, the Commission rejects the evidence of Mr Clarke and Mr Cossu to the effect that, at the time that GWAC began to do Council work, there was no financial partnership or similar arrangement between them whereby Mr Cossu (either directly or through PMLV) would be financially rewarded for assisting GWAC to win Council work and maximise its profits from such work. The Commission finds that there was such an arrangement from the outset.

Mr Clarke and Mr Cossu denied that Mr Cossu was paid money by way of a share of the profits made by GWAC on Council work.

Mr Clarke said that Mr Cossu did not "specifically" invoice him for work or advice given by Mr Cossu in relation to Council projects. Mr Cossu invoiced him for reimbursement of "bits and pieces" and supplies that Mr Cossu had purchased to assist with Council jobs. Mr Cossu also invoiced him through PMLV for "engineering work" that he undertook for Mr Clarke. Some of the "engineering management" work related to Council jobs and some to "other jobs". For example, when Mr Clarke was advising on plant improvement for a Marulan fertiliser company, Mr Cossu provided verbal advice, and he provided advice when McGoo Civil was constructing retaining walls at private and commercial properties. In addition, Mr Cossu introduced Mr Clarke's companies to private jobs of which Mr Cossu was aware through friends.

The Commission accepts that Mr Cossu may have recovered minor out-of-pocket expenses that he had incurred on behalf of GWAC and GWAC may have paid him for other minor work that he undertook. However, the Commission rejects the evidence that Mr Cossu was not paid a share of the profits made by GWAC on Council work as contrary to compelling contemporaneous documentary material.

Rather, the Commission finds that there was an arrangement whereby, in return for his assistance, Mr Cossu shared in GWAC's profits. This conclusion is supported by more detailed consideration, in the following sections of this chapter, of Mr Cossu's involvement in some of the Council projects that were awarded to GWAC during the period that Mr Cossu was engaged at Council. The Commission did not examine all the projects in detail, but an overview can be found in table 7, in appendix 5.

#### Bankstown Library and Knowledge Centre (July 2020)

The first Council RFQ project awarded to GWAC was for quote number "Q59-21". It concerned an access platform for an air-conditioning cooling tower at Bankstown Library and Knowledge Centre (known as "the BLaKC tower"). The contract sum was \$27,890.

Mr Cossu was the project manager/superintendent's representative for Council on the project and a member of the evaluation panel. He declared no conflict of interest.

Mr Clarke recalled that Mr Cossu had asked him whether he was interested in a job that involved installation work that had to be done at weekends.

Using his Council email, on 9 July 2020 (two days after GWAC was registered on 7 July), Mr Cossu emailed Mr Clarke, referring to a discussion on the previous day, stating that a "design and build" was required (there was no mention of installation) and suggesting an early site walk. They conducted a site meeting.

On 10 July 2020, Anthony Luu (a member of the Procurement Services Unit) emailed the tender box (with a copy to Mr Cossu) advising that the budget and estimated contract value for the project was \$55,000, for "design and construct".

On 10 July 2020, Mr Cossu emailed F3 Industries (F3) seeking a quote for a "design and build".

The project was advertised on 13 July 2020.

On 15 July 2020, following a site visit, Graeme Kirkness of F3 submitted a quote to Mr Cossu, with a total price of \$15,200 to design, fabricate and certify the access platform. The request had been for a "design and build" and the quote did not refer to installation. Mr Cossu said that, at the site visit, Mr Kirkness had told him that F3 didn't do installation. If so, it begs the question why Mr Cossu allowed F3 to proceed with its quote. The Commission did not receive any evidence from F3 about its quotation.

On 17 July 2020, Steelbiz submitted a detailed quote for \$30,337 for the project, including installation costs of \$8,837 (covering transport, installation, supervision and safety documents).

Later that day, Mr Clarke provided a quote to Mr Cossu (at his PMLV email address) for \$16,890 (although, the itemised amounts totalled only \$16,800) for the whole job, including fabrication, delivery, and installation. There was no line item in the quote for safety, management and supervision. Mr Clarke could not explain why his quote had been sent to PMLV.

Four hours later – during which time there were three calls from Mr Cossu to Mr Clarke – Mr Clarke emailed a quote to Mr Cossu (now his Council address) for a total cost of \$27,980. This included \$8,253.80 for "site works" (delivery, installation, supervision and safety). It stated, "we have included and allowed for the manual handling of items up to the location".

In relation to this second quote, which was much higher than the first, Mr Clarke said in evidence that Mr Cossu had asked him whether he had considered various aspects. Further, based on the site visit Mr Clarke had assumed that he would be able to use the lift that was located on site, but Mr Cossu had advised him later that he must use manual labour.

Mr Clarke "[didn't] think" that Mr Cossu had revealed competitor quotes or proposed figures for Mr Clarke's quote, although he may have "hinted" at prices. He could not explain why his cost breakup and descriptions were very similar to but marginally cheaper than those provided by Steelbiz.

Mr Cossu gave evidence that, in the calls with Mr Clarke on 17 July, he probably asked Mr Clarke whether he had forgotten anything in his quote (that is, he asked Mr Clarke if he had included a safety item, et cetera). He "doubted" that he would have given Mr Clarke the Steelbiz quote or relayed figures so that Mr Clarke could undercut Steelbiz. He denied that he had told Mr Clarke what figures were required to "undercut" that quote. Asked whether he had told anyone on the Council that he had helped Mr Clarke prepare the quote, Mr Cossu said: "No ... because I didn't help him." However, the timing, evidence of communication, similarity of content and fortuitous amount of GWAC's final quote compel the inference that Mr Cossu assisted Mr Clarke to substantially increase his quote, while mirroring but undercutting Steelbiz's quote. The Commission cannot determine with confidence whether Mr Cossu provided GWAC with the Steelbiz quote or simply advised Mr Clarke about what to include in GWAC's quote, although the similarity of line items supports the former proposition.

The evaluation panel for this project comprised Mr Cossu and Kevin Jain (another project manager at Council). On 21 July 2020, the panel recommendation report authored by Mr Cossu recommended that the project be awarded to GWAC. The recommendation was endorsed by Mr Anderson and approved by Mr Webb. The report referred to the three quotes that had been received, stating that the F3 quote was non-conforming, as the price did not include installation costs. GWAC's quote was preferred to that of Steelbiz because it was cheaper.

On 23 July 2020, Mr Luu advised Mr Clarke that GWAC had been awarded the contract, that Mr Cossu was the superintendent's representative and that Mr Clarke should provide certain insurances and a construction program.

On the same day (23 July), Mr Clarke messaged Mr Kirkness at F3 stating that Mr Cossu had provided his details in relation to pricing for the design and fabrication of the library access platform, which had been awarded to GWAC. Mr Cossu said that he had assisted Mr Clarke in this way because he knew that F3 was capable.

On 3 August 2020, Mr Cossu sent a project timeline from his PMLV email address to Mr Clarke for platform fabrication and installation, as part of the BLaKC tower project. Mr Clarke gave evidence that he had asked Mr Cossu to create a project timeline for him, and Mr Cossu had "fixed that one up" for him. Mr Clarke then sent the final product to Mr Cossu via his Council email. The timeline nominated a completion date of 3 September. Mr Cossu maintained that he "didn't know" whether he had created the timeline, "but I wanted him to get the job for sure ... he's a good man". The Commission notes that, by 3 August, the job had already been awarded to GWAC.

On 9 September 2020 (six days after the BLaKC tower project was due for completion, according to the timeline), Mr Cossu emailed Mr Clarke, forwarding F3's original quote to design and fabricate the platform, and Mr Clarke emailed Mr Kirkness at F3 Industries, accepting its quote.

Mr Clarke undertook the installation work with the assistance of two men whom Mr Cossu had recommended and whom Mr Cossu paid in cash; Mr Clarke reimbursed Mr Cossu for his expenses in paying the men. Mr Clarke said that Mr Cossu had been present at the installation, as it was a Council job.

#### Variation to the BLaKC tower project

On 14 September 2020, Mr Clarke emailed Mr Cossu (his Council address) regarding a variation of \$4,820 for additional works on the BLaKC tower project. Mr Clarke said that one of the aspects – "acceleration of the installation work" – concerned the need to work over the weekend, as Mr Cossu had pressured him to complete the project (which, according to the timeline, should have been completed by 3 September).

Following a discussion with Mr Cossu, on 15 September 2020, Mr Anderson approved the variation. On the same day, Mr Clarke invoiced Council and Mr Cossu and Mr Webb approved GWAC's invoice ("Invoice 14") for \$36,080 (contract and variation amounts plus GST). On 8 October 2020, this amount was paid by Council and Mr Clarke paid F3 the sum of \$15,200.

Mr Anderson said that variations can be "a latent condition" (as opposed to a change in scope) and, if so, they may proceed on a verbal approval to avoid holding up the project. Mr Cossu also said it was acceptable to retrospectively approve variations. This evidence does not sit comfortably with Council's documented variations procedure, as detailed earlier in this chapter. At no time during the project did Mr Cossu disclose his association with Mr Clarke.

#### Non-destructive digging works for The Appian Way (October 2020)

The non-destructive digging works project ("The Appian Way NDD project", under the RFQ process Q128-21) was a precursor to "The Appian Way stormwater upgrade" major works. The digging was designed to identify service locations prior to undertaking storm drainage works along The Appian Way (Bankstown) and to guide the drainage design.

The budget for this project was \$150,000.

On 30 July 2020, Nathaniel Coelho, a Council design engineer, emailed an RFQ to six contractors (GWAC was not included), seeking a response by 12 August 2020. Five recipients responded, including Aqua Assets Pty Ltd and Durkin Constructions Pty Ltd. The lowest quote (from Utility Locating Pty Ltd trading as SureSearch) was \$181,253.34.

On 3 August 2020, Mr Coelho forwarded to Mr Webb the RFQ stating that "Asad" (Mr Asaduzzaman) had asked him to forward it. Mr Webb could not explain why he had requested the RFQ; he thought that perhaps he had wanted to know "where it was up to in progress".

On 13 August 2020, Mr Cossu (his PMLV address) sent Mr Clarke three emails concerning the project. This included a scanned copy of the Council drawings that had been emailed to contractors on 30 July 2020 and forwarded to Mr Webb on 3 August 2020, and photos marked with the location of the proposed trenches. Mr Cossu agreed that he had taken the photos. Mr Cossu said he didn't recall how he had obtained the other documents.

The material may have come from Mr Webb, after he received it on 3 August 2020. However, as this is only a possibility, the Commission does not infer that Mr Webb sent the material.

Mr Clarke said that, between 13 and 16 August, he must have received more information to enable him to work out what the job required, most likely from Mr Cossu, although he couldn't recall. He said that he could not recall anyone giving him prices or informing him that quotes were being assessed.

An Excel spreadsheet on Mr Clarke's computer (last saved at 4:03 pm on 16 August 2020) contains pricing for 19 trenches, with a quote total of \$179,940.50. In evidence, Mr Clarke said that this was to work out what would be involved in digging slot trenches; it was not a quote but preliminary work.

On 16 August 2020 at 10:10 pm, Mr Clarke emailed himself a photograph from a Durkin design drawing that had been submitted to Council as part of the Durkin RFQ response. Mr Clarke's computer contained two photographs of pages from the Durkin design drawing. In evidence, Mr Clarke said that most likely Mr Cossu had given him access to the photographs, but he could not recall the circumstances in which that had occurred. Mr Cossu said he "really [didn't] know" whether he had been involved in giving the photographs to Mr Clarke.

On 16 August 2020 at 11:07 pm, Mr Clarke emailed Mr Cossu's PMLV address, attaching a GWAC proposal for \$179,940.50, for The Appian Way NDD project. He could not explain why he had emailed the PMLV address rather than the Council address. Mr Cossu said that Mr Clarke may have wanted him to review and give advice about what had been included in the proposal; he couldn't recall whether they had discussed it.

On 16 August 2020 at 11:12 pm, Mr Clarke emailed to Mr Cossu's Council address a proposal for GWAC to undertake The Appian Way NDD.

This proposal was not submitted to Council. Instead, for unknown reasons, Council issued a new RFQ.

Further, for unknown reasons, under the new RFQ the project was broken into two projects: design and construction.

On 16 September 2020, the new RFQ was sent to three contractors only, excluding three of the six original responders, including the two lowest quoters. The three contractors sent the new RFQ were Aqua Assets Pty Ltd (original quote \$261,649), Non Destructive Excavations Australia Pty Ltd ("NDEA") (original quote \$340,000) and GWAC (not an original responder).

About four hours after receiving the RFQ from Mr Luu, Mr Clarke forwarded the email and attachments to Mr Cossu (his PMLV address). There was a four-minute call from Mr Cossu to Mr Clarke.

On 20 September 2020, Mr Clarke emailed CMB Excavations Pty Ltd ("CMB") requesting pricing in line with the Bill of Quantities (BOQ) in the RFQ. CMB provided its rates to Mr Clarke, who forwarded them to Mr Cossu (his PMLV address). Ultimately, GWAC subcontracted to CMB on the project.

On 22 September 2020 at 6:06 am, Mr Clarke emailed to Mr Cossu (his PMLV address) GWAC's original proposed quote for \$179,940.50 – although the project scope had changed.

That night, Mr Clarke emailed Mr Luu attaching GWAC's BOQ in the total sum of \$108,300 and a timeline for the works. The BOQ employed Microsoft Project software. Immediately after sending the documents to Mr Luu, Mr Clarke emailed the same documents to Mr Cossu (his PMLV address).

In evidence, Mr Clarke said he was unsure whether he had spoken to Mr Cossu about the BOQ, but it was possible. Microsoft Project was used by Mr Cossu and, as the document was in Microsoft Project (Council's preferred software), it may have come from Mr Cossu; although Mr Clarke had updated his own software at some point. Mr Clarke "assumed" that he had sent the timeline to Mr Cossu for his advice.

On 23 September 2020 at 12:32 pm, Mr Luu emailed Mr Clarke requesting the BOQ in Excel format and clarifications to several questions no later than noon the following day.

At 2:08 pm on 23 September, there was a four-minute call from Mr Cossu to Mr Clarke. There were several other attempted calls. At 6:08 pm that evening, Mr Cossu emailed Mr Clarke a revised BOQ, the total price now \$104,509.50, and a draft email response for Mr Clarke to send to Mr Luu stating that the change in price was due to an error in calculation. A discount of 3.5% had been included. The metadata of the revised BOQ shows Mr Cossu as the last author of the document (23 September 2020 at 5:54 pm). At 11:53 pm, Mr Clarke emailed the revised BOQ to Mr Luu, together with the explanatory note.

Mr Cossu denied (or, at least, submitted that he had no recollection of) inserting the discount and changing the price but agreed that he probably had inserted the draft response; he said he had done so to help Mr Clarke win the project.

The Commission finds that Mr Cossu did insert the discount and change the price. As a matter of common sense, the author of the memo that explained the change in price was most likely also responsible for the change in price. The Commission infers that, consistent with his behaviour on other occasions, Mr Cossu lowered the price to make GWAC's quotation more attractive to Council and he devised an apparently legitimate explanation for the price change.

Before the tender was awarded, on 1 October 2020, Mr Clarke, Mr Cossu and Mr Luu met onsite to discuss variations, being three additional trenches totalling \$70,050. Mr Clarke agreed that, in the context of this meeting, he had assumed that Mr Cossu had something to do with the project from a Council perspective.

The evaluation panel for The Appian Way NDD comprised Mr Luu, Mr Cossu and Mr Coelho (Council's design engineer). Mr Cossu accepted that he had not disclosed his knowledge of Mr Clarke's revised BOQ to other panel members; he could offer no reason for this omission.

On 6 October 2020, an evaluation panel recommendation report prepared by Mr Luu and agreed by the other panel members was signed by Mr Webb and Mr Asaduzzaman. It recommended that the contract be awarded to GWAC for \$104,509.50. NDEA had quoted \$105,449.64; that is, lower than GWAC's original quote and marginally higher than its revised quote (although the NDEA quote allowed for 13 working nights and GWAC allowed for only eight).

Mr Webb gave evidence that, before a contract is awarded, any discussion about variations should follow a transparent process. A discussion about additional works prior to the award of project was not uncommon if the scope of the project was not fully known, but such a discussion should involve all tenderers. The Commission accepts that may be an appropriate process.

Mr Cossu said that he would not have seen the three quotes from the second RFQ for The Appian Way NDD until all were submitted. All were submitted after GWAC had submitted its first quote.

On 7 October 2020, Mr Luu notified Mr Clarke that GWAC was the successful tenderer and Mr Cossu was the superintendent's representative for the project. Mr Clarke knew that this meant that Mr Cossu would deal with any variations.

### Variations to The Appian Way NDD project

In October 2020 and February 2021, GWAC was required to undertake rectification and variation works for this project. In mid-2021, there were complaints about the state of the roads on which GWAC had worked and trench rectification was needed.

On 22 August 2021, Mr Cossu emailed Mr Webb four unsigned memoranda he had prepared for Mr Vangi's approval. One memorandum, which concerned "Repairs to Appian Way trenches – Approval of Variations", expressly recommended the approval of works for GWAC.

A week later, on 30 August 2021, Mr Cossu texted Mr Webb, "Hi Ben, Jeremy is calling for anything we may have. How can I help with the memo?" On I September 2021, Mr Webb directed Mr Cossu to "just patch Appian Way". Mr Webb's evidence was that he was telling Mr Cossu that GWAC should "just patch [it]" because it was going to be dug up again. Mr Cossu agreed that he was trying to help Mr Clarke win work in relation to this memorandum.

For this project, GWAC was paid \$104,509.50 (the original contract sum) and \$101,810.78 (for variations).

#### Northcote Park amenities block upgrade (November 2020)

As indicated in table 7 (see appendix 5), Council's budget for the Northcote Park amenities block upgrade project (Q196-21) was \$45,000.

Having been awarded the project, GWAC submitted substantial variations. The total that GWAC received was more than twice the project budget.

#### Mr Clarke's "company project cost tracker" and Mr Cossu's spreadsheet on a USB (late 2020)

An Excel spreadsheet titled "company project cost tracker" was found on Mr Clarke's laptop. It was created and last modified by Mr Clarke on 25 November 2020. A similar spreadsheet to Mr Clarke's "company project cost tracker" spreadsheet was found on a USB stick in Mr Cossu's residential premises ("the similar spreadsheet"). It was created and last modified by Mr Clarke on 2 November 2020.

After being informed by Counsel Assisting that the similar spreadsheet was found on a USB at Mr Cossu's house, Mr Clarke accepted he gave the similar spreadsheet

to Mr Cossu. He said he gave it to Mr Cossu as his overheads had been higher than anticipated and he hoped to get a lot more work from Council. He gave evidence linking his need for keeping spreadsheets recording profits to the original conversation with Mr Cossu regarding the proposed joint venture through Orsum Engineering.

The "company project cost tracker" spreadsheet contained four tabs relating to start-up costs and profits on the three projects GWAC had undertaken when the document was created on 2 November (BLaKC tower, The Appian Way NDD and the Northcote Park amenities block upgrade).

The "company project cost tracker" spreadsheet demonstrated that it was the intention of Mr Clarke and Mr Cossu to split the profits of GWAC's Council work on a 50-50 basis.

Tab I of the spreadsheet records business start-up costs and "revenue" received from the first three Council projects. The "revenue" column is actually the net profit received from those jobs, as can be seen in the remaining pages of the spreadsheet. Two rows at the bottom of that spreadsheet are "jc" (Jeremy Clarke) and "pc" (Pietro Cossu) and the figure of \$70,975.28 is recorded against each name. The figure of \$70,975.28 comes from dividing the last figure in the "Running Totals" column (\$141,950.55) by two.

The spreadsheet also indicates that, at that time, Mr Clarke and Mr Cossu had each received \$26,000.

On 2 November 2020, Mr Clarke emailed Mr Cossu at his PMLV address regarding "work to date". Mr Clarke stated, "I ma [sic] reconciling the jobs so far and im [sic] after your invoice for the work done", which he calculated to be \$26,000 plus GST. He asked Mr Cossu to address the invoice to BCE. Mr Cossu responded with PMLV invoice 20–001 addressed to BCE for "work done as per agreed quote" regarding "project management" in the amount of \$28,600 (\$26,000 plus GST).

Financial records tendered during the public inquiry indicated that, on 2 November 2020, Mr Clarke paid PMLV \$28,600 (\$26,000 plus GST) and made two transfers to his BCE account totalling \$28,600 (\$28,500 and \$100), described as "management fees".

In light of this evidence, Counsel Assisting asked Mr Clarke whether he accepted paying Mr Cossu's invoice 20-001 for \$28,600 (\$26,000 plus GST) for his role in performing work for Mr Clarke in the three projects (BLaKC tower, The Appian Way NDD and the Northcote Park amenities block upgrade) identified in the "company project cost tracker" spreadsheet. Mr Clarke conceded, "Those three projects, yes, I guess so." In evidence, Mr Cossu characterised the payment of \$28,600 as repayment of a loan plus items for which he had paid. He said that he had wanted PMLV to seem more valuable as he had intended to sell the company and, for that reason, he had described repayment of the loan as "project management".

The Commission rejects this evidence as an implausible attempt to explain documents that clearly describe the purpose of the payment. The inescapable inference is that the payment was Mr Cossu's share of GWAC's profit from undertaking Council work, for the following reasons:

- Mr Cossu's evidence is inconsistent with Mr Clarke's admission against interest. Mr Clarke accepted he paid Mr Cossu for assisting him in respect of three Council projects.
- The "company project cost tracker" spreadsheet shows that the payment related to Mr Cossu's share of the profits from three Council projects.
- In Mr Clarke's email to Mr Cossu on 2 November 2020 requesting PMLV's invoice, the language is completely inconsistent with the payments being by way of repayment of a loan. In that email, Mr Clarke thanked Mr Cossu for "work to date" and added "I ma [sic] reconciling the job so far and im [sic] after your invoice for the work done, I have totalled it to being \$26,000 including GST, and If your numbers confir [sic] with this please send the invoice".
- Mr Cossu could not recall when he had loaned this money to Mr Clarke. He had no record of the loans allegedly given to Mr Clarke, describing Mr Clarke as meticulous in relation to the repayment of loans while in other respects he painted Mr Clarke as hopeless with paperwork.

Tab 2 of the spreadsheet related to the access platform at the BLaKC tower. It recorded payments to JC (Mr Clarke), PC (Mr Cossu) and MC (McGoo Civil), total revenue of \$36,080 (GWAC invoice), total costs of \$21,205.95 (including the F3 invoice, and \$1000, the cost of Mr Cossu's two labourers), giving a "net result" of \$14,874. 05 (note that this is a slight error, and the net profit was actually \$14,540).

Asked at the public inquiry whether the 40 per cent profit margin on the project was "quite large", Mr Clarke disagreed and said it was a "good margin".

Tab 3 of the spreadsheet, which related to The Appian Way NDD, recorded "Total Costs" of \$122,926.91 and a "Net Result" of \$89,154.54. The bottom two rows of "costs" are described as "Management Fees" and "Engineering Fees" respectively, each totalling \$28,600. This is the same figure that was paid to Mr Cossu and Mr Clarke on 2 November 2020, which was paid out within one week of Mr Clarke receiving Council's payment for the The Appian Way NDD project. Notably, these two "costs" were not included in the "Total Costs" figure identified for the project. This is a further indication that the profits were to be shared between Mr Cossu and Mr Clarke.

The profit margin for The Appian Way NDD was also around 40 per cent. When Counsel Assisting asked Mr Clarke whether he generally applied a 40 per cent margin for Council projects, Mr Clarke said, "I had no formula for that".

# Belmore stadium demolition works (November 2020)

As indicated in table 7 (see appendix 5), the Belmore stadium demolition works project (Q252-21) was the subject of numerous variations, which resulted in GWAC receiving vastly more than Council had budgeted for.

# Belmore stadium fencing upgrade (March 2021)

On 25 April 2021, Council accepted GWAC's quote of \$66,700 to complete a perimeter fencing upgrade at the Belmore sports stadium (Q300-21).

Payment of the invoice was certified by Mr Cossu, recommended by Mr Anderson and approved by Mr Webb.

On 22 August 2021, Mr Cossu emailed Mr Webb four unsigned memoranda he had prepared for Mr Vangi's approval. One memorandum was a variation to the Belmore stadium fencing upgrade contract, to build a timber screen over the newly built Belmore stadium fence to prevent the public from watching training or games inside the stadium. The variation cost was \$10,285. The memorandum did not explicitly mention GWAC.

As discussed, a week later, Mr Cossu texted Mr Webb, "Hi Ben. Jeremy is calling for anything we may have. How can I help with the memo?" Mr Webb responded with instructions about the other memoranda and to "Hold on Belmore Stadium".

Mr Cossu agreed that he was trying to help Mr Clarke win work in relation to these memoranda.

# Abandoned project: Milperra Drain clearing and grubbing

This was a reasonably valuable project but, because of environmental issues, the contract with GWAC was cancelled.

# Leslie Street Depot cleaning project (August 2021)

This project concerned cleaning and clearing the Leslie Street Depot to enable the storage of materials. It involved vermin clearing, water blasting and removal of redundant furniture.

It was part of Mr Cossu's role at Council to identify prospective contractors. Mr Cossu, at times, identified GWAC as a prospective contractor and sent Mr Clarke a request for quote, ensuring that GWAC was included in the procurement process.

On 22 August 2021, Mr Clarke submitted his quote to Council for the Leslie Street Depot cleaning project. The evidence indicates that GWAC's work on the project was completed on or around 18 October 2021. This was before 14 November 2021, when Mr Webb emailed Mr Cossu requesting a purchase order and stating that two quotes were sufficient. On 29 November 2021, another company submitted to Council a quote for the Leslie Street Depot cleaning project.

Also on 22 August 2021, Mr Cossu emailed Mr Webb an unsigned memorandum he had prepared regarding Leslie Street Depot for Mr Vangi's approval. The memorandum did not identify GWAC as the party that had submitted the only quote.

In the public inquiry, Mr Cossu denied deliberately omitting GWAC from the memorandum to conceal he was trying to obtain work for GWAC.

The Commission rejects Mr Cossu's evidence. Mr Cossu obtained one quote (from GWAC) before the work was completed and obtained one from another company after the work was done. The Commission concludes that when Mr Cossu obtained the later quote, he intended to disguise his non-compliance with the proper tendering process and ensure GWAC was included in the procurement process.

# Ewen Park Outdoor Learning timber salvage (August 2021)

This project concerned the processing and relocation of heritage timber being offered by TfNSW at Central Station for Council to salvage and reuse in what would be its Ewan Park Outdoor Learning project.

An unsigned memorandum concerning "Heritage timber, from Central Station", prepared by Mr Cossu and supported by Mr Webb and Mr Vangi, was one of the four memoranda sent by Mr Cossu to Mr Webb on 22 August 2021. The cost of the contract work was \$53,625, comprising a day rate of \$3,575 for a total of 15 days, and the memorandum's recommendation was to give the work to GWAC. This memorandum did not otherwise mention GWAC.

As discussed, a week later, Mr Cossu texted Mr Webb, "Hi Ben. Jeremy is calling for anything we may have. How can I help with the memo?" Mr Webb responded with instructions about the other memoranda and "The timber I will sort out this morning".

Mr Cossu agreed that he was trying to help Mr Clarke win work in relation to these memoranda.

A GWAC invoice, dated 17 November 2021 ("Invoice 30"), indicated the timber was processed at Kingsgrove over eight days between 6 to 20 October 2021.

On 29 November 2021, Mr Cossu emailed Greg Hudson (PMO commercial officer at Council) requesting that a purchase order be raised. Mr Hudson enquired whether there was a second written quote as required by the procurement policy. Mr Cossu replied that he could not find anyone else to do the work. As mentioned, GWAC's invoice of 17 November suggests that, by this time, the work had already been completed.

On 1 December 2021, Awada Civil provided Mr Cossu with a quote of \$4,200 per day to move timber.

Invoice 30 was electronically signed by Mr Cossu and approved by Mr Webb for payment, and GWAC was paid by Council on 16 December 2021.

This was another example of Mr Cossu manipulating the proper tendering process to ensure that GWAC obtained the contract, or at the very least was included as a prospective contractor in the procurement process. He attempted to hide what he had done by obtaining a competitive quote after completion of the work.

# Vale of Ah dog-off-leash area project (October 2021)

Ms Bhuiyan was Council's project manager on this small project to create a dog-off-leash area at the Vale of Ah reserve ("the Vale of Ah DOLA project", Q154-2), which involved fencing and signage.

On 7 October 2021, Kevin Hu (contract administrator at Council) emailed Ms Bhuiyan concerning pricings for the project, with a summary of the submissions received in the RFQ process by the closing date (5 October 2021).

The budget was \$60,000.

On 10 October 2021, Mr Hu emailed Mr Luu regarding the two quotes received; Northern Fencing Specialists Pty Ltd ("Northern Fencing") could do the whole job, but Top Job Installations Pty Ltd could only do part of it. Mr Luu asked Mr Hu to recommend to "Ben" that Council proceed with Northern Fencing, which provided a quote within budget.

On 11 October 2021, Mr Hu emailed the quotes to Mr Webb and, "given the short timeframe", recommended accepting the Northern Fencing quote of \$46,270, as it included all items in the BOQ and was within budget.

Ms Bhuiyan gave evidence that Mr Webb had suggested GWAC be approached. She said Council usually gave preference to a member of the LGP panel, as that provided quality assurance. However, at that time, a lot of contractors on that panel were overloaded, and she believed that Mr Webb thought that Council could get the project done more quickly by going to GWAC.

Later on 11 October 2021, Mr Cossu sent Mr Clarke's mobile telephone number to Ms Bhuiyan. The same afternoon, she emailed Mr Clarke, asking him to quote for the non-fencing part of the work and attaching the official RFQ, construction drawings and a BOQ itemising the works.

Mr Cossu's evidence was that he may have sent Mr Clarke's number to Ms Bhuiyan because Council was having difficulty finding a contractor. He said it would not have been Mr Webb who suggested that course; Ms Bhuiyan may have asked whether he knew anyone.

On 12 October 2021, Ms Bhiuyan emailed Mr Webb stating that she had spoken to Mr Clarke that afternoon, he would be able to commence work the following week and he would provide prices and a program the following day.

Mr Webb gave evidence that he "didn't think" that he had instructed Ms Bhuiyan to speak with Mr Clarke or obtain a quote from GWAC.

The Commission rejects Mr Webb's evidence; it is inconsistent with that of Ms Bhuiyan (whom the Commission found to be a generally reliable witness) and with her email of 12 October 2021, which implies that she had spoken with him about Mr Clarke undertaking the works.

On 13 October 2021 at 8:56 am (before GWAC had furnished a quote), Mr Webb forwarded Ms Bhuiyan's email to Mr Cossu and instructed him to call Mr Clarke and tell him to start on Monday.

In evidence, Mr Webb denied that he had given the "go ahead" without getting a quote.

On 13 October 2021 at 11:05 pm, Mr Clarke emailed Mr Cossu (his PMLV address) a BOQ with prices totalling \$11,670. It omitted a price for the fencing works item of the BOQ. One minute later, at 11:06 pm, Mr Clarke sent a WhatsApp message to Mr Cossu stating, "price for dog park in your email follow up ASAP so I can respond to Faiza". Mr Cossu replied, "Ok".

Mr Cossu denied reviewing the BOQ. That evidence is contradicted by the evidence that, on 14 October 2021 at 8:17 am by WhatsApp, Mr Cossu enquired of Mr Webb as to what was "a good price for that work" as he "needed to price it". At 8:17 am, via WhatsApp, Mr Cossu told Mr Clarke that he was "Waiting". At 8:18 am, Mr Webb sent Mr Cossu a picture. It showed the Northern Fencing quote of \$46,270 as well as the total project budget of \$60,000.

Mr Webb said that he had probably sent the image to enable Mr Cossu to see the budget price for the Vale of Ah DOLA project (\$60,000). He suggested that Mr Cossu may have needed that information in his Council capacity, rather than to assist GWAC. By way of further explanation, Mr Webb suggested that Mr Cossu's communication "isn't always clear" but conceded that he had sought no clarification from Mr Cossu.

The Commission does not accept Mr Webb's evidence. Mr Cossu had asked about a "good price" because he "needed to price" the project; he hadn't enquired about the budget. The Commission finds that Mr Webb sent the information to Mr Cossu so that he could determine a competitive price by reference to the Northern Fencing quote.

On 14 December at 9:51 am, Mr Clarke emailed Mr Cossu (his PMLV address) under the heading "fencing included revision" with a BOQ that was the same as that emailed to Mr Cossu on 13 October 2021, except that the fencing works item was now priced and the total was now \$41,975.

On 14 October 2021 at 9:06 pm, Mr Clarke emailed Ms Bhuiyan attaching a completed BOQ for the Value of Ah DOLA project. It was similar to the BOQ he sent to Mr Cossu on 13 October, in that it also did not include fencing, but the rates for other items were now higher so that the total price was now \$16,192. The next day (15 October 2021), Mr Hu emailed Mr Webb (copying Ms Bhuiyan) referring to an updated submission from Northern Fencing for fencing works only (\$22,951) and the quote from GWAC for the rest of the project (\$16,192) against a total budget of \$60,000. Mr Hu recommended that Council accept these quotes and Mr Webb approved the recommendation.

Subsequently, an item was removed from the GWAC job, reducing the price to \$14,092. That amount was paid on 2 December 2021.

# Ewen Park folded lawn (November 2021)

In November 2021, GWAC was awarded a Council contract to deliver demolition and degrading for Ewen Park folding lawn (Q100-23). Mr Cossu was not on the evaluation panel for this project. He was sent a copy of GWAC's quote for the project, but it was not amended before submission to Council (see table 7 in appendix 5). GWAC was awarded a contract for this project worth \$44,545 and variations totalling \$13,820.

#### Belmore stadium roof temporary works and scaffolding (December 2021)

Contract Q256-22 was a project to repair the Belmore stadium roof. However, Ducros Design Pty Ltd (a consultant engineering firm) had found corrosion in the purlins supporting the roof that may have required replacement or reinforcement. In a memorandum to Mr Vangi, Mr Webb proposed that the consultant engineer inspect the thickness of the purlins directly and GWAC be contracted to provide access to the roof. This work was treated as a variation to Q256-22 but eventually became part of a separate project, Q306-22, funded by a different cost centre.

On I December 2021, Mr Cossu sent Mr Clarke an image that was part of a BOQ. Mr Clarke replied, thanking him. The following exchange ensued:

COSSU:	Dont change your price.
CLARKE:	l won't
COSSU:	I will look into it

During the public inquiry, Mr Cossu could not provide an explanation for these messages.

On 8 December 2021, the conversation was:

COSSU:	Send me the quote
CLARKE:	To which account
COSSU:	There was one other one for the scaffolding only
COSSU:	PMLV
CLARKE:	l cannot find one specifically for the scaffold
WEBB:	I will talk to you Monday morning.

On 13 December 2021 at 11:00 am, Mr Cossu sent to Mr Clarke a message saying "37600". Later that morning (11:53 am), Mr Cossu communicated with Mr Clarke by WhatsApp:

CLARKE:	In your inbox
COSSU:	Send it in PDF to Council

When Counsel Assisting put to Mr Cossu that he was telling Mr Clarke what to put in his quote to Council, he responded "I don't have idea".

At 12:06 pm, Mr Clarke submitted to Mr Cossu (his Council email address) a quote for Belmore stadium for \$37,500 (that is, \$100 cheaper than the price Mr Cossu messaged Mr Clarke that morning).

Based on the evidence set out above and in table 3, the Belmore stadium roof project was an instance of Mr Cossu providing Mr Clarke assistance in pricing his quotes.

# The "light pole project" (February 2022)

GWAC was not awarded this project and it was not in itself the subject of the Commission's investigation. However, related communications between Mr Webb and Mr Cossu were examined in the public inquiry.

On 25 February 2022, Mr Cossu sent Mr Webb a GWAC BOQ for project T37-22, with the subject "Light Pole Footings Pricing Schedule". There was the following text-message exchange:

COSSU:	Hi Ben, Jeremy is quoting for the attached any idea?
WEBB:	They are for all the light poles. Pretty straightforward job
COSSU:	Have looked at the BOQ? Does he have any chance?
WEBB:	Yes. Minor panel was very expensive.
COSSU:	[Can] we go up?
WEBB:	I will talk to you Monday morning.

When it was put to Mr Cossu that he had sent Mr Clarke's prices to Mr Webb, he said he could not recall doing so but he could see what the message recorded. Mr Cossu accepted that when he said, "can we go up", he was asking Mr Webb about raising Mr Clarke's prices. The Commission is satisfied this exchange in relation to the light pole project is another example of Mr Cossu assisting Mr Clarke with the prices GWAC included in its quotes.

In evidence, Mr Webb disagreed with the proposition that Mr Cossu had been asking him whether there was scope to increase GWAC's quote.

This exchange raises questions about whether Mr Webb was aware that Mr Cossu was assisting Mr Clarke to price Council jobs. The question of whether Mr Webb was party to the procurement arrangement between Mr Cossu and Mr Clarke is addressed at the end of this chapter.

#### Belmore Sports Ground – box gutters and roof repairs (March 2022)

This project (Q315-22) followed on from the inspections in Q256-22 and was to deliver the identified repairs on the box gutters and roof of Belmore Sports Ground stadium.

As outlined in table 7 (see appendix 5), GWAC claimed extensive variations for the project, amounting to more than \$444,900 above the original project budget.

The final amount received by GWAC for this project was more than \$290,900 higher than the next largest quote received from a competitor candidate during the original RFQ process.

Mr Cossu was a member of the evaluation panel for this project and was sent GWAC's quote before it was submitted to Council.

No competing quotes were sought for the variations, as GWAC was already on site.

#### North Terrace Culvert project hoarding and statue removal (August 2022)

In August 2022, GWAC was awarded a contract for statue removal and hoarding (for establishing a perimeter around a work site) as part of the North Terrace Culvert project (Q107-23). This project was related to The Appian Way stormwater upgrade project.

There was evidence that Mr Cossu reviewed GWAC's draft quote for the project and obtained a competitor quote approximately four days after Mr Clarke had supplied Council with his invoice for the work. For more information about this project, see table 7 in appendix 5.

# Undercliffe retaining wall project (December 2022)

In late 2022, GWAC was awarded a Council contract to deliver works on the Undercliffe retaining wall project (Q100-23) and delivered them below budget. Mr Cossu was not on the evaluation panel for this project and there is no evidence he reviewed GWAC's quote for the project (see table 7 in appendix 5).

# Sefton Golf Course shed (late 2022)

In late 2022, GWAC was awarded a contract to supply and install a golf shed at Sefton Golf Course (Q174-23). Mr Cossu was not on the evaluation panel. While Mr Clarke forwarded GWAC's quote of \$42,230 to Mr Cossu, it was not amended prior to him sending it to Council. GWAC was also awarded variations totalling \$18,353.97 for this project (see table 7 in appendix 5).

# The Appian Way stormwater upgrade project

The Appian Way stormwater upgrade ("The Appian Way works program") was a significant drainage infrastructure upgrade. It involved the installation of pre-cast elements (culverts and pipes) to decrease the flood risk to Bankstown CBD by increasing the drainage capacity underneath North Terrace, The Appian Way and The Mall.

The total budget for the program was \$16–20 million.

The project interfaced with several high-value projects being undertaken by other agencies.

Initially, Council sought interest in The Appian Way works program through RFQ Q171-22. Council required RFQ tenderers to be on the then Roads and Maritime Service (RMS) and NSW Government lists. When the RFQ process failed to identify a contractor for a substantial part of the work, the work was split, and Council moved to a tender process.

In its final iteration, The Appian Way works program had several elements, including:

 Q128-21 The Appian Way Non-destructive digging works ("The Appian Way NDD project"); awarded to GWAC on 7 October 2020 and discussed earlier in this chapter.

- T55-22 The Appian Way stormwater upgrade supply and delivery of culverts ("The Appian Way culverts upgrade project"); awarded to GWAC on 29 June 2022. This phase consisted of three parts: pipe drainage, pre-cast pits and pre-cast culverts.
- T56-22 The Appian Way stormwater upgrade – civil works ("The Appian Way civil works project"); that were not sought by GWAC.

The allocated budget for The Appian Way culverts upgrade project (T55-22) was \$2.5 million.

Mr Clarke said that, in April 2021 (before the project was split into components), Mr Cossu had sent him drawings for the project. On 8 April 2021, Mr Clarke informed Mr Cossu that he "[needed] the other culvert drawings". Mr Cossu obtained 15 pages of drawings for The Appian Way works program from Council worker Mr Magsipoc – who was a project manager hired through the recruitment scheme (see chapter 4) – and scanned them to Mr Clarke. Again, at Mr Cossu's request, on 20 May 2021 Mr Magsipoc provided drawings to him from the project. All the documents contain a footer identifying the project and showing Council as the client. Mr Clarke realised that, as then constituted, the project was too large for him.

#### Mr Cossu makes early enquiries of pre-cast concrete suppliers (April to November 2021)

Mr Cossu knew that GWAC did not have a facility to manufacture the pre-cast elements that were critical to The Appian Way culverts upgrade project.

On 24 May 2021, Mr Cossu emailed an edited page of the culvert-upgrade drawings to Graeme Tunbridge, who worked for Austral Precast, seeking an approximate cost per unit to produce and deliver the culverts. Mr Tunbridge advised Mr Cossu that he could not provide a costing for the culverts.

In about 2015, Mr Clarke had owned a company known as Obnova Pty Ltd, which had manufactured pre-cast concrete. It had employed Miroslav (Mick) Davidovic as a technical manager. Following a dispute, Mr Davidovic had established the company "Obnova Concrete Constructions Pty Ltd" ("Obnova"). It operated from the Wollongong premises that had been occupied by Mr Clarke's Obnova company, specialising in pre-cast concrete constructions. Mr Clarke and Mr Davidovic had an antagonistic relationship.

It was Mr Cossu's evidence that, in his mind in mid-2021, Obnova was the obvious pre-cast fabricator for The Appian Way culverts upgrade project. However, Mr Cossu knew of the poor relationship between Mr Clarke and Mr Davidovic. He and Mr Clarke discussed a "work around" whereby Mr Clarke would subcontract the fabrication to Mr Cossu's company, PMLV, and PMLV would deal with Obnova. Mr Cossu said that this plan was developed in mid-2021.

Mr Cossu telephoned Mr Davidovic to re-introduce himself, as the two had previously met. Mr Cossu mentioned a project for the construction of culverts.

On 22 July 2021, Mr Cossu (his PMLV address) emailed Mr Davidovic seeking a price for various culverts, "to see if we are competitive or not".

On the afternoon of 30 September 2021, Mr Cossu sent Mr Webb photos via WhatsApp of Obnova's factory in Wollongong and told Mr Webb he "had a good meeting". There was the following exchange:

	ing exeriainge.
COSSU:	Hi Ben, what you think about the capability of this guys? They have the moulds <b>we</b> need, and they are doing work for transport [TfNSW]. I spoke to them today Mike (the owner) [Davidovic] said if I give them the loads required he will prepare the design to submit for his Colverts [sic]. At the moment they are doing something similar of ours Excavation of 10~15m prepare the bottom layer, place the floor piece than the colverts [sic] fill and compact, drill place dials and pour 100mm slab before placing asphalt.
WEBB:	It won't matter if they are not on the panel we cannot use them
COSSU:	I thought <b>we</b> were going to use GWAC that's why I was talking to them [Obnova]
WEBB:	I asked you if they were on panel
COSSU:	No Not in our panel
WEBB:	No the state govt panel What's the business called.
COSSU:	Obnova but if they [Obnova] bid directly <b>we</b> get nothing If you want I can give you 2 more that are in the gov panel
WEBB:	I'll call you tomorrow
(Emphasis added)	

Mr Cossu gave evidence that his first use of "we" (shown in bold) was a reference to Council. He didn't know what he had meant by the second "we" (also shown in bold); it may have been a reference to himself and Mr Clarke. It was probable that he had already spoken to Mr Webb about using GWAC. Mr Cossu originally said he probably had sent the images to Mr Webb to show that he/PMLV had the capacity to do the work; however, he then corrected to say that he probably had intended to show that GWAC could do the job. Mr Cossu said that he had not been honest with Mr Webb in that he had not told Mr Webb that he was "helping" GWAC.

In his evidence, Mr Webb said he could not recall any discussion prior to this time about using Obnova or GWAC to deliver the culverts and did not believe that there had been a discussion about using GWAC or another supplier.

The natural reading of the exchange of 30 September 2021 is that Mr Cossu and Mr Webb were considering "using" GWAC but, as GWAC lacked the capacity to manufacture pre-cast elements, Mr Cossu was investigating a manufacturing source for the pre-cast component, and to that end had met with Obnova. He was informing Mr Webb that he "had a good meeting" and was seeking Mr Webb's endorsement of Obnova. Mr Webb did not give that endorsement but said that he would discuss it with Mr Cossu the following day.

What is plain from this exchange is that, in September 2021, Mr Webb and Mr Cossu were discussing the possibility of GWAC undertaking the culvert project, using a third-party pre-cast manufacturer. Mr Cossu said as much in his evidence.

On 17 November 2021, Ms Bhuiyan sent drawings for The Appian Way culverts upgrade project to Mr Cossu.

#### An RFQ is issued and fails, quotes are requested for pre-cast elements (November 2021 to February 2022)

Meanwhile, in October 2021 Ms Bhuiyan had become the project manager for The Appian Way project. By this stage, the first part of the project, the non-destructive digging, had been undertaken (see the section on those works earlier in this chapter).

On 9 November 2021, Council issued an RFQ for the remaining two parts of the project, which were advertised as one project. Twelve eligible contractors were targeted from RMS and state government panels.

Mr Dankaro (a PMLV contractor working for Council) was instructed to test the market for suppliers for the project. On 23 December 2021, he advised Mr Webb

(copying Ms Bhuiyan, Mr Anderson and Mr Cossu) that he had contacted 23 contractors and was awaiting responses. GWAC was not one of the contractors he contacted.

On 31 January 2022, Mr Dankaro emailed Mr Webb (copying Ms Bhuiyan, Mr Cossu and Mr Luu) updating him on the procurement effort. No responses had been received from the contractors that had been contacted. In relation to "precast", Dankaro noted that the "project team have investigated and determined that [Alpha Precast and GWAC] are able to produce and supply required culverts for these projects within the required timeframe".

On 19 February 2022, Mr Dankaro (copying Mr Cossu) emailed a BOQ to contractors (inferentially, including GWAC) "urgently requesting quotes for concrete pre-cast elements". Mr Dankaro said the inclusion of GWAC would have been at the request of Mr Webb, Mr Cossu or Ms Bhuiyan.

Later that day, Mr Clarke forwarded Mr Cossu (his PMLV address) the BOQ and project drawings that he had received from Mr Dankaro. Mr Cossu filled in the BOQ section relating to the pre-cast elements.

On 21 February 2022, Mr Cossu sent from his Council email to his PMLV email the BOQ and tender drawings for the pre-cast elements. Immediately thereafter, Mr Cossu (his PMLV address) emailed Mr Davidovic attaching the BOQ.

# The Appian Way RFQ moves to a tender process

Council received no submissions in response to the RFQ for The Appian Way culverts upgrade project.

After discussions in Council's Executive Leadership Team, Mr Webb instructed Ms Bhuiyan to review the procurement strategy and consider breaking it up.

The Executive Leadership Team decided to go "off panel" – that is, no longer limiting themselves to suppliers on the RMS and state government panels. They proceeded by way of a select tender for the civil works portion of the project and an open tender for the supply of culverts.

As project manager, Ms Bhuiyan developed tender documents and a draft contract for T55-22.

Mr Dankaro advised Ms Bhuiyan of potential pre-cast suppliers. On 23 February 2022, Ms Bhuiyan emailed Vy Ho (team leader procurement at Council), adding Advanciv and GWAC to the list of suppliers.

Later on 23 February 2022, Mr Dankaro sent a follow-up email to pre-cast suppliers (blind copying Ms Bhuiyan,

Mr Cossu and Mr Luu) advising that the RFQ was now a formal open tender process with a closing date of 22 March 2022.

In evidence, Mr Clarke said that, after receiving this email from Mr Dankaro, he would have spoken to Mr Cossu.

On 24 February 2022, Mr Webb approved a tender evaluation panel, nominating the project manager as Ms Bhuiyan and the panel members as Mr Luu, Mr Cossu and Mr Anderson. As project manager, Ms Bhuiyan was responsible for recommending members of the evaluation panel to Mr Webb for approval.

By this stage, it was known that GWAC was interested in the project and – in Ms Bhuiyan's view – panel members should have declared any conflict of interest.

On 1 March 2022, tender package T55-22 was published on e-Tendering (the NSW Government website for state government tenders), with a tender closing date of 22 March 2022.

# GWAC's responses to tender requirements

All tenderers were required to agree to Council's Conditions of Tender. This included compliance with Council's Code of Conduct and Statement of Business Ethics.

Tenderers were prohibited from engaging in corrupt practices in general. Each must, among other things, warrant it has not had corrupt access to information, will disclose any relationships with Council personnel and will use only subcontractors disclosed to and approved by Council.

Mr Clarke said that he downloaded and reviewed the tender package. However, he claimed he did not appreciate that it required him to disclose any relationship he had with Council personnel. He thought that any obligation to disclose rested with the Council officer. He said he did not realise Mr Cossu was on the evaluation panel.

Mr Clarke appreciated that his relationship with Mr Cossu did need to be disclosed by someone.

Mr Clarke said that it had always been his intention to use subcontractors for The Appian Way culverts upgrade project; he intended to use different subcontractors to supply the culverts, pits and pipes. Section 11 of the tender prompted the tenderer to give details of staff or subcontractors. In GWAC's submission, only Mr Clarke was nominated in this section. The submission referred to Mr Clarke having five years' "pre-cast concrete production and supply" and there was no reference to subcontractors. As to the failure to nominate staff or subcontractors other than himself, Mr Clarke said that he could not recall why he had failed to do so and that he may have "missed it". He said that in relation to pipe supply there were about 10 possible suppliers, and he didn't want to be "locked in"; in relation to culverts there were two possible suppliers; and in relation to pits there were two possible suppliers. At the time of tender, he had not identified the suppliers that he would use and, as he did not know the likely costs, he had submitted high estimates.

In relation to the culverts, Mr Clarke said that the two suppliers he was considering were Paul Gallo – who had undertaken pre-cast work for Mr Clarke in the past – and PMLV (subcontracting to Obnova). Mr Clarke said that his relationship with Mr Gallo subsequently soured. He also described Mr Gallo as "unavailable", suggesting this was the reason the Obnova option was revisited, having initially been rejected because of his relationship with Mr Davidovic.

Ms Bhuiyan said that the evaluation score sheet for this project heavily weighted project delivery and methodology. As fabrication of culverts, pipes and pits was the biggest part of the project – in terms of both quantity and value – subcontracting to another entity would have been significant to the evaluation. Had a subcontractor been disclosed in the tender package, Council would have done due diligence and may have gone direct to the subcontractor.

Ms Bhuiyan's evidence was that, initially, she was not aware that GWAC itself had no capacity to fabricate the pre-cast elements. At some point, she learned that GWAC lacked capacity. However, her evidence was quite unclear on the question of whether she concluded that relevant experience lay with an entity that was related to GWAC or with a third-party subcontractor.

Nothing turns on this confusion. It is likely that Ms Bhuiyan herself was always unclear about where the relevant experience lay. In any event, her equivocation on this point did not base a substantial attack on her credit. The Commission accepts her evidence about other significant matters; her demeanour was forthright, and her evidence accorded with contemporaneous records.

On the other hand, Mr Vangi said that though GWAC did not nominate a subcontractor for fabrication of the culverts, he understood that they would engage a third party to do it and that the recommendation report from the evaluation panel said so. The recommendation report contained no such statement. Mr Vangi was confused on this significant point; possibly, he was not au fait with subcontracting requirements at the time. However, his confusion does not cause the Commission to doubt his credibility generally. As to culvert lengths, Ms Bhuiyan said that if, at the tender stage, GWAC had notified Council that they could only provide 2.4-metre culverts, the team would have discussed whether there was a way around this problem; for example, by requiring additional culverts or changing their design. Given the culvert specifications were critical for the project, Ms Bhuiyan said a failure to comply may have resulted in GWAC losing the tender.

### Mr Cossu's assistance to Mr Clarke with the tender (4 to 22 March 2022)

On 4 March 2022, Mr Clarke sent a text to his wife saying:

I'm feeling successful today ... I had a talk with Pietro and he said the council will help.

In evidence, Mr Clarke said that he did not believe that this message related to the tender for The Appian Way culverts upgrade project; rather, Mr Cossu had offered to assist him to recover the sum of approximately \$900,000 that he was owed in relation to the Greenacre Splash Park project.

The Commission rejects Mr Clarke's evidence because, on 7 March 2022 at 12:17 pm, Mr Cossu did "help" by emailing Mr Sumreen (a The Appian Way project officer) and Ms Bhuiyan, providing Mr Clarke's contact details. Ms Bhuiyan sent the details to Ms Ho, who replied that she had spoken with "Jeremy" about accessing the tender documents for T55-22 via the NSW e-Tendering website.

On 9 March 2022, Mr Clarke emailed Mr Cossu (his PMLV address) attaching a zip file containing tender documents. Mr Cossu (his PMLV address) responded, "Send me the BOQ only Cannot open it". Mr Clarke emailed Mr Cossu (his PMLV address) again, attaching the T55-22 zip folder. Later, Mr Clarke emailed Mr Cossu (his PMLV address) attaching the BOQ only.

On 18 March, Mr Cossu sent a message to Mr Clarke asking Mr Clarke to call him: "no one around please".

Later that day, Mr Clarke discussed finances with his wife. He told her, "Pietro is going to put ten in today". Mr Clarke said that this was a reference to the fact that Mr Cossu was going to lend him \$10,000.

At 10:09 am on 22 March 2022, Mr Cossu (from his personal email) sent Mr Davidovic another copy of the BOQ (in addition to the copy he had supplied on 21 February 2022). "PMLV Consulting" had been inserted at the top of the document. Mr Cossu's evidence was that he sent it to Mr Davidovic so he could price the culverts.

At 11:12 am that same day (22 March), Council notified tenderers that the closing time and date had been updated

to 2:30 pm on 24 March, as requested by one prospective tenderer (not GWAC).

At 12:49 pm, Mr Clarke wrote to Mr Cossu, "I just need the pipe prices and culvert ones".

Mr Clarke gave evidence that, having sent the BOQ template and drawings to Mr Cossu on 19 February 2022, he hoped that Mr Cossu would assist him to secure Obnova's services, and he needed their prices to complete the BOQ. By this stage, it was clear that Mr Gallo would not be used as a supplier.

As to PMLV being the intermediary between GWAC and Obnova, Mr Clarke said that there was no discussion about whether PMLV would charge for the proposed assistance. Mr Clarke hoped that Mr Cossu "would just be doing this to help [him] out".

This evidence is rejected. It does not sit comfortably with Mr Cossu's evidence and the documentary evidence to the effect that, by this stage, it was clear that the use of PMLV as an intermediary would entail significant input from Mr Cossu. Nor does it sit well with the evidence of earlier kickbacks given to Mr Cossu for assisting GWAC to win RFQ contracts.

# Mr Cossu's involvement in GWAC's tender, up to the tender submission deadline

On 24 March 2022 at 7:53 am, Mr Cossu (from his personal email) sent Mr Clarke a BOQ for The Appian Way culverts upgrade project, including most prices. Mr Cossu said he had amended the prices to allow a margin, but he had not discussed the margin with Mr Clarke.

At 9:05 am that same day (24 March), Mr Cossu sent the following text message to Mr Clarke:

COSSU:	Call me when you send it
COSSU:	Please <b>he</b> wants to see it

(Emphasis added)

Mr Cossu gave evidence that "he" was not a reference to Mr Webb. He said it may have been a reference to Mr Davidovic (an assertion that makes no sense, as Mr Davidovic may have become upset at seeing the inflated price in the BOQ).

At 9:33 am that day, Mr Clarke emailed Mr Cossu (his PMLV address) attaching GWAC's BOQ for \$2,339,556.90. All items were priced, as by that stage Mr Clarke had received the price for pits from his supplier. At 11:05 am, Mr Clarke emailed Mr Cossu (his PMLV address) attaching a revised BOQ for \$2,165,720.20. The figures under the heading "Supply pre-cast pits" had been changed, and new figures had been added for "pipe drainage".

At 11:26 am, Mr Clarke messaged Mr Cossu saying, "Call when u can please".

Mr Clarke submitted GWAC's tender that afternoon.

#### Mr Cossu declares a conflict of interest (24 March 2022) and Mr Dankaro replaces him on the evaluation panel

In accordance with usual practice following the close of tenders, on 24 March 2022, Ms Ho emailed Ms Bhuiyan, Mr Anderson, Mr Cossu, and Mr Luu (the tender panel) a conflict of interest document and informed them that Council had received four submissions: from Cadia Pty Ltd, GWAC, Modcast Pty Ltd, and Precast Civil Industries Pty Ltd trading as Civilmart Bcp Pre-cast (Moorebank) ("Pre-cast").

Ms Bhuiyan gave evidence that, when Mr Cossu failed to return his conflict of interest form to her, she approached him. He said that he would like to be removed from the evaluation panel as he had a conflict with GWAC; he had known Mr Clarke on other jobs, they were friendly and they had known each other a long time. While Ms Bhuiyan did not perceive that there was a clearcut conflict, she was happy to meet his request. She was busy and didn't pause to reflect on the fact that Mr Cossu had been working with GWAC on Council jobs for some time.

Having spoken to Mr Cossu, Ms Bhuiyan went straight to Mr Webb's office and recounted what Mr Cossu had told her concerning his conflict of interest.

Ms Bhuiyan then emailed Ms Ho, Mr Anderson, Mr Cossu, Mr Luu and Mr Webb, stating:

Please note that we will need to replace Pietro Cossu on the Tender Evaluation Panel. Could we replace Pietro Cossu with Nosa Dankaro? @Ben please approve request to replace Pietro on the Tender Evaluation Panel.

Ms Bhuiyan was unsure who had proposed Mr Dankaro as Mr Cossu's replacement on the panel (she does not believe that it was Mr Cossu) but she considered him to be a natural choice given his prior involvement in the project. Mr Cossu also said he did not propose Mr Dankaro as his replacement.

Mr Cossu gave evidence that he did not speak to Ms Bhuiyan regarding his conflict of interest; he had spoken to Mr Anderson and said that he was "too close" to Mr Clarke. He did not say that they were very good friends (although that was the case) and he did not mention the PMLV subcontracting arrangement as he didn't want the arrangement to be discovered.

Mr Webb gave evidence that he recalled Ms Bhuiyan telling him that Mr Cossu had to be removed from the panel. He did not discuss the reason with Mr Cossu. He approved the request to replace Mr Cossu with Mr Dankaro.

Mr Clarke said Mr Cossu told him he had declared an interest. Mr Clarke understood that Mr Cossu had told Council that he wasn't available to participate in the tender.

Mr Dankaro said he knew that Mr Cossu couldn't continue on the panel but did not know the reason; he inferred that it may have been because he was too busy.

On 24 March 2022, Mr Dankaro completed a conflict of interest form declaring he had nil interests. He agreed to keep all documents confidential and not take copies, and to immediately declare any conflict. Mr Dankaro told the Commission that he understood that a conflict of interest meant a financial conflict in relation to the quotes or tenders that were being considered but he "guessed" that it could include a friendship.

Mr Dankaro said he thought that the confidentiality requirement referred to confidentiality vis-à-vis third parties. He believed that information about The Appian Way culverts upgrade project could be disclosed to Mr Cossu for the purposes of the project, as Mr Cossu was his boss at PMLV and responsible for Mr Dankaro's position on Council, but not for the purpose of Mr Cossu communicating information to Mr Clarke, whom Mr Dankaro knew to be a long-standing friend of Mr Cossu.

Given his workplace inexperience, it may be that Mr Dankaro was of that view. More importantly, his relationship to Mr Cossu was one of a mentee to a mentor, and Mr Cossu was Mr Dankaro's employer.

Mr Dankaro gave evidence that, in early 2022, he frequently interacted with Mr Cossu; he sought Mr Cossu's advice and they socialised over drinks or lunch on the rare occasions that Mr Cossu could manage to do so. The relationship of mentee/mentor made it less likely that Mr Dankaro would question whether Mr Cossu's approach was appropriate.

There was also a power imbalance between the two men, which Mr Cossu had impressed upon Mr Dankaro. At one time, Mr Dankaro had tried to find out what PMLV was being paid for his services. Mr Cossu had expressed dissatisfaction and reminded Mr Dankaro that he could "get rid of" him. Mr Dankaro was concerned that he may lose his job with PMLV. Further, Mr Dankaro had limited experience in the Australian workforce and for that reason he may not have appreciated the import of his conduct in assisting GWAC.

Mr Dankaro did not act from the desire to benefit financially; there was no suggestion in the evidence that he was paid for the services he provided to GWAC.

Supported as it is by these considerations, the Commission accepts Mr Dankaro's evidence that, in assisting GWAC, Mr Dankaro took instruction and direction from Mr Cossu.

The Commission also accepts Mr Dankaro's evidence that, at the time, he did not know that Mr Cossu had a financial stake in the tender and he did not know that a subcontractor was providing the culverts to GWAC.

# Mr Cossu vouches for GWAC's experience, despite his declared conflict

Mr Anderson recalled a discussion between the members of the evaluation panel for The Appian Way culverts upgrade project in which it was noted that GWAC had not submitted adequate documentation to demonstrate experience with projects the size of The Appian Way project.

Mr Anderson told the Commission that Mr Cossu was nearby during this discussion and proffered the information that GWAC had done a similarly sized project. Mr Anderson said that, based on that information, GWAC was invited to clarify its quote. But for that information, he could not say that GWAC would have been offered the opportunity. It was after Mr Cossu identified a conflict of interest that he vouched for GWAC.

# Mr Dankaro helps GWAC and Mr Cossu (25 to 31 March 2022)

On 25 March 2022, Mr Dankaro texted Mr Clarke, "... please give me a call when you're free".

The next day (26 March), Mr Dankaro emailed Mr Clarke (via Dropbox) inviting him to edit a folder that he had created, titled, "General Works and Construction (GWAC) – Existing Documentation". Mr Dankaro said, "As discussed, please save current tender and management documentation here at your convenience. I'll review and update accordingly." Mr Clarke received two further emails from Mr Dankaro via Dropbox, inviting him to edit the folders he had created, titled, "GWAC Construction Phase Photos" and "GWAC – Completion Photos".

On 28 March 2022, Mr Dankaro sent a message from his personal email account to Mr Cossu's PMLV account, saying:

As discussed, all current relevant documentation and photographs available are to be saved to this location. [Dropbox link] This will enable me to review and take action as necessary ... I can begin the production of a standard suite of management plans and templates that can be adjusted to suit different panels or tender applications or I can focus on a few to begin with if given a list of priority documentation needed. I await confirmation of document upload, or suggestion of a better process.

#### (Emphasis added)

It is consistent with this email that, as stated in his evidence, initially Mr Dankaro understood that he was assisting GWAC in a general way, not specifically in relation to The Appian Way culverts upgrade project.

Nevertheless, by this stage Mr Dankaro understood that he had a conflict of interest as a member of the evaluation panel, because he was assisting with GWAC's documentation. He did not declare the conflict when it arose because he "just didn't think about it", a proposition that is hard to accept, as he had completed a conflict of interest form only four days earlier.

Mr Dankaro said his conduct was motivated by the desire both to assist Mr Cossu and to get the project done; he said, "we knew [GWAC] could do the job but they weren't looking good on paper". Mr Dankaro said that, after the panel evaluated the initial submissions, GWAC was the only remaining contractor who could deliver. Through Mr Cossu, Mr Dankaro understood that GWAC had the capacity and experience to deliver, but its paperwork was deficient in that technical details were missing. Mr Cossu told Mr Dankaro that Mr Clarke "had always been like that" and suggested that Mr Dankaro could assist by "formalising" Mr Clarke's documentation while making no major changes. Mr Dankaro said he sent revised documentation to Mr Cossu as he understood that Mr Cossu wanted to help Mr Clarke with the paperwork.

On 29 March 2022, Obnova sent a culvert plan to Mr Cossu, who forwarded it to Mr Clarke.

On 31 March 2022 at 7:30 am, Mr Clarke emailed Mr Cossu various documents concerning the project and Mr Cossu (his PMLV address) forwarded Mr Clarke's email to Mr Dankaro's personal email address.

#### Mr Cossu and Mr Dankaro assist Mr Clarke with "clarification 1" (31 March to 7 April 2022)

As part of the tender evaluation process, Council sought clarification on a number of aspects related to the responses. Some of these "clarifications" are examined in this section.

On 31 March 2022 at 2:05 pm, Cindy Tran (a Council procurement officer) emailed Mr Clarke seeking details on pricing, transport, delivery program, examples of previous experience and equipment available for The Appian Way culverts upgrade project, requiring a response by 10:00 am, 4 April 2022 ("clarification 1"). On 1 April 2022, Mr Clarke forwarded Ms Tran's email to Mr Cossu (his PMLV address), who forwarded it to Mr Dankaro (his personal email address).

On 31 March 2022 at 4:37 pm, Mr Clarke emailed Mr Cossu (his PMLV address) regarding "transport price" attaching a document titled "culvert delivery price". Mr Clarke said he sent the documents to Mr Cossu "for a review" because he wanted to make sure that his tender looked good.

Mr Cossu forwarded this to Mr Dankaro's personal email address.

In evidence, Mr Dankaro said that he must have received a call from Mr Cossu instructing him to draft a response. Mr Dankaro created a template and then drafted the response. He said that he "was just following instructions".

Mr Dankaro knew that he had a conflict of interest which, if disclosed, could result in his removal from the evaluation panel. However, he didn't think that his view counted a lot on the panel, as he was the most junior member. Further, based on what Mr Cossu had told him, he thought that GWAC was best for the job.

At 8:19 am on 3 April 2022, the day before the response was due to Ms Tran, Mr Dankaro (from his personal email) messaged Mr Cossu (his PMLV address) three documents forming the proposed response to the clarification questions, stating: "...let me know if any changes are necessary". Metadata shows these documents were created that day (3 April 2022) by Mr Dankaro's former de-facto partner. At 9:20 am, Mr Dankaro (from his personal email) messaged Mr Cossu (his PMLV address) attaching updated versions of the three documents.

Mr Dankaro said that he had used his personal address to email Mr Cossu partly because he didn't want Council to know that he was assisting. He said that Mr Cossu had given him the information to include in the clarification document. Up to this point, Mr Dankaro had not interacted with Mr Clarke. Mr Cossu denied he had told Mr Dankaro how to respond to clarification questions.

The Commission rejects Mr Cossu's evidence. It is contrary to Mr Dankaro's evidence and the contemporaneous emails, which show Mr Cossu's close oversight of Mr Dankaro's assistance. Additionally, up to this point there had been no contact between Mr Dankaro and Mr Clarke; all communication had been channelled through Mr Cossu.

Mr Cossu (his PMLV address) emailed the three documents to Mr Clarke instructing him to "submit ASAP" .

It appears that there was difficulty in Mr Clarke receiving the material. Consequently, Mr Cossu (his PMLV address) emailed Mr Clarke at his other company, BCE, attaching the same documents.

Mr Clarke then emailed his response to Ms Tran's clarification questions to Council, incorporating some of the information supplied by Mr Dankaro. He also attached the two files authored by Mr Dankaro's former partner. However, the files had been scanned as PDF documents and the metadata reflected the author as Mr Clarke. Mr Clarke sent a WhatsApp message to Mr Cossu saying, "Submitted I had to print then to pdf to take away the reference to Nosakhare partner". Mr Cossu replied, "corport".

On 4 April 2022, Ms Tran forwarded the clarification responses to members of the evaluation panel, including Mr Dankaro, for their review.

Mr Dankaro said he felt he didn't have much choice but to stay on the panel, despite the conflict of interest. He wasn't clear about the reporting process, he "couldn't just walk into the director's office" and he felt that his job was at risk.

Ms Bhuiyan gave evidence that, based on GWAC's answer to clarification 1 question 5, which sought the location and capacity of the manufacturing facility, she understood that manufacturing was occurring at a GWAC plant.

She also said that, had she known Mr Dankaro was assisting Mr Cossu and/or Mr Clarke to respond to clarification 1, she would have notified Mr Webb and Mr Anderson, Mr Dankaro would have had to leave the panel and she would have notified the Council's Procurement Services Unit.

On 7 April 2022, Ms Tran emailed Ms Bhuiyan, Mr Dankaro, Mr Anderson and Mr Luu an Excel spreadsheet titled "T55-22 Summary Post Clarification I" containing the scoring for the four tenderers across the three phases of the project (SPI – delivering pipes; SP2 – delivering pits; and SP3 – delivering culverts). The overall ranking in order of preference was Modcast, GWAC (awaiting clarification re delivery fee), Pre-cast and Cadia.

#### Mr Cossu and Mr Dankaro assist Mr Clarke with "clarification 2" (7 to 14 April 2022)

On 7 April 2022, Ms Tran emailed Mr Clarke seeking clarification regarding the size and number of units per truck load ("clarification 2"). Mr Clarke emailed Mr Cossu (his PMLV address) regarding the clarification questions, saying, "when u have time give me a call". That evening, there were two calls from Mr Cossu to Mr Clarke.

The next morning (8 April 2022), Mr Cossu again called Mr Clarke.

Later on 8 April 2022, Mr Clarke emailed Mr Cossu (his PMLV address) with the subject line "clarification 2 response for your review". Attached was an MS Word document on GWAC letterhead with responses to the second round of clarification questions. A copy of this letter was located at Mr Cossu's residence during the execution of a search warrant. Numerous handwritten notes are on this hardcopy of the letter, indicating changed pricing.

Mr Dankaro gave evidence that, having been asked to assist, he drafted the response to clarification 2 based on information obtained from Mr Cossu. The response document refers to GWAC culverts being produced in Wollongong. Mr Dankaro said that information would have come from Mr Cossu.

Mr Clarke sent Ms Tran the clarification response he had previously emailed to Mr Cossu for review.

On 11 April 2022, Ms Tran emailed the GWAC response to clarification 2 to Ms Bhuiyan, with a copy to Mr Anderson, Mr Dankaro and Mr Luu. Although he was not copied on this email, it was located on Mr Webb's hard drive.

That same day (11 April), Ms Tran also emailed Mr Anderson, Mr Luu, Mr Dankaro and Ms Bhuiyan an updated Excel spreadsheet titled "T5522 Summary Post GWAC Clarification 2". The preferred suppliers indicated in the email were now:

a. SP 1–Cadia Group and clarify if GWAC is happy to only supply item 1. Or a File Note to Ben (setting aside Cadia Group) is required, if you would like to proceed with GWAC for SP 1.

b. SP 2-Cadia Group

c. SP3 – Modcast Pty Ltd.

On 14 April 2022 at 7.24 pm, Mr Dankaro (from his personal email) sent Mr Cossu (his PMLV address) attaching the same Excel spreadsheet, giving Mr Cossu visibility of the pricing, exclusions, terms and ranking of all tenderers.

Mr Dankaro gave evidence that Mr Cossu must have requested the information. It was put to Mr Dankaro that he had provided it voluntarily, but Mr Dankaro insisted that Mr Cossu had asked for it. Mr Dankaro admitted that he knew the information was confidential and he knew Mr Cossu was helping GWAC to bid for the work.

Mr Cossu "couldn't recall" whether he had asked for this document, reviewed it, or spoken to Mr Clarke about it. In this, as in other significant respects, Mr Cossu had a strategic failure of recall, or answered questions with an unhelpful, "Pass".

#### Mr Cossu and Mr Dankaro assist Mr Clarke with "clarification 4" (April 2022)

The evaluation panel met on 14 April 2022, "to review the information provided following the clarification sent through by GWAC". They concluded that SP1 (the project phase involving the delivery of pipes) should be awarded to GWAC, and SP2 (for the delivery of pits) should be awarded to Cadia (subject to its inclusion of delivery costs). The panel requested further clarifications for SP3 (the delivery of culverts).

On 19 April 2022, Ms Tran emailed Mr Clarke seeking clarifications regarding SP3, requesting a response by 10:00 am, 20 April 2022 ("clarification 4").

On 20 April 2022, Mr Clarke forwarded the email to Mr Dankaro (at his personal email address).

Later that day (20 April), Mr Dankaro (from his personal email) sent Mr Clarke and Mr Cossu (his PMLV address) a proposed MS Word and PDF version for GWAC's response to clarification 4. Mr Dankaro gave evidence that he had drafted the response based on information received from Mr Clarke and/or Mr Cossu.

Mr Clarke emailed Ms Tran attaching the GWAC clarification response that had been prepared by Mr Dankaro.

The clarification response was then emailed to members of the evaluation panel – including Mr Dankaro – for their review.

#### The tender evaluation (May 2022)

On 28 April 2022 at 10:20 am, Ms Bhuiyan emailed Mr Webb, stating:

At this stage we are looking at awarding as follows:

SP1 – Pipe Drainage to be awarded to GWAC for \$40,432.00 ex GST SP2 – Pre-cast Pits to go to BCP (though we are not in agreement with their overall terms and conditions, it is not a risk for this portion, which is of lower value. This is part of the file note issue being clarified by Cindy

SP3 – GWAC (we have set aside Modcast as they are 1. Interstate (which is not the most convenient for managing quality) 2. Not most competitive in terms of program 3. It is as well as assumptions in their transportation costs.

(Open-ended brackets as per original)

Council's Procurement Services Unit manager Alan Parker and procurement officer Ms Tran disagreed with the evaluation panel's view that BCP's tender should be set aside because of its terms and conditions. Ms Bhuiyan said that, after speaking to Mr Webb, who made the final decision, it was agreed that Council would not go back to BCP to negotiate better terms because that would cause a delay.

On 5 May 2022, Mr Cossu sent a WhatsApp message to Mr Clarke asking, "Any news regarding the precast?". Mr Clarke replied, "No I'll try again". Mr Cossu suggested, "Soft....ly" (sic).

In an email chain dated 6 May 2022, Ms Bhuiyan asked the other evaluation panel members to confirm they were happy to recommend the award of SP1 and SP3 to GWAC and SP2 to BCP. Mr Anderson, Mr Luu and Mr Dankaro confirmed their agreement. Mr Webb approved the recommendation.

On 9 May 2022, Ms Tran advised the evaluation panel that BCP could not provide the Lintel parts and inquired whether the panel was happy to proceed with GWAC for SP2; that is, to proceed with GWAC for all portions of the tender. Ms Bhuiyan and all members of the evaluation panel agreed to do so.

Ms Bhuiyan agreed that Mr Webb was "quite involved" in the project and that he was pushing for the project to progress, but she considered that to be understandable as it was a larger project there were pressures because it interfaced with other large infrastructure projects.

# GWAC fails the financial assessment (May 2022)

As part of the tender process, the credit-rating consultants Equifax Australasia Credit Ratings Pty Ltd ("Equifax") undertook a financial assessment of GWAC and produced a detailed report of its financial viability and capacity.

GWAC failed the assessment. Its score of 2.42 indicated an "Unsatisfactory financial capacity to undertake the contract in question". The report was sent to Mr Webb, who said that he did not read it in detail but discussed GWAC's deficiencies with Mr Parker.

On 10 May 2022 at 4:54 pm, Ms Tran emailed Ms Bhuiyan:

Alan will discuss this [failed financial assessment] with Ben, but as we do not have any other vendors that can deliver this we may have to look at progress payments where we will pay them in batches (i.e. once they have delivered a batch then we pay them for that batch only) to minimise financial risks to Council.

On 11 May 2022, Mr Parker emailed Mr Clarke advising him of the unsatisfactory financial assessment. Mr Parker sought his comments, particularly in relation to how GWAC would fund the manufacture of the pre-cast pits, given that Council did not pay suppliers in advance of deliveries.

On 12 May 2022, there was a WhatsApp message from Mr Cossu to Mr Clarke asking, "Any news on their [sic] financials?" Mr Clarke replied, "Checked 10 time [sic] still nothing".

On 13 May 2022 at 1:17 am, Mr Clarke emailed Mr Cossu (his PMLV address) a proposed response to Mr Parker. He attached an Excel spreadsheet that broke up the project into expenses and revenue and provided three scenarios for a "cashflow model". At 7:15 am that day, Mr Cossu sent a text message to Mr Clarke, asking, "Any news in regards of the financials?" Mr Clarke replied, "No I sent u a model". At 7:33 am, Mr Clarke tried calling Mr Cossu. At 9:26 am Cossu replied, "Please send it".

Later on 13 May 2022, Mr Clarke sent a response to Mr Parker, concluding:

We have undertaken a financial model of 3 scenarios for the precast project ... All 3 of these scenarios are within the range of the funds available through the related entities...

Mr Parker asked Mr Clarke whether GWAC could provide bank guarantees, for all three separable portions.

Mr Clarke replied to Mr Parker, "GWAC will be in a position to get them in place".

On 18 May 2022 at 2:24 pm, Mr Cossu sent a WhatsApp image to Mr Clarke of a computer screen showing a page from the Equifax financial assessment of GWAC (see figure 6). The image showed a table of "Latest Financial Statements" as at 31 March 2022, including sales revenue (\$392,875), operating profit before tax (\$17,522), net tangible worth (\$16,098) and working capital (\$16,098).

### Figure 6: Photo Mr Cossu sent to Mr Clarke of the Equifax financial assessment of GWAC

ANZSIC Code(s)			
	E3221		
Year Established	2020		
PPSR	No		
Court Actions & Litigation	Clear URCED FROM ASIC'S SYSTEM ON 18/03/2022 AT 12.51. N SIC CHECK DATE 29/04/2022 AT 16:21.		
ended 31 mar	as been extracted from the subject's Man 31-Mar-22		
	\$392,875		
Devenue	\$17,522		
Operating Profit before Tax	\$16,098		
Net Tangible Wolui	\$16,098		
Working Capital			

Mr Cossu said that he had sent the image to Mr Clarke "to show him it was no good". Mr Cossu said that he couldn't recall how he had obtained the document.

A minute later, at 2:25 pm (18 May), Mr Cossu sent a WhatsApp message to Mr Clarke, asking, "Can't the accountant come back to you? And help in this mess..... [sic]"

That same day (18 May), Mr Clarke sent Mr Cossu (his PMLV address) a draft email to Mr Parker providing information about the financial performance of Mr Clarke's company group. He attached financial statements for BCE and McGoo Civil, stating "FYI this is what I will send to Alan in the morning once you have had a chance to review it".

Mr Cossu forwarded the draft email and attachments to Mr Webb's personal email address early the next day (19 May 2022) at 5:04 am. Mr Webb said that he did not recall whether he read this email.

Later that day (19 May), Mr Clarke sent to Mr Parker the same email and attachments he had sent to Mr Cossu for review the previous day, which Mr Cossu had forwarded to Mr Webb.

When asked about this chain of communications, both Mr Clarke and Mr Cossu maintained that Mr Webb had absolutely nothing to do with GWAC's tender for The Appian Way culverts upgrade project.

# An obstacle during the reference check – "clarification 6" (May 2022)

On 18 May 2022, Ms Bhuiyan received an email from a graduate project engineer at Council attaching an Excel spreadsheet detailing the attempts she made to contact GWAC's referees. Of the 10 referees GWAC had nominated, only one had supplied a reference. The other nominated referees did not recall GWAC or could not be contacted on the telephone number provided (for some, no telephone number was provided). Ms Tran prepared a letter to GWAC ("clarification 6") requesting two additional client references from recent relevant contracts completed, in which GWAC was the principal contractor. On 19 May 2022, Ms Bhuiyan forwarded the email chain to Mr Webb advising she needed to discuss it.

A copy of the Excel spreadsheet detailing all the referee checks was located on Mr Webb's hard drive.

Upon receiving the clarification 6 letter, Mr Clarke responded, nominating two referees and attaching their details.

#### Concern about GWAC's financials is overcome and Council awards GWAC the contract (30 May to 6 July 2022)

On 30 May 2022, Ms Bhuiyan emailed Mr Webb attaching a draft "General Manager Report" (that she and Mr Luu had drafted) recommending GWAC as the preferred tenderer for all three separable portions of T55-22 (The Appian Way culverts upgrade project). Ms Bhuiyan asked Mr Webb to check the proposed wording in the financials section of the report.

The evaluation summary in the draft general manager report set out the submissions that were received and assessed, including that of GWAC. In the "Summary of Recommended Tenderer", the draft report stated that GWAC had a production facility in Wollongong and capacity for a large variety of pre-cast moulds. This section also stated that GWAC had undertaken relevant major projects, including the Sydenham Station Drainage Project and the Cumberland Council Drainage Upgrade Works. The total sum for the three separable portions of The Appian Way culverts upgrade project (as submitted by GWAC) was \$2,419,493 – just under the allocated budget of \$2,500,000. Ms Tran asked Ms Bhuiyan to provide "Ken's confirmation to proceed with GWAC". This was a reference to Ken Manoski, the director of corporate at Council.

On 31 May 2022, Ms Bhuiyan responded, "I do not have written confirmation from Ken. I will discuss with Ben and return to you shortly."

On 2 June 2022, Mr Parker emailed Mr Clarke, seeking (among other things) more information about the link between some of the larger contracts GWAC nominated that they had undertaken and the financial data, which did not show a commensurate income.

On 3 June 2022, Mr Parker emailed Mr Webb expressing concern about the capacity of GWAC.

On 4 June 2022, Mr Cossu sent WhatsApp messages to Mr Clarke, saying, "Morning mate, give me a call when you can please" and "I may have a way to go out of our dilemma" (sic). On 6 June 2022 at 7:09 am, Mr Cossu messaged Mr Clarke, "Don't send anything before we talk".

In evidence, Mr Clarke suggested that these communications may have related to the Greenacre Splash Park project, for which he had not been paid. The Commission rejects this explanation, given the surrounding discussions concerned the obstacles to GWAC obtaining The Appian Way culverts upgrade project, and the improbability that the expression "way to go out of our dilemma" would have related to a discussion about non-payment of a claim.

On 9 June 2022, over two emails, Mr Clarke replied to the questions Mr Parker emailed him on 2 June, regarding differences between the project values and GWAC's financials. Mr Clarke asserted that the large-value projects had been undertaken by related companies over an extended period, and the revenues had been spread over several financial periods, and across the company group as part of a taxation strategy. Mr Clarke forwarded both emails to Mr Cossu (his PMLV address).

The next day (10 June) at 11:43 am, Mr Parker emailed Ms Bhuiyan (copying Mr Manoski and Mr Webb), stating, "I spoke to Ken & we are comfortable for the GM rpt [general manager report] to be amended to state that the projects listed in the rpt [report], were undertaken by affiliated/associated entities".

The General Manager Report (dated 14 June 2022) was authored by Ms Bhuiyan, and Mr Anderson said he agreed with it. The report was signed by Matthew Stewart (Council's general manager), Ms Bhuiyan, Mr Webb, Mr Vangi and others. The report said the GWAC production facility was located in Wollongong. It set out the reasons for awarding all three portions of the project to GWAC despite the financial assessment failings. It stated that financial risk would be managed by staging activities, and noted that:

the Evaluation Panel has concluded that General Works and Construction Pty. Ltd. are the only acceptable submission that is able to supply all required components and meet our delivery dates...

In evidence, Ms Bhuiyan said she had reservations about GWAC's company structure and would have preferred to have more time to evaluate it. However, GWAC seemed to be the only remaining contractor that had capacity to deliver the whole job.

Mr Vangi said that, when he signed the report, he was not aware of an arrangement by which Mr Cossu – who was a council worker at the time – would be providing subcontracting services to GWAC through his company, PMLV. Had he known, he would not have proceeded with the tender and would have cancelled it.

In evidence, Mr Webb agreed that, if the lion's share of a tender was to be delivered by a subcontractor, he would have expected to see the name of the subcontractor in submitted tender documents. Mr Webb said he did not know at the time GWAC's claim to have a production facility in Wollongong was incorrect. He said he did not know what facilities GWAC had.

The Commission doubts this evidence from Mr Webb, as it is inconsistent with his WhatsApp exchange with Mr Cossu in September 2021 about Obnova.

On 29 June 2022, Mr Webb reviewed and approved the T55-22 contract for The Appian Way culverts upgrade project, which listed the commencement date as 4 July 2022 and the completion date as 28 February 2023. The total contract value was \$2,419,493.34.

#### Mr Cossu renews engagement with Obnova and acts as intermediary with Council

On 6 July 2022, Obnova emailed Mr Cossu attaching a draft program of works for The Appian Way culverts upgrade project for his review and comment. Mr Clarke subsequently emailed this program to Council, having removed the reference to Obnova. Mr Clarke said he did so because he wanted it to appear that the document had come from him and to keep his source of supply to himself, because he didn't want Council to go direct to Obnova.

On 13 July 2022, Mr Cossu (PMLV address) emailed to Obnova six separate files, including drawings and specifications which still featured the Council logo.

On 18 July 2022, Mr Clarke emailed Mr Cossu (Council address) two PDF documents that he described as "the program for the production of the precast elements for the apian way [sic] project". Mr Cossu forwarded the email and attached documents to Mr Webb (his Council address).

On I August 2022, Ian Bennett (a civil engineer at Obnova) sent Mr Cossu (his PMLV address) two Obnova branded documents. The second page of one – the Obnova Quality Plan – stated, "For City of Canterbury Bankstown".

On 2 August 2022, Mr Clarke emailed the inspection and test plan and quality management plan to Mr Cossu (his PMLV address), who sent them to Mr Webb's personal email address.

# Mr Cossu conducts a pre-pour inspection on Council's behalf (16 September 2022)

On 20 July 2022, Ms Bhuiyan reminded Mr Clarke that certain documents relating to the project were outstanding. The email continued:

In addition, the program sent through previously indicates that the pre-pour inspection for first mould is due to occur on Friday [22 July].

Could you confirm that this is occurring? A representative from Council should be in attendance if possible.

The pre-pour inspection should have been scheduled with Ms Bhuiyan and the design engineer. The inspection was for the purposes of checking the steel quality, ensuring compliance with specifications, undertaking a slump test (to measure the consistency of the concrete) and checking other requirements. However, because Ms Bhuiyan received very short notice of the pre-pour, she was not available to attend the inspection.

At 11:49 am on 16 September 2022, Mr Clarke emailed Ms Bhuiyan (copying Mr Webb), stating:

We have been working hard to get the first lot of box culverts ready for pouring and have finished them ... and would like to have someone inspect today please

Mr Clarke did not indicate a specific time. The inspection would need to take place in Wollongong.

Ms Bhuiyan gave evidence that, having received this email, she was minded to issue a stop-work notice. However, Mr Webb advised her to allow Mr Cossu to undertake the inspection, as he was located in Wollongong. In his evidence, Mr Webb "thought" he had approved Mr Cossu attending the pre-pour inspection. He claimed he did not recall how that had come to pass. He said he did not recall Ms Bhuiyan approaching him to complain about the late notice of the inspection. He said Ms Bhuiyan may have suggested that Mr Cossu attend.

Mr Cossu did attend the Obnova factory in Wollongong. He made a video call to Ms Bhuiyan so she could also view the factory. The contract for The Appian Way culverts upgrade project required culverts of 2,440 millimetres. Ms Bhuiyan asked Mr Cossu to measure the length of the culvert mould. However, Ms Bhuiyan said that the image was of poor quality, and she couldn't read the tape measure. They did a slump test, which she couldn't see; she had to rely on Mr Cossu to assess it. In evidence, she couldn't recall what he had said in response to her questions. In any event, she did not have the specifications in front of her at the time as she was on a lunch break. She said that Mr Cossu would have had access to GWAC's copy of the specifications. Had he said that the mould was too short, she would have issued a stop-work notice.

Mr Cossu gave evidence that he "must not" have checked the length of the mould. He provided reasons the Commission found difficult to follow, saying he had been more concerned with the width. In an email to Obnova on 31 October 2022 (more than a month after the pre-pour inspection), Mr Cossu described the shortfall in the length of the culverts as a "significant problem over the job". This email is discussed in more detail later in the chapter.

Culvert length was a critical specification for The Appian Way culverts upgrade project. The Commission does not accept that a person of Mr Cossu's experience would have failed to check the length of the culvert mould. The Commission cannot say whether Mr Cossu chose to overlook this critical deficiency because his personal interests favoured speed of production over quality, because of the obvious difficulty of excluding Ms Bhuiyan from any later inspection, or for some other reason.

Further, the Commission finds that Mr Clarke and Mr Cossu had agreed that Ms Bhuiyan should be given late notice of the pre-pour to ensure she couldn't attend and thereby learn of the subcontracting arrangement. Prior to the inspection, Mr Davidovic had been advised that PMLV would undertake the quality assessment, there was no real need for the inspection to occur instantly and the notice given to Ms Bhuiyan did not even provide an inspection time.

The Commission cannot confidently conclude that Mr Webb was party to this agreement; it is possible that he approved Mr Cossu's attendance at the pre-pour inspection to ensure the project progressed as quickly as possible. It is not clear that Mr Clarke knew about the shortfall in length of the culverts prior to Council writing to him about it in a contractual letter dated 31 October 2022 (as discussed later in this chapter).

Ms Bhuiyan said that, although Mr Cossu had no formal role in The Appian Way culverts upgrade project, he took an interest, and he would come by and have input to conversations. She felt somewhat excluded by Mr Cossu. However, she could not say with conviction that he had deliberately excluded her.

# Invoicing between GWAC, PMLV and Obnova (August to November 2022)

A BOQ spreadsheet saved as "quote of culverts Mike", authored by Mr Cossu and last saved on 24 April 2022, shows a potential profit of \$628,790 to PMLV. The spreadsheet indicated PMLV would invoice GWAC \$2,094,940 for the culverts and pay Obnova only \$1,466,150 to manufacture them.

Between 7 October 2022 and 17 April 2023, Obnova issued multiple invoices to Mr Cossu (his PMLV address). In evidence, Mr Cossu said he increased the prices of every Obnova invoice he received before submitting the invoice to GWAC. He said Obnova's invoices were "under priced" so he added a margin for himself. He did not discuss with Mr Clarke the margin he was charging.

Although Mr Clarke must have inferred that Mr Cossu was making a profit, it is not clear that Mr Clarke knew the extent of the profit.

# Council issues a variation, reducing the project scope of works value (October 2022)

On 27 October 2022, Ms Bhuiyan emailed to Mr Clarke (copying Robert Dudley – a construction manager at Council – and Mr Webb) a variation letter that reduced the scope of works for The Appian Way culverts upgrade project. The variation letter had been signed by Mr Webb as superintendent for the project. Ms Bhuiyan asked Mr Clarke for a quote for the changes by 1 November 2022.

# Council raises issues with culvert length with GWAC (November 2022)

At this time, Council had identified a number of problems with GWAC's performance under the project contract, including that the culverts measured 2,400 mm rather than 2,440 mm. On 31 October 2022, Mr Dudley emailed Ms Bhuiyan a draft contractual letter for her consideration, suggesting that she may wish to "pull the trigger". Later that night (31 October), Mr Cossu (his PMLV address) emailed Obnova saying:

The length of the culverts is only 2.4 not 2.440 and this going to be a significant problem over the job. Can u check and we will have to supply a 1.2 m wide one to correct what we have. Council wants us to stop immediately, and rectify. The 40mm are in the drawing sent to transport for acceptance. Please call me urgently.

The next day (1 November), Mr Clarke emailed Mr Dudley offering to provide a short filler piece if required to rectify the issue with the culvert length. He noted that a binding grout is usually poured in the 40 mm gap. Mr Dudley advised Ms Bhuiyan to write to Mr Clarke to:

- advise that a typical gap was 10 mm
- suggest that it made sense to continue pouring 2,400 mm culverts (rather than mixing them with 2,440 mm ones)
- express frustration that the length variation had not been identified in the pre-pour checks "given the criticality of the dimension".

On 22 November 2022, Ms Bhuiyan emailed a letter to Mr Clarke. Among other things, the letter (which noted that Council did not wish to issue contractual letters given GWAC performed a lot of work for Council) stated:

To date Council instruction has predominantly been issued via email, with the intent that the Contractor accommodates our instructions where reasonably practicable. Council have reached a stage where we do not feel that our requests or concerns are being acknowledged, let alone actioned. This list includes, but is not limited to:

(1) Pre-cast culverts not manufactured to specification. This now requires design input from Council to rectify.

... If the Contractor does not feel that they can meet their obligations under the contract, they are to notify Council immediately. If the Contractor does feel that they are able to meet their obligations under the contract, then Council requests a formal update in response to this letter. This response should address all items outlined above...

Mr Clarke forwarded Ms Bhuiyan's letter to Mr Cossu (his PMLV address) and Mr Cossu forwarded it to Mr Webb's personal email. Mr Cossu said he could not recall why he sent the letter to Mr Webb; it may have been a mistake, and he may have intended to send it to Mr Davidovic.

The Commission does not accept that Mr Cossu may have intended to send the letter to Mr Davidovic. The letter refers to Mr Clarke and if sent to Mr Davidovic would have alerted him to Mr Clarke's involvement in the project.

On 21 November 2022, a day before Ms Bhuiyan sent the letter, Mr Webb resigned from Council with effect from 10 December 2022.

## Council issues GWAC a stop-work notice (December 2022)

Council issued a stop-work notice to GWAC on 13 December 2022. GWAC was instructed to cease production of all pre-cast units until further notice. Mr Clarke forwarded the stop-work notice to operations@gwac.com.au, which, under Mr Cossu's email signature, forwarded it to Mr Webb's personal email.

Both Mr Cossu and Mr Webb gave equivocal evidence that they used or had access to the

operations@gwac.com.au email address to communicate with each other or Mr Clarke about GWAC matters. In light of the contemporaneous emails tendered into evidence from the operations@gwac.com.au account, the Commission is satisfied they were using that account for that purpose.

Although GWAC had been instructed to cease production, on 19 December 2022

operations@gwac.com.au emailed Mr Clarke the following:

Mate send this after 9am this morning.

Hi Faiza,

Please see our response to Variation 1

Attached was a draft letter from GWAC to Ms Bhuiyan quoting \$158,450 for the variation works, in response to the variation letter she sent on 27 October (more than a month before the stop-work notice).

Later that day, Mr Clarke emailed the letter to Ms Bhuiyan, copying Mr Dudley, Mr Anderson and operations@gwac.com.au.

#### Mr Cossu's dealings with GWAC after departing Council (late 2022 to early 2023)

Council terminated Mr Cossu's contract on 20 December 2022 as his services were no longer required. The following day (21 December 2022), Mr Clarke offered employment to Mr Cossu. Mr Clarke said that, after Mr Cossu left Council, he floated the idea of Mr Cossu obtaining a 50 per cent interest in GWAC.

Mr Cossu gave evidence that, after Mr Webb left Council, he approached Mr Webb for assistance with the dispute between GWAC and Council, because of Mr Webb's skillset and experience in Council dealings. As for the dispute between GWAC and Council, Mr Cossu accepted he "had money in the game" given PMLV had a contract with Obnova, so if GWAC did not get paid by Council, PMLV would need to make up the deficit to Obnova.

Mr Webb said he began to "help" GWAC about a month after he left Council (his final day at Council was 9 December 2022). He said Mr Cossu and Mr Clarke approached him to assist in resolving the dispute between GWAC and Council. There was a discussion about Mr Webb receiving payment for this assistance (his rate was \$1,400 per day), although he received nothing as it transpired. He did not consider it inappropriate to assist. He maintained that it was at this point he discovered Mr Cossu's involvement as an intermediary between Obnova and GWAC. Mr Webb said his involvement was not for the purpose of assisting Mr Cossu to recover money from GWAC; he had not known PMLV was owed money.

A letter dated 14 December 2022 (the day after GWAC received the stop-work notice) was found on Mr Webb's hard drive, saved as "GWAC Response". The letter was on GWAC letterhead, addressed to Council (attention to Ms Bhuiyan). Mr Webb was the original and last author. The letter addressed the issues Ms Bhuiyan (on behalf of Council) had raised in her letter dated 22 November 2022.

Another letter, dated 15 December 2022 – also on GWAC letterhead and addressed to Council (attention to Ms Bhuiyan) – was located on Mr Webb's hard drive, saved as "GWAC Contact Person". Mr Webb was the author. The letter states:

Dear Ms. Bhuyian [sic]

General Works and Construction (GWAC) have received emails and correspondence from several individuals, including the Superintendent (Ben Webb), the Project Manager (Faiza Bhuyian), [sic] and Construction Manager (Robert Dudley), during the life of this project.

Several of the instructions have contractual and commercial significance. On previous projects for the Council, we were not paid or granted an extension of time since the instructions we received did not originate from the Superintendent. Could you clarify who is authorised to give instructions on behalf of the Council for this project?

On 16 December 2022, Mr Webb used the shared operations@gwac.com.au email address to instruct Mr Clarke to "send this letter to Council around 9am".

Located in Mr Webb's Surface Pro 9 laptop was a letter on GWAC's letterhead dated 16 December 2022 and addressed to Ms Bhuiyan demanding payment of invoices 93, 94 and 99. Metadata for the document showed it was last saved by Mr Webb at 9:24 am that day. A few minutes later, operations@gwac.com.au emailed Mr Clarke and blind copied Mr Cossu (at PMLV) asking that the letter regarding invoices be sent at lunchtime that day. At 12:45 pm, Mr Clarke emailed the letter to Ms Bhuiyan using his jeremy@gwac.com.au email address.

Mr Clarke gave evidence that he retained lawyers in anticipation of adjudication proceedings in GWAC's payment dispute with Council. He said Mr Webb had attended a meeting with them, and "we talked strategy".

On 19 December 2022, operations@gwac.com.au emailed Mr Clarke, (blind copying Mr Cossu at PMLV):

Please send the following to Council. Hi Faiza, Please find attached Culvert Design Submission for your approval.

Attached was a letter addressed to Ms Bhuiyan from GWAC disputing that the culverts were "defective" and proposing a means of resolving the issue.

A 23-page contractor's notice of dispute between GWAC and Council, dated 10 January 2023, was located on Mr Webb's Surface Pro 9. According to the metadata, the document was authored by Mr Webb and last saved on 11 January 2023. The notice claimed Council owed GWAC \$970,563 for various projects, including The Appian Way culverts upgrade project (T55-22).

On 15 January 2023, Mr Cossu informed Mr Webb that he had "modified the dispute document to remove [Mr Webb's] name... I will send it to you to make sure it's ok. Can you check it?". During the public inquiry, Mr Cossu could not explain why he wanted Mr Webb's name removed from the dispute document.

On 23 January 2023, Mr Webb emailed Mr Cossu, providing a "script" for Mr Clarke to follow at a dispute meeting with Council on 24 January 2023. Mr Cossu forwarded the email to Mr Clarke.

In evidence, Mr Webb agreed that he had drafted a script for Mr Clarke to use during his dispute meetings with Council in January 2023. Some documentation prepared by Obnova contained a file location path at the bottom including "Projects\ Clients\Pietro Culverts\QA\PIR Appian Way Culverts". This was raised by Mr Webb in a WhatsApp message to Mr Cossu on 1 February 2023, saying, "Your name is on the obnova documents council have". Mr Webb attached a screenshot of the documentation. Mr Cossu responded to Mr Webb, "Hmmmm," and then, "Client?". Mr Webb replied, "Yeh we can say that". That is, they manufactured an explanation for the potentially damaging "Pietro Culverts" reference: that Mr Cossu was the client.

Thereafter, through 2023, there was extensive correspondence between Mr Webb, Mr Cossu and Mr Clarke regarding the dispute with Council, often via operations@gwac.com.au.

#### Financial dealings between Mr Clarke and Mr Cossu

#### Mr Cossu (PMLV) gave loans to support Mr Clarke's companies

Mr Clarke confirmed that, between February 2022 and March 2023, Mr Cossu loaned him money to assist with cash-flow issues.

Between 4 February 2022 and 13 December 2022, Mr Cossu (from a PMLV bank account) paid a total of \$105,000 into Mr Clarke's BCE and McGoo accounts. Each payment coincided with a time when Mr Clarke's accounts had a negative or extremely low balance. These sums were described as loans. Between February 2022 and March 2023, the loans were repaid, plus an additional \$5,000. The last three repayments from Mr Clarke to Mr Cossu of \$20,000, \$2,000, and \$3,000 were made on 13, 17 and 27 March 2023.

Mr Cossu confirmed that he had loaned Mr Clarke \$105,000 in 2022, Mr Clarke had repaid him, and Mr Cossu had deliberately refrained from disclosing this arrangement to Council.

# GWAC made payments to PMLV following receipt of monies from Council

Table 4 shows 19 of the payments received by Mr Clarke on behalf of GWAC from Council where a payment was made almost immediately thereafter to Mr Cossu (via a PMLV bank account). Table 4 has been compiled for this report based on extracts of tendered material available to the Commission.

## Table 4: Examples of Mr Clarke making payments to PMLV within four days of Mr Clarke receiving money from Council (March 2021 to May 2023)

Recipient	Date	Incoming payments from Canterbury-Bankstown Council (\$)	Incoming payments from Jeremy Clarke accounts (\$)
Jeremy Clarke	11/03/2021	52,833.00	
Pietro Cossu	11/03/2021		29,278.70
Jeremy Clarke	25/03/2021	32,578.70	
Pietro Cossu	27/03/2021		17,600.00
Jeremy Clarke	29/04/2021	26,180.00	
Pietro Cossu	29/04/2021		12,980.00
Jeremy Clarke	21/05/2021	44,264.00	
Pietro Cossu	21/05/2021		33,000.00
Jeremy Clarke	15/07/2021	73,370.00	
Pietro Cossu	16/07/2021		11,550.00
Jeremy Clarke	23/12/2021	125,573.80	
Pietro Cossu	23/12/2021		43,780.00
Jeremy Clarke	5/05/2022	98,505.00	
Pietro Cossu	7/05/2022		44,000.00
Jeremy Clarke	16/06/2022	162,085.00	
Pietro Cossu	17/06/2022		55,000.00
Jeremy Clarke	4/08/2022	225,811.30	
Pietro Cossu	5/08/2022		95,500.00
Jeremy Clarke	11/11/2022	154,979.00	
Pietro Cossu	14/11/2022		85,000.00
Jeremy Clarke	17/11/2022	396,110.00	
Pietro Cossu	18/11/2022		100,000.00
Jeremy Clarke	24/11/2022	182,753.95	
Pietro Cossu	25/11/2022		21,958.00
Jeremy Clarke	25/01/2023	555,852.00	
Jeremy Clarke	25/01/2023	136,545.18	
Pietro Cossu	25/01/2023		79,970.00
Pietro Cossu	27/01/2023		159,940.00
Jeremy Clarke	16/02/2023	7,136.80	
Jeremy Clarke	17/02/2023	104,126.00	
Pietro Cossu	18/02/2023		95,000.00
Jeremy Clarke	30/03/2023	19,865.81	
Pietro Cossu	31/03/2023		137,905.00
Jeremy Clarke	13/04/2023	220,940.83	
Pietro Cossu	13/04/2023		70,000.00
Pietro Cossu	14/04/2023		70,000.30
Jeremy Clarke	25/05/2023	159,964.20	
Pietro Cossu	27/05/2023		95,000.00
Total		2,779,474.57	1,257,462.00

The Commission rejects Mr Cossu's attempt to characterise these payments as loans. Unlike the payments made in February 2022 and March 2023, which Mr Clarke described as "loan repayment[s]", most of the payment descriptions accompanying the payments to PMLV shown in table 4 referenced an invoice. The latter payments bore a close chronological association to payments made by Council to GWAC. Further, Mr Cossu said he paid tax on these monies.

On 25 January 2023, Mr Cossu sent Mr Clarke a photograph of the then current summary of payments owed by GWAC to PMLV (see figure 8).

#### Figure 8: Photograph sent from Mr Cossu to Mr Clarke showing a summary of payments paid or owed by GWAC to PMLV

12 OCT 2	2 20-013	IO. CLAIM NO. CLAIM 1	AMOUNT \$63,096	STATUS PAID 12 COM
12 OCT 22		CLAIM 2	255,904	PAID 13 OCT 22
-			233,504	PAID 14 NOV 22 (1) 85,000
				(2)\$85,000
28 OCT 22	20.015			(3)85,904
20 001 22	20-015	CLAIM 3	\$143,946	PAID 19 NOV 22
6 NOV 22	20-016	CLAIM 4	\$111,958	PAID 5&6 DEC 22
				(1)80,000
11 NOV 22	20-017	CLAIM 5	\$95,964	(2) 31,958
			\$33,304	PAID 8 DEC 22
21 NOV 22	20-018	CLAIM 6	\$150.040	OUTSTANDING
			\$155,540	OUTSTANDING
28 NOV 22	20-019	CLAIM 7	\$127,952	OUTSTANDING
2 DEC 22	20-020	CLAIM 8	670.070	01/707410
2 010 22	20-020	CLAIN 8	\$79,970	OUTSTANDING
19 DEC		CLAIM 9	\$315,480	OUTSTANDING
				-

The document indicates that, by 23 January 2023, claims I–5 had been paid. Claim 3 for \$143,946 was paid by instalments of \$100,000 and \$43,946 on 18 and 19 November 2022 (although this is not detailed in

Claim 6 for \$159,940 was paid on 27 January 2023.

Claim 7 for \$127, 952 was paid on 30 January 2023.

Although not detailed in the document, claim 9 for \$315,480 was partly paid by instalments of \$95,000 and \$98,000 on 18 and 19 February 2023. As at that date, \$122,480 was still outstanding for claim 9.

On 11 March 2023, Mr Cossu emailed Mr Webb with the subject line "have a look but I need to sit with you". In part, the email stated:

Hi mate I not sure how to put this into words

1. JK have invoiced money from different jobs to council. Omitting to pay the 10% originally discussed.

...

3. He still has a debt of 180K to PMLV. Considering that he did not spending [sic] a cent in this project we are financing GWAC.

A letter to him address as..... [sic]

Hi Jeremy, guys, Pietro?

Thanks for the mail and I am happy to know you have cleared the debt, what I am concerned here is the mentioning of other costs. (Are we working for him?)

Culverts

We are working on extra money on the culverts. How you intend to pay this incomes [sic] to the company? ..... when are you settling the 180K still owed...

An Excel spreadsheet in Mr Cossu's possession entitled "GWAC – Summary of payments paid to PMLV" was created by Mr Cossu on 11 March 2023; the same day he sent the above-mentioned email to Mr Webb. The spreadsheet included an updated list of claims paid from GWAC to PMLV, including the balance of claim 9 (\$122,480), claim 10 (\$40,425) and \$20,000, which had a note next to it saying "Pietro". It indicated that, as at 11 March 2023, the "amount owed by GWAC" was \$182,905.00.

On 13 March 2023, Mr Webb and Mr Cossu had the following WhatsApp exchange:

Mr Webb:	We need to plan out how this is going to work
Mr Cossu:	I think take the pmlv shares and shardana shares. There's no need to transfer your vehicles either. Just try to talk via mail with JC. Lets [sic] pay the debts and do as you wish. I am too stressed.

On 31 March 2023 there was a transfer of \$137,905 from Mr Clarke's BCE account 9669 to Mr Cossu's account 0827.

the document).

On 2 April 2023, it appears Mr Cossu sent an email to himself from the PMLV administration account attaching a spreadsheet entitled "GWAC - Summary of payments paid to PMLV – updated". The spreadsheet listed the following payments:

13-Mar-23	\$20,000	loan Pietro repay
17-Mar-23	\$2,000	loan repaiment [sic]
26-Mar-23	\$3,000	loan repaiment [sic]
31-Mar-23	\$137,905	loan repaiment [sic].

On 13 April 2023, there was a transfer of \$70,000 and there was another transfer of \$70,000 on 14 April 2023. These were both made from BCE account ending 9669 to PMLV account ending 0153.

On 27 and 29 May 2023, payments of \$95,000 and \$45,000 were made from BCE account ending 9650 to PMLV account ending 0153. It is not clear how these payments were applied to the outstanding amounts from the spreadsheet or for what purpose they were transferred.

#### Mr Clarke and Mr Cossu's arrangement concerning GWAC and Council projects

The Commission rejects the evidence of Mr Clarke and Mr Cossu to the effect that, at the time that GWAC began to do Council work (in 2020), there was no financial partnership or similar arrangement between them. The Commission confidently concludes there was such an arrangement from the outset, for the following reasons:

- Mr Clarke and Mr Cossu had long been discussing a partnership. The fact that the draft shareholders' agreement was provided soon after Mr Cossu commenced at Council and reconnected with Mr Clarke, and a few weeks before GWAC was registered, suggests that a partnership was in contemplation at that time (albeit that the document was not executed).
- Mr Clarke admitted that partnership remained a topic of discussion. He said that, in the early period when GWAC was doing Council work, he suggested to Mr Cossu that when Mr Cossu left Council he should take a 50 per cent interest in GWAC; Mr Cossu could bring in the work and Mr Clarke would do it.
- The circumstances in which GWAC undertook its first Council project (the BLaKC tower, as detailed earlier in this chapter) speak of an arrangement that existed at that time.

The Commission is satisfied that, between mid-2020 and late 2022, Mr Clarke and Mr Cossu had an arrangement whereby Mr Cossu would assist Mr Clarke to win Council projects and maximise his financial gain from the projects, and Mr Clarke would financially reward Mr Cossu or his company PMLV for doing so. At one stage, the arrangement was to pay half the profits from GWAC's Council work to Mr Cossu.

Mr Cossu assisted Mr Clarke (GWAC) in the following ways:

- He introduced GWAC to Council work and misrepresented GWAC's experience and credentials.
- He assisted Mr Clarke with the prices GWAC included in guotes or tenders to Council. This included providing him information about other contractors' quotes or tenders and amending draft guotes to maximise GWAC's prospects of both winning Council work and achieving a substantial profit. This occurred for the BLaKC tower project, the Vale of Ah DOLA project, The Appian Way NDD project, the Belmore stadium fencing upgrade project, the Leslie Street Depot cleaning project, the light pole project, and The Appian Way culverts upgrade project. Mr Cossu accepted that he amended guotes sent to him by Mr Clarke. Mr Clarke accepted that on some occasions he used information from Mr Cossu to draft tenders that undercut competitors.
- He drafted documents for Mr Clarke for submission to Council, assisted Mr Clarke to complete documents and reviewed documents Council required from Mr Clarke. This occurred when Mr Cossu drafted the timeline for the BLaKC tower project and in relation to The Appian Way culverts upgrade project.
- He provided Mr Clarke with access to internal Council documents. This occurred in relation to The Appian Way NDD project and The Appian Way culverts upgrade project.
- He engaged the services of Obnova for The Appian Way culverts upgrade project; without Obnova's services, GWAC could not have undertaken the project, but Mr Clarke could not deal directly with Obnova because of his acrimonious relationship with Mr Davidovic.
- He instructed and supported Mr Dankaro to assist Mr Clarke in the procurement process for The Appian Way culverts upgrade project.
- He prepared internal Council memoranda supporting the award of work to GWAC

and participated on evaluation panels that recommended the award of work to GWAC. This occurred in relation to the BLaKC tower, The Appian Way NDD, the Belmore stadium fencing upgrade, the Ewen Park outdoor learning and the Leslie Street Depot cleaning projects.

- He engaged in a ruse concerning the pre-pour inspection, which ensured that Ms Bhuiyan did not attend the inspection and consequently did not learn that GWAC was using a third party to produce the culverts for The Appian Way culverts upgrade project.
- As superintendent's representative or project officer, he supported substantial variations benefitting GWAC, including for the following projects: BLaKC tower, The Appian Way NDD and the Belmore stadium fencing upgrade.
- He engaged GWAC for Council projects before obtaining competitive quotes, including for the Vale of Ah DOLA project, the Leslie Street Depot cleaning project and the Ewen Park outdoor learning project.

In return for his assistance, Mr Cossu (directly or through PMLV) received significant financial rewards:

- Between October 2020 and August 2023, Council paid to GWAC a total of \$5,278,849.47 for various projects. Of that amount, GWAC paid a total of \$2,428,612 to PMLV. This represented 46.01% of the total payments from Council to GWAC being subsequently paid by GWAC to PMLV. PMLV paid the sum of \$1,179,072.40 to Obnova between 12 October 2022 and 5 May 2023, as payment for the fabrication of culverts for The Appian Way culverts upgrade project. This left PMLV with a total amount of \$1,249,539.60.
- Money paid by Mr Clarke to Mr Cossu during the period that GWAC undertook Council work was drawn largely from Mr Clarke's 4916 account and Council was the primary source of funds deposited into that account.
- A spreadsheet located on Mr Clarke's computer that related to Council jobs – last saved by Mr Clarke on 25 November 2020 – shows that, at that stage, Mr Clarke intended to split the profits of GWAC Council work with Mr Cossu on a 50–50 basis. Sheet 1 of the spreadsheet records business start-up costs and "revenue" (net profit) received from three Council projects. A figure of \$70,975.28 (half the "running total") is recorded against "jc" (Jeremy Clarke) and "pc" (Pietro Cossu). The spreadsheet also

indicates that Mr Clarke and Mr Cossu had already received \$26,000 (or \$28,600 incl GST), described as "Management Fees" and "Engineering Fees" respectively. These figures were not included as part of the "total costs". In fact, on 2 November – within a week of receiving Council's payment for The Appian Way NDD project – Mr Clarke paid PMLV \$28,600 (\$26,000 plus GST) and made two transfers to his own BCE account that together totalled \$28,600.

 As shown in table 4, between March 2021 and May 2023, substantial sums were paid by GWAC to PMLV within days of GWAC receiving a substantial payment from Council.

The existence of the arrangement is also supported by the close relationship between Mr Clarke and Mr Cossu, as evidenced by the employment offer made by Mr Clarke to Mr Cossu on 21 December 2022, very soon after Mr Cossu left Council. Mr Clarke sent Mr Cossu an employment letter offering him a position at GWAC on a profit-share basis.

#### Did Mr Cossu or Mr Clarke declare the arrangement or disclose any conflict of interest?

#### Mr Vangi and Mr Anderson's evidence

Mr Vangi gave evidence that he had been unaware of any association between Mr Cossu, or anyone else at Council, and Mr Clarke's companies including GWAC between 2020 and 2022. He was not aware that Mr Cossu, or anyone else at Council, was assisting GWAC to obtain Council contracts. He did not know that Mr Cossu would be providing subcontracting services through PMLV to GWAC in relation to The Appian Way culverts upgrade project. For the reasons stated in chapter 1, the Commission finds Mr Vangi to be a truthful witness. Mr Anderson was also unaware of the relationships.

#### Mr Cossu's evidence

Initially, Mr Cossu gave evidence that he "must have mentioned" to someone at Council that he knew Mr Clarke, as they were good friends it was "an obvious thing" to do. He said he was "sure" he would have disclosed his longstanding friendship with Mr Clarke. He said he "was not keeping [it] a secret", but eventually he conceded that the work that he did for GWAC was "probably" a secret.

Mr Cossu accepted that he deliberately did not disclose to Council the financial arrangement he had with Mr Clarke;

that he was receiving money from GWAC, at least in part, as a reward for helping Mr Clarke win projects at Council. He also accepted that, during the time the payments were being made, he could not bring an impartial mind to evaluating GWAC as a prospective contractor. Mr Cossu admitted that he had breached Council's Code of Conduct by misusing his position to obtain a private benefit for himself.

The Commission is convinced Mr Cossu made a deliberate decision that he would not declare any conflict of interest in relation to the procurement arrangement he had with Mr Clarke and would keep it a secret. In addition to the admissions made by Mr Cossu, the following evidence supports that conclusion:

- Mr Cossu made no written declaration of conflict, although he was aware that Council's Code of Conduct referred to written declarations. When confronted with the need to make a written declaration in relation to evaluation of The Appian Way culverts upgrade project, he excused himself from the evaluation panel.
- Other than Mr Webb, no one at Council was aware of the real relationship between Mr Clarke and Mr Cossu. Ms Bhuiyan became aware that there was some sort of relationship when Mr Cossu withdrew from the evaluation panel for The Appian Way culverts upgrade project, but there was no suggestion she knew of the business relationship. Had Mr Vangi, Mr Anderson, Ms Bhuiyan or anyone else at Council been aware of the true relationship, Mr Cossu's role as superintendent's representative and/or project manager on GWAC projects would have been challenged. Mr Cossu admitted he made a deliberate decision that he would not disclose his relationship with Mr Clarke to Mr Anderson (his supervisor), including that they were involved in a subcontracting arrangement.
- When Mr Clarke was seeking assistance with pricing or otherwise for Council jobs, or Mr Cossu was assisting him, the men communicated secretly, by WhatsApp (which uses encrypted messaging) or through Mr Cossu's PMLV or private email addresses. Mr Clarke accepted that he submitted draft quotes to Mr Cossu at his PMLV email address so Mr Cossu could review and change them before sending them back to Mr Clarke, who subsequently emailed them to Council (to Mr Cossu's Council email address).

- Mr Clarke asked Mr Cossu to invoice his other company, BCE, rather than GWAC and Mr Cossu did so, thereby concealing that Mr Cossu was being paid by GWAC.
- Obnova and PMLV were not disclosed as subcontractors in GWAC's tender submission for The Appian Way culverts upgrade project despite the requirement for the tender submission to disclose all subcontractors. Nor did GWAC disclose this subcontracting arrangement with Obnova or PMLV in subsequent documentation furnished to Council, including the response to clarification 1.
- Mr Cossu attended Obnova's premises for the pre-pour inspection on behalf of Council, thereby ensuring that Council did not become aware that Obnova (not GWAC) was fabricating the culverts.
- Mr Cossu's identity was obscured in Mr Clarke's signed statement dated 15 January 2024, which was prepared for the purpose of adjudication proceedings between GWAC and Council. In the statement, Mr Clarke did not mention Mr Cossu, electing instead to refer to his "supplier". During the public inquiry, Mr Clarke denied deliberately refraining from referring to Mr Cossu in his statement. The Commission rejects that evidence. Having regard to the nature of the relationship and professional dealings between Mr Clarke and Mr Cossu addressed in this chapter, it is plain Mr Clarke deliberately omitted mentioning Mr Cossu in his statement dated 15 January 2024.

#### Mr Clarke's evidence

When questioned about Mr Cossu's conflict of interest in connection with tendering for The Appian Way culverts upgrade project, Mr Clarke asserted that there had been "an ongoing discussion" about Mr Cossu's inability to maintain a Council role while at the same time assisting Mr Clarke with the tender. Mr Clarke agreed that Mr Cossu had a clear conflict of interest. At one point in his evidence, Mr Clarke said that he understood that Mr Cossu had informed Council that he could not be involved as he was assisting Mr Clarke. He suggested that, at the time, he thought Mr Cossu had made a disclosure, referring to a letter that Mr Cossu may have shown him. However, he accepted that the letter did not accurately describe the financial arrangement between GWAC and PMLV. He accepted that there was no document declaring the conflict of interest. Further, Mr Clarke did not verify the position with Council.

Ultimately, Mr Clarke accepted that at no stage had Mr Cossu disclosed to Council his connection to GWAC or the fact that he was receiving money from GWAC although he understood that his arrangement with Mr Cossu could adversely affect the exercise of Council functions, including the evaluation of quotes and tenders for the award of Council projects.

At one point, Mr Clarke asserted that, despite the terms of The Appian Way culverts upgrade tender document, he did not appreciate that he himself had an obligation to disclose any conflicts; he thought the responsibility lay with the Council officer.

The Commission rejects this evidence as self-serving and disingenuous, and finds that Mr Clarke deliberately decided that he would not disclose to Council his relationship with Mr Cossu. Because Mr Clarke did present as somewhat naïve for a businessperson, the Commission is not satisfied that he appreciated the need for him to disclose the relationship from the outset. However, the Commission is well satisfied that by the time he was awarded The Appian Way culverts upgrade project, Mr Clarke knew he had a personal duty to disclose his relationship with Mr Cossu and PMLV. This conclusion is supported by the following evidence:

- Over the preceding period of two years, Mr Clarke and Mr Cossu were careful to keep their dealings a secret from Council.
- The tender document clearly spelled out the need to disclose conflicts.
- While Mr Clarke did not have the business acuity of Mr Cossu, by his own admission he understood that the arrangement with Mr Cossu could adversely affect the exercise of Council functions.

# Was Mr Webb part of the procurement arrangement?

Mr Webb, Mr Cossu and Mr Clarke denied that Mr Webb was party to the procurement arrangement between Mr Cossu and Mr Clarke.

Mr Webb denied knowing that Mr Cossu or PMLV had any arrangement with GWAC or received any money through it. He "didn't think" that Mr Cossu had said he intended to approach GWAC to undertake work for Council. Mr Webb also said it was possible Mr Cossu had suggested that Mr Clarke undertake Council work. Mr Webb was agreeable to Mr Clarke undertaking smaller works for Council. To appreciate Mr Webb's role in relation to the arrangement between Mr Cossu and Mr Clarke, it is important to consider the following circumstances:

- Mr Webb did not hold Mr Clarke in particularly high regard, and Mr Clarke did not like Mr Webb; they were not natural business partners. There is no evidence of direct engagement between Mr Webb and Mr Clarke between 2020 and December 2022, other than evidence consistent with ordinary professional interaction.
- Mr Clarke provided Mr Cossu with a draft shareholders' agreement, which Mr Cossu forwarded to Mr Webb. However, there is no evidence that the shareholders' agreement was solicited by Mr Webb; there is no evidence that it was implemented; and there is no evidence that Mr Cossu followed up with Mr Webb regarding it or suggested that Mr Webb become involved in any such arrangement.
- In relation to The Appian Way NDD project, for unknown reasons Council abandoned an RFQ project that had elicited five responses. GWAC had not submitted a quote. On 16 September 2020, Mr Webb met with other Council officers and, on the same day, a new RFQ was issued to three contractors; that is, two original contractors (but not those who had submitted the lowest quotes) and GWAC.
- On 22 August 2021, Mr Cossu sent Mr Webb a series of memoranda seeking work for GWAC. On 30 August 2021, Mr Cossu asked Mr Webb whether he could assist, as Mr Clarke was "calling for work" and Mr Webb informed Mr Cossu how best to proceed.
- In October 2021, in connection with the Vale of Ah DOLA project, Mr Webb asked that GWAC be approached after quotes from other contractors had been received and there had been a recommendation to accept the Northern Fencing quote. Mr Webb instructed Mr Cossu to direct that Mr Clarke start the project before he obtained a quote from GWAC, and he sent the Northern Fencing quote to Mr Cossu so that Mr Cossu could determine a competitive price by reference to that quote. Ms Bhuiyan conceded that there was an urgency in relation to these works and there may have been some utility in allocating the work to GWAC.
- On 25 February 2022, there was an exchange between Mr Cossu and Mr Webb regarding how "Jeremy" could best price a light pole project and whether "we" could go up. Mr Webb said

he would speak to Mr Cossu about it at a later date. The use of "we" may be consistent with Mr Webb being a party to the arrangement, but it is at least equally consistent with Mr Cossu and Mr Clarke being in partnership.

- In relation to The Appian Way culverts upgrade project:
  - On 30 September 2021, Mr Webb and Mr Cossu discussed the possibility of GWAC undertaking the delivery of culverts for the project (Mr Cossu said "I thought we were going to use GWAC that's why I was talking to them"), using Obnova as a subcontractor for the pre-cast elements. Mr Cossu cautioned Mr Webb, "if they [Obnova] bid directly we get nothing". Mr Webb's response to Mr Cossu was, "I'll call you tomorrow". While "we" may have referred to Mr Webb and Mr Cossu, it may also have referred to Mr Cossu and Mr Clarke.
  - Mr Webb advocated for GWAC to take the project, despite concerns about its capacity to deliver the works. However, this conduct would also be consistent with Mr Webb's desire to deliver the project as expeditiously as possible.
  - Mr Webb told Ms Bhuiyan that the pre-pour could proceed with Mr Cossu attending.
  - On 22 November 2022 (the day after Mr Webb resigned from Council but before he left Council), Ms Bhuiyan wrote to Mr Clarke complaining that pre-cast culverts were not manufactured to specification. Mr Clarke forwarded the letter to Mr Cossu (his PMLV address) and Mr Cossu forwarded it to Mr Webb at his personal email.
- The haste with which, immediately after leaving Council, Mr Webb voluntarily assisted GWAC in its dispute with Council is consistent with PMLV having a financial interest in the outcome of the dispute because it was owed money by GWAC, and Mr Webb having a financial interest in PMLV recovering those funds from GWAC. There was an exchange between Mr Webb and Mr Cossu on 7 January 2023 about money owed by GWAC to PMLV, as PMLV needed to pay Obnova. Mr Webb denied that the use of the collective "we" in this exchange referred to Mr Webb and Mr Cossu and their joint ownership of PMLV. He suggested that

"Cossu uses 'we' regularly". However, in a text message later that day, Mr Webb himself said, "No I'm confident that we will be fine. We need to play our cards right this coming week and we will clear the loan" (emphasis added).

- Not only were Mr Webb and Mr Cossu close friends, but they had a mutual interest in PMLV, through which they derived profits from the recruitment scheme (see chapter 4). Mr Webb drove a vehicle owned by PMLV. Mr Cossu invoiced GWAC through PMLV and utilised that company in relation to The Appian Way culverts upgrade project.
- The WhatsApp exchange between Mr Cossu and Mr Webb on 13 March 2023 (quoted earlier in this chapter, under "GWAC made payments to PMLV following receipt of monies from Council") appeared to concern the need for a plan to wind up or restructure their previous business arrangement in the context that GWAC owed money to PMLV.
- The W Project's 2023 acquisition of PMLV without actually paying anything, and the associated absorption of Mr Cossu as an employee, suggest that this acquisition was a way of restructuring a longstanding business partnership.
- During a search of Mr Webb's residential premises by Commission officers, a notebook was seized that contained a sketch of an entities structure. The sketch depicted "The W Group" as an overarching entity and suggested that it had, or would take, a 30 per cent share in GWAC. Mr Webb said this reflected a general discussion about a possible business structure that did not eventuate.
- Mr Cossu provided Mr Webb with many financial benefits, some of which can be clearly connected to Mr Webb's involvement in the recruitment scheme (see chapter 4). However, there is no clear evidence linking any of these benefits to Mr Webb's conduct in connection with the procurement arrangement.

This material shows that Mr Webb knew that Mr Cossu had contemplated a shareholders' arrangement with GWAC, and he knew Mr Cossu was advocating for GWAC to obtain Council work; this was obvious from Mr Cossu's communications with Mr Webb on 21 August 2021, 30 September 2021, in October 2021, and on 25 February 2022 (as discussed earlier in this chapter). In relation to the Vale of Ah DOLA project, Mr Webb sent confidential Council material to Mr Cossu to enable Mr Cossu to price the quote for GWAC. As manager of Council's Works and Projects Unit, Mr Webb knew GWAC was Mr Clarke's company and that GWAC had been awarded many Council projects. He knew of the friendship between Mr Cossu and Mr Clarke.

Mr Webb was responsible for approving members of evaluation panels. Because of his conversation with Mr Cossu on 30 September 2021 (as discussed earlier in this chapter, under "The Appian Way stormwater upgrade project"), Mr Webb knew of GWAC's interest in The Appian Way culverts upgrade project well before the evaluation panel was constituted. Despite this, he endorsed Mr Cossu as a panel member. When Ms Bhuiyan advised Mr Webb that Mr Cossu had recused himself, Mr Webb was reminded of Mr Cossu's conflict of interest, yet he later proposed to Ms Bhuiyan that Mr Cossu undertake the pre-pour inspection.

As superintendent of Council's capital works program, Mr Webb was aware of the identity of Council's project managers and must have known that Mr Cossu was the superintendent's representative/project manager on many projects that were undertaken by GWAC. In that capacity, Mr Cossu was responsible for certifying that works had been completed by the contractor and considering variations, of which there were many where GWAC was concerned. Nevertheless, Mr Webb approved many recommendations made by Mr Cossu.

However, there is no clear evidence that Mr Webb was more than peripherally involved in the procurement arrangement between Mr Cossu and Mr Clarke. He may have been helping Mr Cossu for a number of reasons: because of their friendship; in the hope of future financial benefit; because Mr Cossu was financially assisting him through the recruitment scheme to circumvent the strictures of his bankruptcy (see chapter 4); or for some other reason. He may have received substantial financial benefits from Mr Cossu or PMLV only because of his involvement in the recruitment scheme (see chapter 4), because Mr Cossu anticipated a future quid pro quo, or for another reason unrelated to the procurement arrangement between Mr Cossu and Mr Clarke.

# Corrupt conduct in relation to the procurement arrangement

In determining the findings of corrupt conduct set out below, the Commission has, in each case, applied the approach set out in Appendix 2.

#### Mr Cossu

Between mid-2020 and late 2022, Mr Cossu misused his public official functions by assisting Mr Clarke and his company, GWAC, to win Council projects and maximise his financial gain from the projects (including through variations), by utilising the information and opportunities available to him through his position at Council. Mr Cossu did so for the purpose of improperly benefitting himself and his company, PMLV, which received over \$2 million from GWAC.

In connection with his Council responsibilities, it was Mr Cossu's duty to act in the public interest, uninfluenced by other considerations, especially personal financial considerations: Berejiklian. It was therefore Mr Cossu's duty to carry out his public functions in the best interests of the Council by conducting the procurement functions in accordance with the policies and protocols required by Council to achieve work of sound quality and representing value for money.

The conduct on the part of Mr Cossu comes within s 8(1)(b) of the ICAC Act because it involved conduct of a public official that constituted or involved the dishonest and partial exercise of their official functions. Mr Cossu's conduct was dishonest, in that he deliberately concealed from Council the assistance he was providing to Mr Clarke, knowing that it would be unacceptable to Council. His conduct was partial, in that it favoured Mr Clarke and his company GWAC, giving them an unfair advantage in the procurement process. Mr Cossu's conduct also comes within s 8(2)(d) of the ICAC Act because it was conduct that could adversely affect the exercise of Mr Cossu's official functions and could involve obtaining secret commissions.

The Commission is satisfied that Mr Cossu's conduct could constitute or involve an offence against s 249(1)(a)(ii) of the Crimes Act on the basis that:

- Mr Cossu was an "agent" of Council in that, although he was not an employee, as a contingent worker engaged as a project manager he was "acting for or on behalf of" the Council (see s 249A Crimes Act definition).
- Mr Cossu received a "benefit" (which is defined to include money) in that he received more than \$2 million from Mr Clarke and his company, GWAC (see s 249A Crimes Act definition).
- To Mr Cossu's knowledge, in paying money to him, Mr Clarke intended to reward him for showing favour to GWAC in relation to the business of his principal (Council).
- The monies were received "corruptly". Mr Cossu knew that the payments were intended to

influence him to favour GWAC in relation to the affairs or business of his principal (Council), and he deliberately failed to disclose the arrangement to his principal. Such conduct is corrupt by ordinary standards.

Further, the Commission is satisfied that Mr Cossu's conduct could constitute or involve the criminal offence of corruptly receiving a benefit, the receipt or any expectation of which would tend to influence him to show favour to GWAC in relation to the affairs or business of his principal (Council), contrary to s 249B(1)(b) of the Crimes Act, on the basis that:

- Mr Cossu was an "agent" of Council, in that, although he was not an employee, as a contingent worker engaged by Council as a project manager he was "acting for or on behalf of" Council (see s 249A Crimes Act definition).
- Mr Cossu received a "benefit" (which is defined to include money) in that he received more than \$2 million from Mr Clarke and his company, GWAC (see s 249A Crimes Act definition).
- Receipt of the benefit or any expectation of receipt would (and did) tend to influence Mr Cossu to show favour to GWAC in relation to the award of Council contracts and the approval of variations to those contracts.
- The monies were received "corruptly". Mr Cossu knew that the payments were intended to influence him to favour GWAC in relation to the affairs or business of his principal, the Council, and he deliberately failed to disclose the arrangement to his principal. Such conduct is corrupt by ordinary standards.

The Commission is satisfied that the jurisdictional requirements of s 13(3A) are met.

For the purpose of s 74BA of the ICAC Act, the Commission is satisfied Mr Cossu's conduct was serious corrupt conduct, because it:

- occurred over an extended period (two years)
- was planned and relatively sophisticated
- comprised many actions
- was significant, in causing Council to pay a large amount of money to GWAC
- disadvantaged many competing contractors
- involved ongoing and deliberate deceit on the part of Mr Cossu, who was motivated by the desire for financial gain, and it resulted in substantial financial gain.

#### **Mr Clarke**

Between mid-2020 and late 2022, Mr Clarke rewarded Mr Cossu for assisting Mr Clarke and his company, GWAC, to win Council projects and maximise GWAC's financial gain from the projects (including through variations). Mr Cossu did so by utilising the information and opportunities available to him through his position. In return, Mr Clarke paid Mr Cossu's company, PMLV, over \$2 million.

This conduct on the part of Mr Clarke comes within s 8(1)(a) of the ICAC Act because it was conduct that adversely affected, either directly or indirectly, the honest or impartial exercise by Mr Cossu of his official functions.

Mr Clarke's conduct also comes within ss 8(2)(d), (x) and (y) of the ICAC Act because it was conduct that adversely affected, either directly or indirectly, the exercise of official functions by Mr Cossu and could involve offering secret commissions, matters of a similar nature or any conspiracy to do so.

The Commission is satisfied that Mr Clarke's conduct of paying monies to Mr Cossu could constitute or involve the criminal offence of corruptly giving to an agent (Mr Cossu) a benefit as an inducement or reward for the agent's showing favour to GWAC in relation to the affairs or business of Mr Cossu's principal (Council), contrary to s 249B(2)(a)(ii) Crimes Act. This is for the following reasons:

- Mr Cossu was an "agent" of Council in that, although he was not an employee, as a contingent worker engaged by Council as a project manager, he was "acting for or on behalf of" Council (see s 249A Crimes Act definition).
- Mr Clarke gave Mr Cossu a "benefit" (which is defined to include money); Mr Cossu's company received more than \$2 million from Mr Clarke and his company, GWAC (see s 249A Crimes Act definition).
- When making the payments, Mr Clarke intended them to be a reward for Mr Cossu showing favour to GWAC in relation to the affairs or business of Mr Cossu's principal (Council).
- The payments were made "corruptly" because, at the time the monies were paid, Mr Clarke intended to influence Mr Cossu to show favouritism and he knew that Mr Cossu had not declared the financial arrangement that he had with GWAC.

Further, the Commission is satisfied that Mr Clarke's conduct could constitute or involve the criminal offence of corruptly giving to an agent a benefit the receipt or

expectation of which would tend to influence the agent to show favour to GWAC in relation to the affairs or business of Mr Cossu's principal (Council), contrary to s 249B(2)(b) Crimes Act. This is for the following reasons:

- Mr Cossu was an "agent" of Council, in that although he was not an employee, as a contingent worker engaged by Council as a project manager, he was "acting for or on behalf of" Council (see s 249A Crimes Act definition).
- Mr Clarke gave Mr Cossu a "benefit" (which is defined to include money); Mr Cossu received more than \$2 million from Mr Clarke and his company, GWAC (s 249A Crimes Act definition).
- When making the payments, Mr Clarke intended that the payments would tend to influence Mr Cossu to show favour to GWAC in relation to the affairs or business of Mr Cossu's principal (Council).
- The payments were made "corruptly" because, at the time the monies were paid, Mr Clarke intended to influence Mr Cossu to show favouritism and he knew that Mr Cossu had not declared the financial arrangement he had with GWAC.

The Commission is satisfied that the jurisdictional requirements of s 13(3A) are met.

For the purpose of s 74BA of the ICAC Act, the Commission is satisfied Mr Clarke's conduct was serious corrupt conduct, because it:

- occurred over an extended period (two years)
- was planned and relatively sophisticated
- comprised many actions
- was significant in causing Council to pay a large amount of money to GWAC
- disadvantaged many competing contractors
- involved ongoing and deliberate deceit on the part of Mr Clarke (although the period of Mr Clarke's deliberate deceit may have been less than that of Mr Cossu)
- was motivated by the desire for financial gain, and it resulted in substantial financial gain.

#### Mr Webb

As the Commission is not sufficiently satisfied that Mr Webb was integrally involved in the procurement arrangement between Mr Cossu and Mr Clarke, in that regard it makes no corrupt conduct finding against Mr Webb.

#### **Mr Dankaro**

The Commission has found that Mr Dankaro's conduct was prompted and controlled by Mr Cossu, in relation to whom Mr Dankaro felt obligated and powerless, and that Mr Dankaro did not seek or receive any reward for his assistance. Counsel Assisting did not submit that any corrupt conduct finding should be made against Mr Dankaro and the Commission makes no such finding.

#### Section 74A(2) statements

In relation to the matters dealt with in this chapter, the Commission considers Mr Cossu and Mr Clarke are "affected" persons.

The evidence of each of Mr Cossu and Mr Clarke was the subject of a declaration under s 38 of the ICAC Act and cannot be used against them in criminal proceedings, except in relation to prosecution for an offence under the ICAC Act.

The Commission considers that there is ample admissible evidence to consider obtaining the advice of the DPP in relation to prosecution of Mr Clarke and Mr Cossu. The admissible evidence includes extensive contemporaneous documentary evidence (including financial records, text messages, Council records and email correspondence) and evidence from other witnesses.

The Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Cossu for the criminal offence of corruptly receiving financial benefits from Mr Clarke or his company, GWAC, in respect of GWAC being awarded projects at Council, contrary to s 249B(1) of the Crimes Act.

The Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Clarke for the criminal offence of corruptly giving financial benefits to Mr Cossu, an agent of Council, in respect of GWAC being awarded projects at Council, contrary to s 249B(2) of the Crimes Act.

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## **Chapter 6: Corruption prevention**

#### Introduction

This chapter examines aspects of the control framework at Canterbury-Bankstown Council that allowed corrupt conduct to occur. Systemic shortcomings in the implementation of processes and policy frameworks for recruitment and procurement at Council, as well as for project management processes for capital works projects, increased the risk of corrupt conduct and made it less likely that Council could deliver value for money. Throughout the chapter, the Commission considers the steps Council has since taken to address these systemic issues and makes 19 recommendations for how Council can reduce corruption risks in the future.

A most serious and obvious deficiency in Council processes was the failure to perform due diligence. As will be discussed, Mr Webb was hired despite presenting false qualifications and being an undischarged bankrupt. He was not sufficiently qualified for the role and did not possess the necessary integrity to hold a position at Council. Moreover, it may well be that General Works and Construction Pty Ltd (GWAC) should not have been awarded several of the Council projects given its limited assets, experience and capabilities.

The PMLV Invest & Const Pty Ltd (PMLV) recruitment scheme revealed other systemic shortcomings at Council. The Council had no policy framework to inform its use of contingent workers. Hiring managers could recruit contingent workers as they saw fit, with little oversight or control. In addition, Council had minimal visibility of its contingent workforce, as it did not plan for, collect data or closely monitor expenditure in this area. These weaknesses helped Mr Webb and Mr Cossu to profit from the recruitment scheme by subcontracting two recruitment companies (Randstad and Spinifex) to engage 26 contingent workers referred by PMLV. Mr Webb and Mr Cossu took large commissions by selecting workers who were often inexperienced in the Australian workforce, and engaging them on a long-term basis, potentially wasting public funds. Their recruitment scheme was uncovered when contingent workers were inadvertently given access to the rates Council paid for their services and was not the result of effective anti-corruption controls. Given their lack of job security, it may have been difficult for the contingent workers to report suspected corruption, several of whom were intimidated by Mr Webb.

Inadequate practices were also found at the different phases in the capital works projects: during planning and design, in the award of contracts and during the construction process. For example, Council did not require sufficient information about subcontracting arrangements or a tenderer's ability to meet specifications and standards, undermining the delivery of its capital works program. Many of the problems that arose in later project stages resulted from earlier planning and budgeting failures.

Council submitted that the corruption exposed during the investigation was not due to systemic failures but rather the result of deliberate fraudulent actions. While Mr Webb and Mr Cossu's actions were dishonest, the Commission rejects the argument that their conduct alone was to blame, considering the weak control environment in place at Council. Moreover, some of the examples put forward by Council to support its assertion that it had comprehensive processes in place rely on activities that are yet to be implemented or are in the process of being implemented. Council's submissions also ignore the evidence about poor processes provided by witnesses regarding capital works, and the management of contingent hires, and its own internal audit report of December 2021 into contingent workforce management.

The Commission does, however, acknowledge that Council has recently taken steps to improve its procedures, including a comprehensive review of end-to-end procurement processes, the planned introduction of project-management software and the implementation of a revised project-management framework.



Council also submitted that information technology (IT) systems are one of the most effective anti-corruption measures, given they provide transparency over third-party contractor arrangements. The Commission believes IT systems can make it easier to detect corruption; however, their implementation does not automatically prevent corruption. The effectiveness of IT tools depends on how they are used and supplemented with other effective corruption controls. While Council's new outsourced recruitment function provides an improved control environment, it still requires oversight and management.

Part 1 of this chapter addresses the systems and processes involved in the recruitment of Mr Webb and the PMLV contingent workers. Part 2 addresses the procurement and management of capital works. Council agreed with most recommendations proposed by the Commission in its corruption prevention submissions, with some exceptions, noted below.

# Part 1: Corruption risks in the recruitment of Mr Webb and the PMLV contingent workers

# Mr Webb was recruited without sufficient screening

Employment screening is a basic corruption control. It plays a fundamental role in ensuring an organisation engages qualified people who have appropriate integrity. As the manager of the Works and Projects Unit, Mr Webb was responsible for the delivery of a \$150-million capital works program. The role encompassed significant financial, managerial, leadership and decision-making responsibilities. However, when hiring Mr Webb, Council's employment screening failed to identify numerous falsehoods and red flags, or consider the risks posed by the seniority of his role. Prior to his appointment at Council, Mr Webb completed psychometric testing, three rounds of interviews and provided three referees. Despite this, Council did not complete all the essential employment-screening checks and requirements identified in its position description and interview guide.

Mr Webb's position description and offer of employment letter specified that he was required to undergo a criminal history check. Council did not complete this check. In addition, Mr Webb did not declare his undischarged bankrupt status and Council undertook no financial checks.

The position description for the role noted that tertiary qualifications in architecture or engineering were essential. As noted in chapter 3, Mr Webb falsely claimed in his resume that he had a Bachelor of Architectural and Environmental Design degree from the University of Canberra. The Commission obtained a copy of Mr Webb's academic transcript. While he had enrolled in an architecture degree, he completed only one year, then failed all subsequent subjects and withdrew from the course. Mr Webb also falsely claimed that he was enrolled in a masters program at Torrens University in discussions with the recruitment consultant and this was referenced in its report. He did not enrol in the course until 2021, a year after he started work at Council. He attempted one semester and failed all subjects.

According to Council's interview guide, candidates are required to provide proof of educational qualifications following the second interview, and hiring managers are to photocopy them. There is no evidence that Council took any measures to verify Mr Webb's claimed qualification.

Better practice employment screening involves verifying academic qualifications by contacting academic institutions. According to Council's human resources manager, under Council's updated recruitment process recruitment companies will upload a candidate's qualification into the recruitment software platform Comensura but are not required to contact the issuing institution as standard practice. Consequently, Council does not verify academic qualifications, nor does it check memberships or professional associations for any hires, regardless of the risks associated with the role. This exposes Council to significant risks if a worker makes fraudulent claims in their CV and are not qualified.

There were several other undetected red flags regarding Mr Webb's CV and other information he provided during the recruitment process. These included that:

- he did not list his employment history prior to 2014 on his CV, which could have revealed his status as an undischarged bankrupt
- his tenure at his previous employers listed on his CV was very short and typically lasted only one-to-two years
- his psychometric test scores were low, which raised issues regarding his suitability for the role.

Checks that could have been used to assess Mr Webb's suitability, but were not conducted, include:

- service and conduct checks to identify performance issues in past roles and to confirm employment dates
- a bankruptcy check
- verification of academic qualifications
- a complete employment history check, and
- a criminal record check.

The recruitment consultant "commended" Mr Webb for the role, yet it is unclear how he compared to other candidates. This was because Council was unable to provide any notes from the interviews held with Mr Webb or any scoring of candidates to justify why he was the preferred applicant. Given the seniority of the role, it is particularly important Council create and retain these records.

Following this investigation, Council has implemented a new human resources information system to capture documentation related to recruitment.

#### **RECOMMENDATION 1**

That Council adopts better-practice employment-screening measures that include:

- more extensive screening for higher-risk roles, in line with a risk-based approach
- confirmation where a position has been identified as requiring a criminal record check – that this check is completed and used to inform the hiring decision
- contact with issuing institutions to verify academic qualifications
- financial checks on candidates for managerial roles with financial delegations.

#### **RECOMMENDATION 2**

That Council retains documents from recruitment interviews and evidence justifying the selection of the preferred applicant.

# The need for contingent labour was not informed by workforce planning

During Mr Webb's tenure, the capital works program rapidly expanded from a budget of \$30 million to \$150 million, with approximately 300–400 projects. This resulted in greater pressure to deliver projects and a need for increased staffing. Council's Executive Leadership Team gave Mr Webb permission to increase his team, including the use of contingent labour. His role was to "lead the recruitment of permanent and contract staff as part of the approved realignment".

Council did not properly consider how to achieve this increased staffing. There was no systematic analysis of whether the contingent workers were needed. According to Council, "The decision to increase resources using contingent labour was not formally documented".

The hiring of contingent labour should be informed by workforce planning and only used when an organisation can demonstrate it is the most effective and efficient solution for its priorities and needs. For example, contingent workers can be used to meet a short-term need for labour or to meet a gap in capabilities or specialist knowledge. However, Council's workforce strategy reports for 2018–2021 and 2022–2025 did not consider contingent labour.

By November 2022, nearly three in four (73%) of the Works and Projects Unit's workers were contingent workers. A lack of workforce planning and oversight by management or the Human Resources Unit gave Mr Webb and Mr Cossu the opportunity to run the PMLV scheme without detection. Contingent workers were recruited in an unplanned and uncoordinated fashion . According to Council's internal audit report:

In the absence of any strategy decisions to engage a contingent workforce is [sic] largely left to the discretion of leaders of individual business units and is occurring in an unplanned and uncoordinated manner to fill gaps arising.

Without workforce planning to inform contingent hiring, Council could not be clear on:

- what capabilities were needed
- what roles were required
- how long these skills were needed for
- which type of recruitment solution was most appropriate
- what safety, performance, reputational and finance risks required management.

### Many contingent workers were renewed on a long-term basis

Many of the contingent workers hired through the PMLV scheme were engaged on a long-term basis that was well beyond the NSW Public Service Commission's six-month guideline (although this guideline was not binding on Council). For example, according to one report, nearly two in five (39%) contingent workers in the Works and Projects Unit had been engaged at Council for more than 12 months.

Council did not thoroughly assess whether there was a continued need for a contingent worker when they were renewed. When funding for a contingent worker ran out, Mr Webb would vary the original purchase order via an email to the Procurement Unit. If the additional funding required was beyond his financial delegation, it would be escalated for approval to Mr Vangi, who was his supervisor. The system for renewing contingent workers was a manual email-based process that was not captured in the electronic procurement system, which further obscured oversight.

When hired for long periods of time, contingent workers provide poor value for money, because they are typically paid higher hourly rates than permanent workers and fees are paid to the labour hire firm. Reliance on contingent labour also allows Council to bypass the requirement of s 348 of the *Local Government Act 1993* to advertise employee positions of 12 months or more. Many contingent worker roles could be suitably filled by permanent staff, or through a different human resourcing strategy, for less expense.

#### **RECOMMENDATION 3**

That Council adopts better practice guidelines on contingent workforce management that incorporate:

- workforce planning
- a requirement to consider alternative recruitment solutions to fill roles
- controls to limit the tenure of contingent workers, including reviews to determine whether contingent roles should be converted to permanent appointments.

#### **RECOMMENDATION 4**

That Council adopts measures to address the risks associated with contingent labour, including:

- placing contingent labour on its risk register(s)
- performing a formal risk assessment to help inform when and how contingent labour should be used.

## There was no clear policy framework for contingent workers

The lack of a policy framework for hiring and managing contingent workers meant that hiring managers had wide discretion over recruitment processes. Hiring managers were not required to justify recruitment decisions, perform high-quality employment screening checks, conduct interviews with candidates or record notes from interviews. The minimal guidance that was available was split across human resource and procurement policies, creating ambiguity and confusion. When standards are unclear or loose, processes are vulnerable to corruption and it is harder to hold people to account.

In November 2022, Council endorsed a contingent labour policy and procedure, and a leaders' guide to managing contingent labour. The new policy guidelines outline the roles and responsibilities of the Human Resources Unit, hiring managers and other stakeholders in the recruitment and management of contingent workers.

### Segregation of duties in recruitment was insufficient

Council's contingent hiring and management processes lacked a proper governance framework and adequate internal controls necessary to stop corruption. Following an internal audit in late 2021, Council identified that the contingent worker control environment was "unsatisfactory". The contingent hiring process was made vulnerable to corruption by Council's failure to implement basic internal controls, such as segregation of duties. Mr Webb was responsible for:

- contacting the recruitment agency to fill a role
- outlining the duties and requirements of the role
- supplying or shortlisting candidates
- deciding whether an interview would be held
- awarding the role
- negotiating and deciding the pay rate
- raising the purchase order and approving the invoice
- deciding any pay increases
- approving timesheets
- renewing the length of the engagement (if within his financial delegation).

This allowed Mr Webb to appoint Mr Cossu as a contingent worker without a competitive process. Mr Cossu was engaged as a team leader of construction through Randstad. Mr Webb referred Mr Cossu to Ms Kielty, a Randstad consultant. No other candidates were submitted for the role. There is no evidence that an interview was conducted. When Ms Kielty asked whether she should conduct reference checks, Mr Webb responded that he had already conducted them. There is no evidence that he performed any such checks. He also failed to declare his conflict of interest with Mr Cossu, as they were former colleagues, friends and business associates.

There was no supervision of Mr Webb's hiring practices. Mr Vangi gave evidence that he had no oversight of Mr Webb's hiring during the relevant period. Furthermore, according to the human resources manager, Mr Webb was responsible for ensuring the roles he hired for adhered to the approved organisational structure. Due to Council's lack of oversight, Mr Webb was able to recruit more staff than he was permitted, who were not part of the approved structure. For example, Mr Webb hired a communications officer who was not identified in the structure. According to the human resources manager, Mr Webb's recruitment activities were not against vacancies: "This structure was outside of that. So the approved structure at the time was 44 people ... they were operating fully well above that."

In September 2022, Council implemented a new process for recruiting contingent workers through Comensura. This was introduced to address weaknesses in existing processes and to standardise how contingent workers were engaged, onboarded and paid. Comensura is a vendor-neutral managed service provider that contacts recruitment companies to supply labour and manages this process. As such, Comensura minimises the direct contact that hiring managers have with recruitment companies by acting as a broker, although it is still possible for a manager to request a specific contingent worker. Comensura transitioned Council's pre-existing suppliers to participate in this arrangement, and both Comensura and Council can request other specific suppliers.

Council submitted that since the introduction of Comensura, it has adopted additional measures that will moderate the control hiring managers have on the recruitment process. Specifically:

- Hiring managers are now required to place booking requests for contingent labour in Comensura.
- Contingent workers are recorded against a position number to ensure there is an approved position and budget.

Comensura collects metrics on contingent labour and can generate reports for greater visibility of the contingent workforce. While the new Comensura system introduces some segregation of duties, most of the process maps provided to the Commission outlining the contingent recruitment procedure involve only the hiring manager. One exception – which was in place at the time of the corrupt conduct – is that hiring managers creating an order for a contingent worker required approval by their manager, or director, beyond a certain payment threshold. Better-practice contingent-worker recruitment processes rely on the expertise of human resources experts. Yet, according to the Human Resources Unit, it has little involvement in this process at Council and the use of contingent workers is still driven by the business unit.

The Commission believes additional segregation measures should be introduced, as addressed in Recommendation 5.

#### **RECOMMENDATION 5**

That Council implements measures to eliminate absolute control of hiring managers in the contingent-labour hiring and management process. In particular, Council should consider giving human resources a role in approving appointments.

# Financial oversight and reporting on contingent workers was inadequate

Poorly controlled expenditure on contingent workers was a systemic problem across Council. There was a significant overspend of approximately \$9 million per year on contingent workers for several years. For example, in 2020–21 there was an overall approved budget of \$3,908,618 for contingent workers, yet the actual spend was \$12,955,754. This expenditure was driven by the Works and Projects Unit, which accounted for 25% of Council's expenditure in this area.

Expenditure on contingent workers significantly increased when Mr Webb joined Council. In 2019–20, expenditure on contingent workers in the Works and Projects Unit was \$1,639,790.42; by 2020–21 it had more than doubled to \$3,290,424. This expenditure on contingent labour was funded through the capital works budget. In the public inquiry, Mr Vangi provided evidence that while the capital works program had increased, Council had not allocated an adequate staffing budget to deliver the program. This suggests Council had not thoroughly considered how to achieve its objectives.

Council's Executive Leadership Team did not adequately monitor contingent-labour budgets. It was informed of expenditure on contingent workers through monthly meetings and quarterly financial reports. Managers also had access to "Our Reporting", a software tool that recorded expenditure on contingent workers. The information provided to Executive Leadership Team repeatedly demonstrated Council's overspend in this area. For example, according to the June 2022 monthly financial spreadsheet, the directorate in which Works and Projects was located had spent nearly nine times its contingent-worker budget for that financial year (867.9%).

Mr Vangi said that he and the rest of the Executive Leadership Team were surprised at the amount spent on contingent workers, despite having received financial reports. It appears the ongoing overspend on contingent workers went largely unnoticed by the Executive Leadership Team until August 2022 – or at least that is when it first took action and asked the Works and Projects Unit to respond to the significant overspend. Council's internal audit report identified the need for greater oversight of contingent workers and noted that, "Whilst the budget is one control to manage spend, in the absence of management reporting and oversight the effectiveness of this control is limited".

Although Council generated financial reports with useful information, the reports remained deficient in detail because Council did not have the capability or systems to collect data on where, when, how or why contingent workers were used. Council did not collect data on the number and location of its contingent workers, their remuneration, their role, which suppliers had provided them, tenure, justification for the worker's recruitment or the quality of candidates for these roles. Thus, while the Executive Leadership Team had oversight of overall spend, it did not have granular information about how Council was using contingent labour. Such statistics are critical to inform workforce planning and expenditure and identify red flags. Council now collects contingent-labour statistics via Comensura and Comensura generates detailed quarterly reports to the Executive Leadership Team.

Another reason expenditure on contingent workers was poorly controlled was that Council did not retain proper records of contractual price lists to inform what contingent workers should be paid. As discussed in chapter 4, Council recruited contingent labour using the Local Government Procurement (LGP) Human Resources panel "Permanent and Temporary Placements and Associated Services" (LGP808-3). LGP is a prescribed entity that supports all councils across NSW with procurement. Council was unable to provide the Commission with a copy of its price schedule for the LGP contract. It appears this may have been a systemic problem within Council. According to Council's internal audit report, business units were unaware of contractual rates, which may have resulted in discrepancies in what contingent workers were paid. The Internal Audit Unit was also not able to obtain a copy of the schedule of rates. According to its report:

Business units engaging contingent labour were not aware of the contractual rates with the recruitment agencies being used, some were not even aware that there were pre-agreed rates in place.

This resulted in illogical pay structures, which had the potential to waste funds. For example, according to the human resources manager, there were instances of project officers being paid more than a project manager. The human resources manager observed that "There was really no rhyme or reason I could see that was being applied to how the rates were". It appears there were no checks to determine if pay rates were reasonable. Similarly, Mr Vangi told the Commission that he questioned whether some of the contingent workers represented value for money, including one contingent worker who was invoiced at \$6,000 per week as a project manager.

To better control expenditure on contingent workers, Council now uses a grading system in Comensura for approved positions and is implementing new cost codes to differentiate between different types of contingent staff, such as seasonal workers and back-filled positions.

Council submitted that booking rates are now pre-populated in Comensura based on its salary system.

#### **RECOMMENDATION 6**

That Council collects detailed and accurate financial and workforce data on contingent workers and shares this information with key stakeholders, including the Executive Leadership Team.

#### **RECOMMENDATION 7**

That Council:

- ensures it retains copies of price schedules for different job grades and bands
- instructs hiring managers and human resources staff to consider these price schedules in their recruitment processes
- embeds internal financial controls to ensure that contingent rates are justified
- confirms a contingent worker's rate of pay with the contingent worker when they are initially engaged.

# Outsourced arrangements were not properly assessed

Outsourcing services can create additional corruption risks, particularly when subcontractors are used and arrangements are less transparent. When outsourcing, Council has a responsibility to ensure there is proper supply-chain management. Contingent labour suppliers (such as LGP and Comensura), contractors and subcontractors also have an obligation to ensure proper supply-chain management. Before outsourcing services, an organisation should assess contractor and subcontractor assurance frameworks by considering whether they have the processes, systems and controls in place to deliver a skilled and experienced contingent-labour force in line with the contract.<sup>1</sup>

### Council did not conduct due diligence on subcontracting arrangements

Council did not conduct due diligence on the PMLV arrangement because, apart from Mr Webb and Mr Cossu, it was unaware of the proposal to subcontract PMLV. To add subcontractors to the LGP panel, the contractor was required to request authorisation from LGP, not Council.

Where practical, Council should require formal permission from external suppliers for any contingent worker subcontracting arrangements, to help it

assess supply-chain risks and maintain visibility over arrangements. This is particularly important when contingent workers participate in construction projects, given the safety-compliance requirements and risks involved. Council's lack of visibility over key features in its contingent-worker supply-chain arrangements, including the level of subcontracting and workers' pay rates, allowed PMLV's involvement to go undetected. As set out in chapter 4, PMLV took large commissions for the recruitment of contingent workers; in many instances, its commissions were 40–59% of the expenditure for a contingent worker, on top of the 14.5–18% that could be charged by the recruitment companies.<sup>2</sup> This meant many contingent workers were receiving significantly less in wages than the commission PMLV received to recruit them. These high commissions represented poor value for money, while the low pay rates affected the quality of contingent workers Council could attract for capital works projects.

Randstad sought and was granted permission from LGP to subcontract to PMLV. However, Randstad's general counsel questioned the merits of the subcontracting arrangement, given the level of risk involved for the company and the fact that previous subcontracting arrangements had created problems. In an internal email, general counsel said:

Please note that we have had a number of instances where subcontractor arrangements cause us more problems than not so we need to be careful here as we in essence outsourcing the work for lower margin but the same level of risk. [sic]

General counsel questioned why Randstad couldn't supply the workers directly:

Note that we are ... taking on the full risk of the engagement—if there is a prob or issue the client still comes direct to us and we will be left to try and fight for reimbursement from the subcontractor—this is a risk. Is there a specific reason we can't supply this worker direct, or indeed another worker of our own?

In this instance, LGP performed inadequate due diligence in assessing PMLV. LGP's subcontracting approval form asked for PMLV's ABN, a description of the working relationship between the two parties, a description of the goods and services that PMLV would be providing and the percentage of the work that would be completed by the subcontractor. However, the form did not require information about PMLV's history, capabilities,

<sup>&</sup>lt;sup>1</sup> NSW ICAC, Investigation into the over-payment of public funds by the University of Sydney for security services (Operation Gerda), Sydney, 2020.

<sup>&</sup>lt;sup>2</sup> This figure is based on a calculation of charge rates and pay rates to PMLV, noting that PMLV paid superannuation and other entitlements from this amount. The maximum commission that could be charged by the recruitment companies was 14.5-18%. There were instances where they charged slightly less than 14.5%.

insurances, and procedures for complying with relevant industrial instruments and other legislative requirements. Instead, LGP placed these responsibilities on the original contractor; in this case, Randstad. Ultimately, LGP authorised PMLV as a subcontractor despite its limited online presence, with a website that lacked basic information.

When the Commission contacted LGP for information about the PMLV subcontracting arrangement, it was unable to provide any documentation, noting: "LGP confirms PMLV is not registered as an LGP Approved Contractor or subcontractor. PMLV has no affiliation with LGP." This was despite LGP gazetting the Randstad– PMLV subcontracting arrangement on 6 April 2021.

The recruitment company, Spinifex, apparently did not perform any due diligence on PMLV. There was no evidence that Mr Trapman (a Spinifex recruitment consultant) declared the arrangement (described in chapter 4) to Spinifex or LGP. The Spinifex–PMLV arrangement provided Mr Trapman with access to a relatively new market for Spinifex, by supplying labour to Council. His goal was to place as many candidates as possible and he was paid bonuses for doing so. Mr Trapman placed PMLV's interests ahead of Council's, and, in some instances, he even referred Spinifex candidates to PMLV.

The current Comensura system permits subcontracting arrangements on a case-by-case basis, under certain circumstances, and has more stringent due diligence processes. For example, the supplier application form requires potential subcontractor companies to complete details about their organisation and its level of insurance, quality-management systems, processes for candidates screening and onboarding, capability and experience, and references.

While Council agreed with the principle behind Recommendation 8 (see below), it expressed some concern regarding the implementation of the assurance-framework aspect. Council submitted that the responsibility for due diligence lies primarily with bodies such as LGP. Council also expressed that fault lay with Randstad and Spinifex for the contingent worker scheme and for not acting in Council's best interests. While it is true that weaknesses within LGP, Randstad and Spinifex contributed to the contingent worker scheme, the Commission is of the view that Council has a responsibility to manage outsourced arrangements and cannot simply trust that services will be delivered. Council needs to confirm that there is an assurance framework in place to verify that all parties are meeting their obligations.

#### **RECOMMENDATION 8**

That Council adopts measures to ensure that:

- it is notified of any proposed subcontracting arrangements involving contingent-labour suppliers, and approval for these arrangements is sought from senior levels within Council and not the business unit engaging the contingent worker
- panels, managed service providers, contingent-labour suppliers and subcontractors all have a robust assurance framework in place to ensure they can deliver services in line with the contract.

### Conflicts of interest were not declared by contingent-labour suppliers

The LGP Standing Offer Deed required Randstad and Spinifex to report conflicts of interest; however, no such reports were made to Council. This was despite Spinifex and Randstad employees knowing of Mr Cossu's dual role.

To help detect hidden conflicts of interest, all parties involved in supplying contingent workers should be made aware of concepts such as conflicts of interest and what constitutes corrupt conduct. This is particularly important when private-sector companies operate in public-sector settings, where there may be different values and ways of working. There should also be a cascading down obligation on downstream parties within the supply chain to report suspected corruption or conflicts of interest to their contracted party.

#### **RECOMMENDATION 9**

That Council requires managed service providers to:

- attest that they are not aware of any conflicts of interest involved in contingent hiring arrangements
- ensure all parties in the supply chain are provided with a conflict of interest definition
- place a requirement on all parties in the supply chain to attest that they are not aware of any conflicts of interest involved in contingent hiring arrangements.

# Employment screening of contingent workers was poor quality

Before Council adopted Comensura, contingent workers were subject to minimal employment screening. Hiring managers had discretion to decide what checks would be performed. No party assumed responsibility for ensuring that contingent workers were properly screened and skilled. Council did not specify clearly what screening was required. Recruitment companies were incentivised and under pressure to place candidates quickly.

Given the lack of high-quality employment screening for contingent workers, Council and the recruitment companies could not detect false CV claims. For example, one contingent worker listed Mr Cossu as a referee but the employment history listed on their CV raises questions as their employment history does not appear to align with Mr Cossu's. This was an overlooked red flag. When Mr Cossu was sent a link by Randstad to complete a reference check, he forwarded this to the contingent worker, who completed their own reference check. This highlights that this process was not secure or rigorous.

This contingent worker was also an inexperienced candidate but was engaged by Mr Cossu as a project manager. Mr Cossu personally paid for the contingent worker's training courses just prior to their engagement. The contingent worker was aware they were not experienced for the role and expressed this concern to Mr Cossu:

What do I tell my colleagues re; my experience and work history etc ... I want to hit the ground running and exceed your expectations.

Several other contingent workers were hired as project managers, a key position requiring strong project-management skills and affecting how Council runs tenders and manages projects. Similar to the example described above, several of these contingent workers were junior, lacked experience, were given minimal training or support, were under pressure to deliver and worked long hours. One worker estimated that three in four (75%) of the contingent workers were "raw graduates", so they required a lot of support. Mr Vangi conducted a review of the CVs and purchase orders for the PMLV contingent workers after the corrupt scheme was discovered. He concluded that "a lot of them were not suitable for those roles". One contingent worker reported that they were supposed to be engaged as a site supervisor but were engaged as a project manager instead and did not receive adequate support. Hiring adequately skilled, experienced staff is crucial, given that contingent workers typically receive less training than permanent staff.

As noted above, there was no requirement for contingent workers to be interviewed, or any records to be made or retained justifying a recruitment exercise. While Mr Webb interviewed some candidates, given that no records were made or retained regarding these interviews, it is unclear whether any formal evaluation of the candidates' skills or experience was performed.

In several cases, Council may not have received the best candidate at the most reasonable pay rate because comparative CVs were not obtained until after a PMLV candidate had already been selected. For example, Mr Webb's executive assistant emailed Spinifex on Mr Webb's behalf seeking comparative CVs to raise a purchase order:

Ben would like me to onboard Noor Wiss, [REDACTED] and Lionel Kools. Would you be able to send me a CV for Lionel so I can raise a PO and also the quotes for the 3 roles and 3 x competitive applications CV's [sic] per role?

Council has since sought to strengthen employment-screening checks for contingent workers by introducing a "Leader's Guide to Managing Contingent Labour" and specifying some employment-screening checks in Comensura. Council now requires at least one interview for contingent-worker engagements longer than a fortnight, and that the hiring manager retains interview notes. Although there is no requirement for multiple contingent workers to be considered for roles, Council can specify in the Comensura system the number of candidates that it wants sourced from each recruitment agency.

#### **RECOMMENDATION 10**

That Council ensures that high-quality employment screening checks are performed on contingent workers and that Council periodically examines the quality of checks performed by suppliers involved in recruitment.

# Workplace culture discouraged the reporting of corruption

According to several contingent workers, it was "commonly known" that some of them had been engaged through PMLV. Many contingent workers thought it was strange that Mr Cossu recruited staff through PMLV while simultaneously working at Council, but they did not report it. For example, one contingent worker said that he was aware that PMLV was Mr Cossu's company but did not ask any particulars because "I was always very mindful not to ... bite the hand that's feeding me..."

There are several reasons why contingent workers may have been reluctant to report their suspicions regarding Mr Cossu and PMLV.

For example, several contingent workers reported in interviews that they were unaware of how to report corruption. In contrast to other staff, they did not receive adequate onboarding, training or off-boarding, such as a debrief session or exit interview. According to Peter Anderson, who was responsible for project delivery in the Works and Projects Unit, "a person would turn up at my desk on Monday morning that I wasn't aware was starting". Without providing sufficient training or opportunities for feedback, Council was unlikely to receive information about possible corruption and misconduct.

People may also have been reluctant to report performance issues – including suspected corruption – as they may have been loyal to the friends or associates who helped them obtain a job. The pool of contingent workers was often limited to a small network of friends and associates, as many were referred to Council by Mr Webb, Mr Cossu, other contingent workers or suppliers. For example, Mr Clarke referred Sarmad (Sam) Haddad. Mr Haddad then referred at least four other contingent workers to Council. This highly networked team created in-groups and out-groups. According to Mr Vangi, "I guess you could describe two cultures. One was if you were in the, if you were in the works and projects clique in terms of one of Mr Webb's favourites, it was a good place to work and if you weren't, it wasn't."

Contingent workers described Mr Webb as "very bullying", "abrupt", "rude", "an authoritative figure" and someone who "sometimes gets a little bit aggressive". Mr Webb's conduct contributed to a negative workplace culture within the Works and Projects Unit, where contingent workers were reluctant to raise issues or report corruption. According to a Council investigation, Mr Webb was found to have bullied staff and received an initial warning of misconduct placed on his personnel file. While the Human Resources Unit initially sought to terminate Mr Webb's employment, he remained at Council.

Senior management was aware that Mr Webb lacked sensitivity. In a performance review, the general manager recorded, "I'd like to see more love and care for others and demonstration of soft skills. There are still a lot of people that are scared of you and while you may think [it's] silly, they simply are and only you can change that."

Some contingent workers may have been uncomfortable raising issues because they had no job security. One contingent worker raised internally that other contingent workers were fearful of losing their jobs:

the culture of the area is not good and ... because of the large agency workforce, people walk around the office on eggshells and frightened that they will be told to leave at [the] drop of a hat. As discussed in chapter 4, Mr Osborne, who was a contingent worker, had his contract terminated by Mr Webb shortly after discovering the PMLV recruitment scheme. Another contingent worker provided evidence that he did not declare a conflict of interest in relation to the assistance he gave GWAC while on the tender panel for The Appian Way stormwater upgrade project because he was concerned that his engagement would be terminated. This suggests his employment status impacted his integrity.

After the PMLV scheme was uncovered, Mr Vangi discovered that many contingent workers had been fearful that they would lose their jobs if they spoke out:

Well some, a few of the staff have spoken to me about it, that basically if you said anything, you would, you'd be gone because again of that contingent labour power [Mr Webb] has over people, yeah. So if things were happening, they weren't, they weren't reported.

#### **RECOMMENDATION 11**

That Council provides:

- contingent workers with induction and ongoing training that explains what corruption is and how to report it
- contingent workers with the opportunity to raise concerns regarding workplace performance during an off-boarding process
- all staff, including contingent workers, with training on how to make and receive (where relevant) public interest disclosures.

Aspects of this recommendation may be modified for extremely short-term contingent labour.

# Part 2: Corruption risks in the procurement and management of capital works

# How did Council scope capital works projects and estimate budgets?

The proper planning of capital works reduces opportunities for corruption. Tight budgets reduce opportunities for money to be siphoned off for corrupt purposes, while clear specifications and completed designs help ensure inferior work is detected and contractors cannot claim for illegitimate contract variations.

During the relevant period at Council, the planning and design phase of capital works projects was sometimes inadequate. One project manager observed that feasibility studies, option engineering exercises, quantity-surveyor estimates and market analysis were not undertaken during the planning phase. Another project manager acknowledged that cost plans were based on unfinished drawings. These problems affected estimated project budgets. It was not uncommon for original project budgets to be significantly exceeded.

Council submitted that any deficiencies in budget planning should be viewed considering the difficult operating environment following the COVID-19 pandemic, which witnessed a surge in government grants to stimulate the economy and, simultaneously, a skills shortage in the construction industry. While these challenges are acknowledged, they do not diminish the need for project planning.

Council also submitted that, with a view to establishing a holistic understanding of its capital works projects, it:

- has recently enhanced its project-management framework
- plans to introduce project-management software
- plans to investigate opportunities to integrate project, financial and procurement information.

#### **RECOMMENDATION 12**

That Council reviews its processes to ensure that the planning of capital works is based on finalised designs or detailed project briefs, robust cost estimates, scope-management plans and scopes of works that are commensurate with the size, risk and complexity of a project.

## Council's procurement policies and procedures were bypassed

Council's procurement policy placed various ethical obligations on staff, including treating suppliers equitably, in a manner that was open, honest and free from bias, and complied with policies, relevant legislation, regulations and related procedures.

As noted earlier, the anticipated value of a given procurement played a critical role in determining the requirements for the procurement process. This included requirements for:

- the number of companies to be approached to bid for work
- the use of an evaluation panel to assess bids
- the adoption of an e-tendering method.

Council's procurement policy prohibited order splitting, which can be used to bypass the dollar thresholds that trigger procurement requirements. Despite this, Council staff avoided compliance with procurement requirements through order splitting and processing variations unrelated to scopes of work. One example is the Northcote Park amenities block upgrade demolition woks. The original purchase order amount was \$2,400 (ex GST), representing only 25% of the total work, which was expected to take four days. The requirement to obtain a minimum of two written quotations was circumvented by submitting a purchase order for this amount, rather than for the full cost of the work.

## The assessment of tender and quotation submissions was flawed

Council's tender assessment processes involved defining selection criteria, creating a tender pack explaining the information required from tenderers, convening an evaluation committee and having the committee assess each submission based on the criteria. Evaluation committees were also required to assess bids for procurement exercises with estimated expenditure of \$25,000 or greater (ex GST).

The failure to properly evaluate tender and quotation submissions has the potential to markedly distort the outcome of procurement exercises; the procurement process for The Appian Way stormwater project upgrade is an example of this.

### Tender packs did not support a clear assessment process

The tender pack for The Appian Way stormwater upgrade project had deficiencies, including, but not limited to, the following:

- There were inconsistencies between assessment criteria listed in section 2.20 of the tender pack and information requested from tenderers in the schedules. For example, plant and equipment was listed as a scoring assessment criterion in 2.20 and as a non-scoring consideration at 4.13.
- There were inconsistencies between the assessment criteria in the tender pack and the tender evaluation plan. As a result, there was poor alignment between the scoring criteria and the evaluation plan.
- Assessment criteria were vague and difficult to interpret at times. For example, a pass/fail criterion was "degree of compliance with Work Health & Safety requirements". It was not clear what degree was required to pass.

#### Potential contractors were excluded

Council unfairly excluded some bidders during its procurement exercises; a practice which favoured GWAC.

A notable example can be seen in The Appian Way stormwater upgrade project, where Modcast – which originally ranked highest in the assessment – was excluded in part because it was based in Victoria, even though the location of the bidding company was not part of the tender evaluation criteria. Moreover, GWAC was not excluded from this tender when it originally submitted that it might use suppliers outside of NSW.

### The clarification process enabled GWAC to alter its submission

Section 176(4) of the Local Government (General) Regulation 2021 provides that a council must not consider a variation of a tender submission made under that section if the variation would substantially alter the original submission. This provision was mirrored in Council's tender-pack requirements.

Permitting a tenderer to make substantial improvements to its proposal also breaches Council's own probity obligations, including the requirement to treat bidders equitably. Further, as procurement exercises are competitive, permitting bidders to revise submissions could destroy trust in Council's processes. This practice also opens the possibility that a bidder can be given the submissions of other companies and subsequently alter its bid to become more attractive.

During the tender for The Appian Way stormwater upgrade project, GWAC responded to clarifications about plant and equipment, transport, delivery plans, experience and references. As an example, although GWAC's original tender submission did not nominate subcontractors, its later clarification response indicated that it was relying on third parties. The submission repeatedly referred to "the supplier" and noted that "the supplier's" order books were closed. As part of a subsequent clarification process, GWAC was permitted to significantly alter its submission to falsely claim it had a production facility located in Wollongong and that it was able to accelerate production as required, despite the company profile not supporting such claims. The contradiction between GWAC's original submission and its subsequent clarification response was not investigated or resolved by the tender evaluation panel, despite the importance of understanding where, and in what kind of facility, the culverts and other concrete elements would be manufactured and the risk posed to the project by not having a steady culvert supplier.

GWAC was also permitted to revise its price for The Appian Way non-destructive digging works, down from \$108,300 (excl GST) to \$104,509.50 via a clarification process. GWAC was awarded the work after another bidder was deemed unsuitable and the remaining bidder quoted \$105,449, which was lower than GWAC's original quote and marginally higher than its revised quote.

#### The tender period was extended

The decision to extend the deadline for The Appian Way stormwater upgrade project meant the two tenderers that submitted their proposals on time were not treated fairly, in contradiction of Council's requirements.

The closing date of 22 March 2022 was extended until 24 March 2022. This raises a question whether s 172(1) of the Local Government (General) Regulation 2021 was breached. This section provides that tender deadlines can only be extended if circumstances "show that the deadline may not allow enough time for meaningful tenders or applications to be submitted". Similarly, it appears that the extension breached the Council's "request for tender" documentation, as requests for time extensions were required to be received at least four business days before closing day.

Council has newly formed an inquiry working group that aims to review and enhance end-to-end procurement processes.

#### Due diligence was not applied to assess potential construction and maintenance contractors

GWAC may not have been awarded many of the contracts under investigation if Council had obtained adequate assurances of its ability to perform the work. Council did not adequately consider GWAC's:

- experience and capabilities
- project methodologies
- ability to meet project specifications.

### Information about the experience and capabilities of tenderers was overlooked

Due diligence assists public authorities to ensure that potential contractors are who they say they are, have the requisite and claimed skills and experience, and do not pose an integrity risk. Mr Anderson, who was acting team leader of construction at the relevant time, acknowledged that "a lot of faith" was placed in evaluation panel members to perform checks.

During the tender for The Appian Way stormwater upgrade project, Council contacted original referees for GWAC. They did not recognise the company. Despite this, red flags were not raised regarding GWAC's claimed skills and experience.

GWAC's suitability for complex projects was highly questionable given it had:

 no fixed assets and provided evidence to Council of insurance for only one car (a Nissan Navara), which was owned by another entity

- very little working capital (\$16,000 as at 31 March 2022)
- a total of three workers (including deemed contractors/workers) covered for employer's liability under the *Workers Compensation Act* 1987, with a total wage bill of \$131,170
- a balance sheet insolvency as of 31 March 2022
- a short trading history and no experience undertaking large projects (GWAC could not have obtained the experience it claimed, as many of the projects it put forward as experience occurred before its formation)
- no premises, despite claiming to own a culvert manufacturing facility in Wollongong
- little cash available and a "related party" loan as its only line of credit, suggesting it could not fund The Appian Way stormwater upgrade project.

Despite knowing all of this, Council awarded GWAC The Appian Way stormwater upgrade project. GWAC also failed its financial assessment and the mandatory financial criterion for the tender. Mr Vangi believed the risk to Council in awarding the work to GWAC was lowered by the fact it would only make payments after receiving the culverts on site. This view does not consider that GWAC's limited assets and short history created a potential risk regarding any warranties or guarantees it provided for the culverts. Moreover, Council had no guarantee that GWAC would be cross collateralised by associated entities, as claimed by Mr Clarke during the tender. Notably, Mr Clarke provided evidence that the benefit of setting up GWAC as a special purpose vehicle was that it was "sterilised" from his other successful businesses.

Council's procurement manager acknowledged that Council could be criticised for not interrogating the financial assessment of GWAC. Similarly, Mr Vangi acknowledged "it doesn't make sense" when questioned about GWAC's total number of employees and low annual payroll. He also observed, "it's evident now [Mr Clarke] was a two dollar company, one man band". Mr Vangi agreed that anyone looking at this information should have reached the same conclusion.

#### Project methodologies were poorly understood

A key factor in any project delivery methodology is whether there is any reliance on subcontractors, as "any issues on their end ... might pose a risk to the delivery of their items or their services". Mr Vangi agreed with the suggestion that it was "very important" for Council to assess subcontractors and their insurances. Council's tender documents, however, requested limited information about the capabilities of subcontractors. Ms Bhuiyan, who was a member of The Appian Way stormwater upgrade project tender panel, provided evidence that suggested there was confusion and a lack of regard within Council over who would be manufacturing the culverts: GWAC, a related entity or independent third party. Ms Bhuiyan acknowledged she would have liked more time to understand GWAC's company structure.

### Capacity assessments did not consider specific standards

With respect to The Appian Way stormwater upgrade project, Council informed the Commission that a review of GWAC's submission revealed "no evidence suggesting that certificates confirming compliance with the specified standards were provided at the time of the tender response". These standards included certification confirming compliance with Australian Standards, a design life of 100 years for the new culverts, adherence to specified design standards and compliance with all applicable industry standards.

Ultimately, Council awarded The Appian Way stormwater upgrade project – which involved complex infrastructure interfacing and several other contractual interactions – to GWAC, the only tenderer with no experience or capability in manufacturing concrete culverts. This was contrary to Council's claim it was seeking a suitably qualified contractor with previous RMS (the then Roads and Maritime Services) approval for products, or the ability to apply for approval.

An example of a poor assessment of safety standards was Council's evaluation of quotations for the Leslie Street depot cleaning project. There is no evidence Council considered GWAC's ability to handle asbestos during this evaluation. Instead, Council's asbestos measures for the project were general in nature and did not include any requirements specifically for this project. Council informed the Commission that various teams "used to have their own registers to deposit information on asbestos finds and removal actions but over time these local registers were not well maintained due to a lack of process or dedicated staff".

A safety officer within the Works and Project Unit, observed:

...you had the contractors not even understanding what paperwork they had to submit and the council is accepting the paperwork they had submitted, so I only have to ask the question, "what is the process that council is employing?"

#### **RECOMMENDATION 13**

That Council reviews its procedures and processes for capital works procurement to ensure:

- compliance with procurement dollar thresholds, particularly in relation to the splitting of orders
- purchase orders are raised for the correct amount
- specifications and assessment criteria are:
  - (i) complete and aligned with evaluation plans
  - (ii) explained in sufficient detail
  - (iii) adequate to assess key contract risks
  - (iv) internally consistent across documents
- closing dates are not extended to unfairly advantage potential contractors
- potential contractors are not unfairly excluded from procurement exercises and that reasons are provided for excluding bidders.

#### **RECOMMENDATION 14**

That Council adopts a robust contractor selection framework that includes:

- verifying claims made by potential contractors
- processes to follow up red flags in relation to the capability and capacity of potential contractors
- assessing project-delivery methodologies, including consideration of the capabilities and insurances of nominated subcontractors
- obtaining assurances regarding compliance with design and safety specifications.

## The evaluation report to the approving officer was misleading

For tenders and capital works with estimated expenditure of \$25,000 (ex GST) and above, Council policy required a minimum two-person evaluation panel to examine the submitted proposals. For tenders and some quotation processes, a report was then provided to the officer with the delegated authority to approve a contract. To promote informed decision-making, these reports should outline the selection methodology, how contractors rated against the selection criteria and why a company was recommended. The report recommending that GWAC be awarded The Appian Way non-destructive digging work was deficient as it did not include information about the clarification process that allowed GWAC to reduce its price.

The evaluation report of The Appian Way stormwater upgrade tender project – addressed to Council's general manager from the evaluation panel – was also misleading in several respects and omitted key information. The report did not highlight GWAC's limited experience and performance. Instead, it conflated the experience of GWAC and its "affiliated entities" to suggest it had been involved in a "broad range of construction activities" that included "larger, complex projects with tier 1 clients". Nor did the report discuss the clarifications that were issued to tenderers and the contrary information supplied by GWAC regarding subcontracting arrangements.

#### **RECOMMENDATION 15**

That Council ensures that contractor selection reports contain adequate information to enable the approving officer to understand key issues. The information should include:

- a realistic and detailed assessment of key procurement and contract risks and the corresponding mitigation strategies
- any significant probity concerns that arose during the procurement exercise and how they were resolved
- any clarifications that were issued to tenderers.

# Commercial-in-confidence information was not kept secure

Council used a secure e-tender box for procurement processes where estimated expenditure was estimated at \$50,000 or above. Where estimated expenditure was below \$50,000, quotations could be submitted to project officers or the contract administration team within the Works and Projects Unit, rather than via the e-tender box. This practice created an opportunity for potential contractors' information to be provided to a competitor, in breach of confidentiality requirements and integrity principles. Further, information provided by companies through clarification processes – which sometimes covered pricing schedules – was circulated before the closing time for the submission of responses. This meant recipients of the information could inform GWAC of competitor prices and other key information that could provide a commercial advantage.

#### **RECOMMENDATION 16**

That Council conducts a detailed risk assessment regarding information security related to procurement exercises and identifies and implements controls to enhance the security of information. The review should consider:

- the use of an electronic submission box for the receipt of all quotations and tender clarifications
- the timing of the release of this information by the Procurement Unit.

### The project-management framework was poorly implemented

Effective project management plays a crucial role in preventing corruption by providing structured oversight and rigorous monitoring mechanisms.

The Commission heard evidence that Council introduced a project-management system during or around 2021. The evidence outlined above suggests that it was not effectively implemented. Ms Bhuiyan also provided evidence that Council lacked a formalised project-management methodology and system for construction projects. Mr Vangi described the project-management framework in place during Mr Webb's time at Council as "smoke and mirrors" and "below par", observing that "project management wasn't carried out properly".

### The contract-variation process enabled order splitting

Compared with competitors, GWAC submitted relatively low bids for work. The "huge cost savings" offered by GWAC was a primary reason for its selection.

Once selected, variations to a project's scope created additional profit opportunities for GWAC in a less competitive environment than if a more open process had been conducted. This raises questions as to whether Council received value for money in relation to the works. Mr Parker, in the Procurement Unit, described Mr Webb's team as "somewhat" circumventing the process by adopting initial budgets under \$50,000, which allowed them to effectively set a project in motion and then vary these projects substantially.

Eleven of the GWAC projects examined by the Commission involved variations. Many of the variations were material and bore no resemblance to the original scope of work. One contingent worker suggested they were asked to provide reasons for variations after the dollar amount was already decided: See they, they had a list of variations with the numbers against them, amounts against them and then I was asked to write up the variations looking at the title and think why it could have happened so I had to guess and write things.

In some cases, the cumulative value of project variations far exceeded the initial contract value. One example is the Belmore Sports Ground box gutters and roof project, for which GWAC received \$485,974.17 (ex GST), despite initially being awarded the work for \$89,550 (ex GST) through a selective RFQ process. In this case, the variations alone amounted to more than four times what GWAC had originally quoted for the project.

Another example is the payments GWAC received for 72 variations relating to the Greenacre Splash Park project. The contract was originally awarded to GWAC for \$184,430.00 (ex GST). The proposed variations totalled \$1,215,450.00 (ex GST), nearly 6.6 times the original quote. After Council reviewed the variation claims, GWAC received \$1,151,404.33 in total for the project (ex GST), which amounted to 6.2 times the original quote. Mr Vangi observed in relation to this project, "there was literally no paper trail".

Variations were typically approved on an individual basis via a memo. Sometimes, however, GWAC was requested to proceed with project variations based only on verbal instructions. While quotations from competitors were occasionally sourced for variations, this was not a formal requirement. There were also examples of approvals for variations to project scopes being submitted after works had been completed, undermining the purpose of the variation approval process. In some cases, variations were approved by contingent workers who did not have authority to do so. As there was no aggregate reporting of project variations to Mr Vangi, a holistic view in terms of the number and size of variations was not available.

Council introduced a documented variation procedure in 2023. According to Mr Anderson, this document formalised the process that to date had been managed "in much the same way". Given the issues outlined above, however, the Commission still considers it necessary to make a recommendation (see recommendation 17) concerning Council's processing of variations as set out. Furthermore, Council's documented variation procedure does not include any requirement to examine aggregated variation information across projects.

The Commission also supports Council's proposals to:

- use its existing requisitioning platform to process variations
- improve its tracking of variations

• develop clear guidelines regarding what constitutes an emergency and who can approve emergency variations.

### Engaging subcontractors for variation works circumvented competitive selection

Council arranged for certain companies to be engaged by GWAC as subcontractors and for the work to be processed as variations, at times for significant value. It appears that this approach was adopted to avoid a competitive selection process.

In several cases, subcontractors needed to pursue payments from GWAC. The subcontracting arrangements facilitated by Council resulted in companies forgoing the reasonable treatment and security of payment that a public authority typically provides. Mr Vangi agreed that Council should not nominate subcontractors and that this situation would be made "significantly worse" if they were not paid by GWAC.

#### Other project-management issues

It is important for councils to have robust measures in place to verify contractor performance and obtain assurances regarding the quality of materials at critical project stages. There were several design and quality issues with respect to The Appian Way stormwater culverts. For example, the culverts were the wrong size, meaning they were outside the tolerance specified in the relevant Australian standard. The project manager also provided evidence that she was "not comfortable with the QA [quality assurance] process and understanding whether these pipes meet Sydney Water standards and RMS standards and Australian Standards".

Other concerns included the following:

- The culvert manufacture was substantially behind the construction schedule.
- Council had no visibility on dates and times for deliveries.
- The culverts were unloaded at an unapproved drop-off location.
- The absence of delivery dockets, meaning the project team could not sign prior to acceptance of materials.

Payments to GWAC were also not always linked to the verification of the delivery of works. For example, GWAC's payment claims were often lacking evidence of hours worked.

Other shortcomings associated with Council's management of projects included the following:

- Little was learnt from previous projects.
- Project budgets were combined, which reduced Council's ability to rigorously control project costs.
- Staff did not receive formal project-management training.
- There was little formal consideration of the interdependency of projects.
- There was inconsistent use of project risk assessments and risk registers. While Council submitted that it already has in place an established project-management framework, which includes the development of formal project risk-management registers and mitigation strategies, two project managers provided evidence that formal project risk registers were lacking. Additionally, Council's procurement manager observed that, at the beginning of a project, his unit does not insist on risk assessments for the procurement process. In fact, the Safety and Risk Unit did not have assurance that project risk registers were of an adequate standard unless an individual business unit requested assistance.

Council submitted that although it generally supported the elements outlined in recommendation 18, its existing project-management framework sufficiently covers these areas. The Commission does not accept this submission. As noted above, the evidence demonstrates problems with the management of capital works at Council.

#### **RECOMMENDATION 17**

That Council implements a contract-variation process for capital works that requires:

- requests to proceed with project variations to be approved and supported by evidence, such as photographs and/or written requests from asset owners in advance of the proposed work being undertaken
- competitive quotations for changes to scopes of works above a certain amount or threshold (to be determined by Council) where the nature of the work allows
- requests for variations to be communicated in writing to contractors
- controls to identify when project variations exceed 15% of the original contract amount and aggregated periodic reporting to the director city assets of such situations.

An exception to the above requirements should be permitted for emergency situations where appropriate.

#### **RECOMMENDATION 18**

That Council enhances its project-management framework for large scale capital works to ensure:

- contractors making payment requests (including those related to the payment of variations) are required to provide documented proof of works such as receipts for materials, evidence of contractor hours and time stamped photographs of works
- quality checks are conducted at critical work stages and documentation collected on compliance with specifications
- a risk-management framework is implemented that complies with the principles in A/NZ ISO 31000:2018 Risk management – Guidelines
- there is monitoring and reporting of project budgets and the progress of work
- project debriefs are undertaken to identify key areas for improvement.

# Conflicts of interest were not managed or investigated

Mr Cossu was replaced on The Appian Way stormwater upgrade project tender evaluation panel at his own request for the stated reason that he knew Mr Clarke from other jobs. He did not complete a conflict of interest form as he was no longer on the evaluation panel. At this time, Mr Cossu had already been involved in other GWAC projects, such as The Appian Way non-destructive digging project, as a superintendent's representative. His verbal declaration, however, did not prompt an investigation into his earlier involvement on GWAC projects or the exact nature of his conflict. Mr Cossu also remained involved in The Appian Way stormwater upgrade project, including as Council's representative for the culvert pre-pour inspection.

Council's tender evaluation documentation specifically stated that conflicts of interest declarations should not be lodged until after the tender box has been opened. This approach facilitates a person with a conflict of interest, like Mr Cossu, remaining involved in critical tender activities that take place before the tender box opening, such as writing specifications, formulating evaluation criteria, determining the evaluation weightings and influencing the procurement methodology.

Council advised the Commission, "For each formal procurement process conducted, Council keeps copies of the Conflict of Interest Declarations, from the evaluation panel members in a file". These declarations remain localised and are not placed on the central conflicts of interest register.

Council sought clarification regarding conflict of interest management plans in relation to the Commission's proposed recommendation dealing with this issue (see recommendation 19). Currently, a business unit's manager approves the replacement of a person on an evaluation panel due to a conflict of interest. However, in such situations it may be necessary to include additional measures as part of a conflict of interest management plan to strengthen the probity of a process. These include:

- enhancing IT controls to protect information from unauthorised access, use or disclosure
- reminding panel members not to discuss tenderers' confidential information with others not involved in the procurement process
- ensuring the person with a conflict of interest is not involved in a contract-management role if the entity or person with whom they are conflicted is awarded the contract.

A conflict of interest management plan should also typically detail the measures that will be undertaken to manage the conflict, who is responsible for implementing each measure and any monitoring arrangements. Further information about conflict of interest management plans can be found in the Commission's publication, *Managing conflicts of interest in the NSW public sector* (April 2019).

#### **RECOMMENDATION 19**

That Council amends its conflicts of interest procedures to ensure that:

- staff are prompted to declare conflicts of interest at the start of a procurement exercise, as well as after the tender box opening
- all conflicts of interest declarations are placed on its central register
- relevant management and staff are informed when people are removed from a procurement process due to a conflict of interest
- conflicts of interest management plans are established for staff excluded from a procurement process due to a conflict of interest with the selected contractor.

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 Canterbury-Bankstown Council.

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

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

The Commission will publish the response to its recommendations, any plan of action and progress reports on its implementation on the Commission's website at 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 *Independent Commission Against Corruption Act 1988* ("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 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) provides that corrupt conduct is also any 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 could involve any of the following matters:

- (a) official misconduct (including breach of trust, fraud in office, nonfeasance, misfeasance, malfeasance, oppression, extortion or imposition),
- (b) bribery,
- (c) blackmail,
- (d) obtaining or offering secret commissions,
- (e) fraud,
- (f) theft,
- (g) perverting the course of justice,
- (h) embezzlement,
- (i) election bribery,
- (j) election funding offences,
- (k) election fraud,
- (l) treating,
- (m) tax evasion,
- (n) revenue evasion,
- (o) currency violations,
- (p) illegal drug dealings,
- (q) illegal gambling,
- (r) obtaining financial benefit by vice engaged in by others,
- (s) bankruptcy and company violations,
- (t) harbouring criminals,
- (u) forgery,
- (v) treason or other offences against the Sovereign,
- (w) homicide or violence,
- (x) matters of the same or a similar nature to any listed above,
- (y) any conspiracy or attempt in relation to any of the above.

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.

#### Section 9 of the ICAC Act

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 Parliamentary Secretary or a member of a House of Parliament – a substantial breach of an applicable code of conduct.

Subsection 9(1)(d) was inserted into the ICAC Act by the *Independent Commission Against Corruption (Amendment)* Act 1994. The object of the Bill which became the Act was to amend the ICAC Act so that conduct of a minister or member of Parliament that substantially breaches a code of conduct could be classified as corrupt conduct. The subsection was again amended in 2022 to include the office of parliamentary secretary.

In *Greiner v ICAC* (1992) 28 NSWLR 125 (at 136, 143) Gleeson CJ said the following in relation to the operation of the word "could" in s 9

Reference has been made above to the conditional nature of a conclusion reached in relation to s 9(1). An accurate understanding of the operation of the word "could" in s 9 is essential to a proper performance of the task of evaluation required by that section ... However, it is of some assistance to an understanding of the way in which s 9(1) operates to consider what might be its effect in relation to a case where it is said that the conduct in question could constitute or involve a criminal offence.

It was common ground in these proceedings that, in determining whether conduct could constitute or involve a criminal offence, the Commissioner would be required to go through the following process of reasoning. First, he would be required to make his findings of fact. Then, he would be required to ask himself whether, if there were evidence of those facts before a properly instructed jury, such a jury could reasonably conclude that a criminal offence had been committed. (It is not necessary for present purposes to examine what happens in a case where the Commissioner's findings depend in a significant degree upon evidence that would be inadmissible at a criminal trial.) I will return below to the significance of the approach to be taken to s 9(1).

• • •

... s 9(1) must be applied by the Commission, and by this Court, in a manner that is consistent with the purpose of the legislature, which was that the standards by which it is applied must be objective standards, established and recognised by law, and its operation cannot be made to depend upon the subjective and unexaminable opinion of the Commissioner.

In *Duncan v ICAC* [2016] NSWCA 143 (at 160, 161), Bathurst CJ said the following in relation to the word "could" in s 9:

Thus, in the circumstances of the present case, the question to be answered is whether on the material before the Commission it would be open to a judge or a jury properly instructed to convict the person concerned of an offence...

...

That approach to the construction of the section is consistent with what was said by this Court in [Greiner].

#### Section 13(3A) of the ICAC Act

Section 13(3A) was inserted into the ICAC Act in 2005 by the *Independent Commission Against Corruption Amendment Act 2005*. It 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.

In *D'Amore v ICAC* [2012] NSWC 473 at [75] McClellan CJ at CL described s 13(3A) (and s 9(5), referred to below) as creating jurisdictional facts. He held:

In those circumstances, the jurisdictional facts created by ss 13(3A) and 9(5) will be found to exist where the Commission forms, in good faith, an evaluative judgment that the person under investigation has committed an offence or breached an identified law, provided the Commission has properly construed relevant criteria such as the elements of the offence or the requirements of the identified law.

The application of s 13(3A) was also considered by the Court of Appeal in *D'Amore v ICAC* [2013] NSWCA 187. Basten JA said the following at [221]:

That leaves open the question as to the matter about which the Commission must be satisfied under s 13(3A). It would clearly be inconsistent with both the function of the Commission and the structure of the [ICAC] Act generally to hold that the Commission must be satisfied beyond reasonable doubt that an offence has been committed. The Commission is not a criminal court and is not required to reach conclusions on the basis of material which would constitute admissible evidence in a criminal proceeding:  $cf \ s \ 17(1)$ . So understood,  $s \ 13(3A)$ requires that the Commission be satisfied that the conduct has occurred and that it is conduct of a kind which constitutes a criminal offence. The combined purpose of ss 13(4) and 74B, is to emphasise that the Commission is not delivering a verdict on a criminal charge.

In *Duncan v ICAC* [2016] NSWCA 143 Beazley P held, at [469]:

Effectively, therefore, there are two requirements at play. First, pursuant to s 9(1), conduct will only constitute corrupt conduct if it could constitute or involve conduct of the kinds specified in paras (a) to (d). Second, pursuant to s 13(3A), the power of the ICAC to make a finding of corrupt conduct is conditioned on the ICAC being satisfied that the relevant conduct constitutes or involves an offence or thing of the kinds specified in paras (a) to (d) of s 9(1). Thus, whilst the provisions overlap, there is a distinction between the meaning of corrupt conduct, which engages ss 7, 8 and 9 and the subsequent conditioning of power on the relevant state of satisfaction within the meaning of s 13(3A): see Bathurst CJ at [164]-[165]; Basten JA at [598]. Basten JA (with whom Beazley P agreed) held at [598]:

Section 8(2) and s 9(1)(a) of the ICAC Act refer to conduct which "could constitute or involve" a criminal offence; s 13(3A) requires the Commission to be satisfied that a person "has engaged in ... conduct that constitutes or involves an offence". It is clear from the legislative scheme identified above that s 13(3A) does not impose an obligation to be satisfied that an offence has in fact been committed. Rather, that as to which the Commission must be satisfied is the capacity of the facts found to constitute an offence, if proved by admissible evidence to the satisfaction of the appropriate court.

# Subsections 9(4) and 9(5) of the ICAC Act

#### Subsection 9(4) of the ICAC Act provides:

Subject to subsection 9(5), conduct of a Minister of the Crown or Parliamentary Secretary or a member of a House of Parliament which falls within the description of corrupt conduct in section 8 is not excluded by this section 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:

Without otherwise limiting the matters that it can under section 74A(1) include in a report under section 74, the Commission is not authorised to include a finding or opinion that a specified person has, by engaging in conduct of a kind referred to in subsection (4), engaged in corrupt conduct, unless the Commission is satisfied that the conduct constitutes a breach of a law (apart from this Act) and the Commission identifies that law in the report.

These subsections were inserted into the ICAC Act by the *Independent Commission Against Corruption (Amendment) Act 1994* to extend the grounds on which a finding of corrupt conduct could be made against a minister of the Crown or a member of Parliament.

At the time subsections 9(4) and 9(5) were inserted, s 13(3A) was not yet part of the ICAC Act. As noted above, it was inserted in 2005. Section 13(3A) does not apply to conduct characterised as corrupt by the operation of s 9(4) and s 9(5).

The application of subsections 9(4) and 9(5) was considered by the Commission in its June 2004 *Report on investigation into conduct of the Hon J. Richard Face.* At page 45 of that report, the Commission noted the following: It is clear from the words in s.9(4) that the provision was intended to catch conduct which fell within the description of corrupt conduct in s.8, but which would otherwise be excluded by s.9.

• • •

As a matter of construction, s.9(4) and (5) extend the range of permissible findings of corrupt conduct beyond those already contained in s.9(1) to those which would otherwise be excluded, but which fall within s.9(4) and (5).

. . .

...it is not necessary to undertake, in the context of the present investigation, a detailed analysis of the meaning of the term "breach of a law (apart from this Act)" in s.9(5). It seems clear, however, that "breach of a law" in s.9(5) ought to be construed as meaning breach of a civil, and not a criminal, law.

Support for this interpretation is found in the judgment of McClellan CJ at CL in *D'Amore v ICAC* [2012] NSWC 473 at [22] that:

In relation to conduct of a Minister of the Crown or a member of Parliament, s 9(4) creates a limited "carve-out" from the operation of  $s 9(1) \dots$  Although this "carve-out" is not subject to the limitation in s 13(3A), it is expressly subject to s 9(5)...

His Honour identified both s 9(5) and s 13(3A) as jurisdictional facts.

Subsection 9(4) was amended in 2022 to include the office of parliamentary secretary.

Accordingly, the effect of subsections 9(4) and 9(5) is that the Commission may make a finding that a minister of the Crown, a parliamentary secretary or a member of a House of Parliament has engaged in corrupt conduct where, although that conduct does not come within s 9(1), it comes within subsections 9(4) and 9(5).

#### Section 74BA of the ICAC Act

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.

# How the Commission determines findings of corrupt conduct

The Commission has adopted the following approach in determining findings of corrupt conduct made in this report.

First, the Commission has made findings of relevant facts on the balance of probabilities (see below).

The Commission has then determined whether the relevant facts as found by the Commission come within the terms of any of subsections 8(1), 8(2) and/or 8(2A) of the ICAC Act.

If they do, the Commission has then considered whether the conduct comes within s 9 of the ICAC Act.

Any finding that the conduct comes within subsection 9(1)(a) has been made on the basis that the Commission considers that, if the facts as found in relation to any of subsections 8(1), 8(2) and/or 8(2A) were to be proved on admissible evidence to the requisite standard of beyond reasonable doubt and accepted by an appropriate tribunal, there would be grounds on which such a tribunal could reasonably conclude that the person has committed a particular criminal offence.

Any finding the conduct comes within subsections 9(1)(b) and 9(1)(c), has been made on the basis that the Commission considers that, if the facts as found in relation to any of subsections 8(1), 8(2) and/or 8(2A) were to be proved on admissible evidence to the requisite standard of on the balance of probabilities and accepted by an appropriate tribunal, there would be grounds on which such a tribunal could find that the person has engaged in conduct that constitutes or involves a matter of the kind described in those sections.

Any finding the conduct comes within subsection 9(1)(d), has been made on the basis that the Commission considers that, having regard to the facts as found in relation to any of subsections 8(1), 8(2) and/or 8(2A) and the provisions of the relevant applicable code of conduct, there are grounds on which it could objectively be found that a minister of the Crown or parliamentary secretary or a member of a House of Parliament has substantially breached the relevant applicable code of conduct.

If the Commission finds the s 8 conduct is not excluded by s 9(1) - (d), the Commission then considers the requirements of s 13(3A).

In the case of any finding that the conduct comes within subsection 9(1)(a), the Commission will have determined for the purpose of s 13(3A) that it is satisfied that, 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, there would be

grounds on which such a tribunal would find that the person has committed a particular criminal offence.

In the case of any finding that the conduct comes within subsections 9(1)(b) and 9(1)(c), the Commission will have determined for the purpose of s 13(3A) that it is satisfied that, 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, there 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.

In the case of any finding that the conduct comes within subsection 9(1)(d), the Commission will have determined for the purpose of s 13(3A) that on the facts as found it is satisfied there are grounds on which it would objectively be found that a person has engaged in or is engaging in conduct that constitutes or involves a substantial breach of an applicable code of conduct.

In the case of any finding that the conduct comes within subsection 9(4), the Commission will have considered whether the conduct of a minister of the Crown, or a parliamentary secretary or a member of a House of Parliament – which falls within the meaning of any of subsections 8(1), 8(2) and/or 8(2A) – 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.

In the case of any finding that the conduct comes within subsection 9(5), the Commission will identify the relevant civil law and will have determined whether, having regard to the facts as found in relation to any of subsections 8(1), 8(2) and/or 8(2A) and the provisions of the relevant civil law, it is satisfied there are grounds on which it could objectively be found that a minister of the Crown or parliamentary secretary or a member of a House of Parliament has breached that law.

If satisfied the requirements of s 13(3A) have been met, the Commission then determines whether, for the purpose of s 74BA of the ICAC Act, the conduct the subject of the Commission's finding for the purposes of any of subsections 8(1), 8(2) and/or 8(2A) is serious corrupt conduct. Factors the Commission may consider in determining whether the conduct is serious include, but are not limited to:

- whether the conduct involves a risk to the life, health or safety of one or more persons
- the degree to which the conduct impairs or could impair public confidence in public administration
- the seriousness of any misconduct having regard to the responsibilities of the office and the office holder, the importance of the public objects they

serve and the nature and extent of the departure from those responsibilities

- the amount of money involved
- the time over which the conduct occurred
- whether the conduct involved a substantial breach of trust
- the motivation of the person involved in the conduct
- the role, functions and seniority of the person involved in the conduct
- the level of sophistication and planning involved
- the number of public sector agencies affected by the conduct
- the number of persons involved in the conduct
- the degree to which the conduct was pre-meditated
- whether the conduct could warrant dismissal or removal from office
- in the case where conduct could constitute or involve a criminal offence, the nature of the offence and the available penalty.

This list is not intended to be exhaustive and may be expanded with reference to additional matters that arise in particular investigations.

If the above requirements are satisfied, the Commission may make a finding of corrupt conduct.

#### Standard of proof

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 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 by 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.

As the High Court pointed out in Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd (1992) 67 ALJR 170 at 171, this formulation is 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 set out in this report have been made applying the principles detailed in this Appendix.



### **Appendix 3: Responses to proposed** 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:

- a) the Commission has first given the person a reasonable opportunity to respond to the proposed adverse finding
- b) the Commission includes in the report a summary of the substance of the person's response that disputes the adverse finding if the person requests the Commission to do so within the time specified by the Commission.

Following the public inquiry, Counsel Assisting the Commission made written submissions setting out (among other things) what adverse findings it was contended were open to the Commission to make against various parties.

The Commission provided these submissions to relevant parties on 8 July 2024. The Commission received written submissions in response from affected parties by 2 August 2024. While drafting the report, the Commission identified additional potential adverse findings affecting some parties. The Commission advised those parties of the further potential adverse findings on 2 September 2024 and 22 October 2024 and gave them an opportunity to make submissions. The Commission received the last submission from affected parties on 11 November 2024.

The Commission considers that, in these circumstances, the parties had a reasonable opportunity to respond to 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: Recruitment tables**

#### Hourly rate PMLV paid to contractor (\$ gross, including Gross hourly mark up for PMLV (\$, ex GST) contractor (\$, ex GST) Start date Contractor End date Hourly rate Spinifex paid to PMLV per Hourly rate Council paid to Spinifex per super, ex GST) contractor Job title સ્ ex GST) ex GST 85.59 98.00 40.00 Melanie 1 February 8 February Project 109.45 95.59 50.00 2021 2022 45.59 Chaparro Management Officer (from approx. (from approx. (from approx. 5/7/21) 5/7/21) 5/7/21) 38.00 47.59 40.00 45.59 98.00 85.59 (from approx. 22/3/21) 50.00 50.59 (from approx. 5/7/21) 55.00 45.59 115.18 100.59 (from approx. (from approx. (from approx. 4/10/21) 5/7/21) 5/7/21) 26 May Mohammed 15 February Project 60.00 40.59 Qutubuddin 2021 2023 Manager (from approx. 14/2/22) 126.63 110.59 60.00 50.59 (from approx. (from approx. 28/3/22) 28/3/22) 60.00 65.00 (from 143.13 125.00 12/9/22) (from approx. (from approx. 80.00 45.00 12/9/22) 12/9/22) (from approx. 3/10/22) 98.00 85.59 50.00 35.59 (from approx. (from approx. 1/3/21) 1/3/21) James Magsipoc 2 March 14 July 2023 Project 2021 Manager 115.00 100.59 50.59 (from approx. (from approx. 23/8/21) 16/8/21) 105.59 70.00 35.59 115.00 120.90 115.18 45.18 Sarmad (Sam) 23 August 21 October Project Haddad 2021 2022 Management (from (from (approx.) Officer approx. approx. 16/8/21) 12/8/21)

#### Table 5: Pay rates for contingent workers and gross mark up for PMLV, via Spinifex

Contractor	Start date	End date	Job title	Hourly rate Council paid to Spinifex per contractor (\$, ex GST)	Hourly rate Spinifex paid to PMLV per contractor (\$, ex GST)	Hourly rate PMLV paid to contractor (\$ gross, including super, ex GST)	Gross hourly mark up for PMLV (\$, ex GST)					
						35.00	50.59					
				98.00	85.59	40.00	45.59					
						(from approx. 3/1/22)						
Asfia Jahan	23 August	9 June 2023	Project	109.45	95.59	40.00	55.59					
Asha Jahan	2021	7 JULIE 2023	Management	(from approx.	(from approx.	43.00	52.59					
			Officer	28/3/22)	28/3/22)	(from approx. 18/7/22)						
				125.95	110.00	43.00	67.00					
				(from approx.	(from approx.	58.00	52.00					
					12/9/22)	12/9/22)	(from approx. 3/10/22)					
	0.2 A		Project Management Officer	115.18	100.59	33.00	67.59					
Najee Sumreen	23 August 2021	10 February 2023				45.00	55.59					
						(from approx. 26/9/22)						
				115.18	100.59	48.00	52.59					
						50.00	60.59					
Nosakhare Dankaro	14 October 2021	14 May 2023	14 May 2023	14 May 2023	14 May 2023	14 May 2023	14 May 2023	Project Management	126.63	110.59	(from approx. 21/2/22)	
											Officer	(from approx. 7/4/22)
						(from approx. 28/3/22)						
						33.00	67.59					
Muhammad Zahid Shafique	5 October 2021	30 June 2023	Project	115.18	100.59	38.00	62.59					
Zanio Shanque	2021	2023	Manager			(from approx. 28/3/22)						
						33.00	67.59					
						38.00	62.59					
Ali Istanbauli	5 Ostabar	26 Mari	Drainet			(from approx. 3/10/22)						
Ali Istanbouli	5 October 2021	26 May 2023	Project Management	115.18	100.59	52.50	48.09					
			Officer				(from approx. 14/11/22)					
					62.50	38.09						
						(from Feb 2023)						

Contractor	Start date	End date	Job title	Hourly rate Council paid to Spinifex per contractor (\$, ex GST)	Hourly rate Spinifex paid to PMLV per contractor (\$, ex GST)	Hourly rate PMLV paid to contractor (\$ gross, including super, ex CST)	Gross hourly mark up for PMLV (\$, ex GST)
Mayra Rodrigues Miranda	13 December 2021	31 March 2023	Design Officer	98.00	85.59	35.00 42.50 (from approx. 17/10/22)	50.59 43.09
						<b>53.12</b> (from approx. 21/11/22)	32.47
Aline Medeiros	13 December 2021	31 March 2023	Design Officer	98.00	85.59	35.00 42.50 (from approx. 17/10/22) 52.50	50.59 43.09 33.09
						(from approx. 14/11/22)	
Noor Wiss	24 January 2021	31 March 2023	Project Management Officer	115.18	100.59	38.00 50.00 (from approx. 6/2/23)	62.59 50.59
Lionel Kools	l February 2022	28 April 2023	Team Leader Building Design	<b>1,374.24</b> /day	<b>1,227.00</b> /day	1,050.00	177.00
QuratulAin Butt	21 February 2022	24 February 2023	Junior Design Engineer	85.88	75.00	38.00	37.00
John Paul Sullano	14 March 2022	15 April 2022	Project Manager – Electrical Engineer	120.90	105.59	50.00	55.59
Peter Bell	21 March 2022	30 January 2023	WHS Advisor	131.68	115.00	73.00	42.00
Mohamad El Halabi	11 April 2022	29 June 2023	Project Manager	115.18	100.59	<b>39.00</b> <b>58.75</b> (from approx. 14/11/22)	61.59 41.84
Ngoc Tuan Hoang (Leo Hoang)	27 April 2022	30 June 2023	Project Manager	148.85	130.00	65.00 70.00 (from approx. 27/2/23)	65.00 60.00
Franklin Ozoemena	4 April 2022	30 June 2023	Night Works Construction Supervisor	131.68	115.00	55.00	60.00
Shantikumar Ariyaratnam	26 April 2022	29 May 2023	Project Management Officer	148.85	130.00	100.00	30.00

Contractor	Start date	End date	Job title	Hourly rate Council paid to Spinifex per contractor (\$, ex CST)	Hourly rate Spinifex paid to PMLV per contractor (\$, ex CST)	Hourly rate PMLV paid to contractor (\$ gross, including super, ex GST)	Gross hourly mark up for PMLV (\$, ex CST)
Sadaat Tareen	30 May 2022	29 July 2022	Civil Project Manager	137.40	120.00	70.00	50.00
Ahmed Said	8 August	31 March	Project	148.85	130.00	59.00	71.00
Abdelhalim Mohamed Abdelhalim (also known as Abdel Halim)	2022	2023	Management Officer			93.75 (from approx. 14/11/22)	36.25

#### Table 6: Pay rates for contingent workers and gross mark up for PMLV, via Randstad

PMLV contractor	Start date	End date	Job title	Hourly rate Council paid to Randstad (\$, ex GST)	Hourly rate Randstad paid to PMLV (\$, ex GST)	Hourly rate PMLV paid to contractor (\$, gross, including super, ex GST)	Gross hourly mark up for PMLV (\$, ex GST)
Yavor Nikolaev	l February	26	Project	96.35	90.00	55.00	35.00
	2021	November 2021	i i i i i i i i i i i i i i i i i i i	107.05	100.00		45.00
		2021		(from approx. 27/9/21)	(from approx. 27/9/21)		
Mario Vescio	8 August 2022	18 June 2023	Project Management Officer	115.43	104.00	50.00	54.00
Nameer Maleko	16 August	27 August	Project	126.53	114.00	50.00	64.00
	2022	2023	Management Officer			75.00	39.00
						(from approx. 14/11/22)	
Ehsan (Omid) Goharinasab	5 September 2022	l September 2023	Project Management Officer	126.53	114.00	50.00	64.00

# Appendix 5: Council capital works projects awarded to GWAC by request for quote

Table 7: Council RFQ projects involving GWAC (Rotating the page is recommended to view the table)

	36,080.00	226,952.31	104,455.13	176,586.83
Total GWAC received (inc GST)	55,000.00	150,000.00	45,000.00	50,000.00
Budget (\$)				
Reference check by Mr Cossu (Y/N)	~	Z	Z	Z
Variations GWAC claimed (\$, ex GST)	4,820.00	101,810.78	62,334.21	I66,255.48 (including a quote of 6,448 sent to Mr Cose that he amended the 23,800 before it went to Council)
GWAC contract with Council (\$, ex GST)	27,980.00	104, 509.50	32,625.00	42,300.00
Other quotes received (\$, ex GST)	F3 Industries Pty Ltd (non-conforming quote) 30,337,00 Steel Biz Pty Ltd	87,537,00 Aqua Assets Pty Ltd (incomplete quote) 105,449,64 Non Destructive Excavations AUST Pty Ltd	N/A	<b>43,850.00</b> Altius Construction <b>67,820.00</b> WGE Pty Ltd
Quote GWAC submitted to Council (\$, ex GST)	27,980.00	Ist quote: <b>108, 300.00</b> 2nd quote: <b>104, 509.50</b>	2,400.00/day (labour) + 50.00/hr (hire of tipper)	42,300.00
Was the quote sent to Mr Cossu + amended? (Y/N, \$)	~	∀ 104,509.50	Z	≻
Original quote GWAC sent to Mr Cossu (\$, ex GST)	16,890.00	179,940.50	2,300.00/day (labour) + 50.00/hr (hire of tipper)	18, 600.00
Conflict of interest declaration	z	Z	A/N	z
(Y/N)	~	~	N/A N/A	~
Mr Cossu on evaluation panel (Y/N) Relevant procurement policy	Selective quote	Selective quote	N/A N/A	Selective quote
Project title	Access Platform BLaKC Tower	The Appian Way non-destructive digging works	Northcote Park amenities block upgrade	Belmore stadium – demolition works
Quote no.	Q59-21	Q128-21	Q196-21	Q252-21

Total GWAC received (inc GST)	73,370.00	N/A (CWAC signed the contract 3/7/22 but due to but due to environmental issues contract was canceled 15/8/23)	75,141.00
Budget (\$)	70,000.07	Stage I: 200,000.00 Stage 2: Unknown	50,000.00
Reference check by Mr Cossu (Y/N)	Z	~	z
Variations GWAC claimed (\$, ex GST)	₹/Z	Κ'N	18,890.00
GWAC contract with Council (\$, ex GST)	66,700.00	218,250 .00	49,420.00
Other quotes received	48,020.00 Playsafe (Ist quote) 61,818.00 Playsafe (2nd quote) 82,195.60 Northern Fencing 53,690.00 Perimeta (Ist quote) 114,475.00 Perimeta (2nd quote) (2nd quote)	425,200.00 J Group (Ist quote) (Ist quote) 283,600.00 J Group (Stage I)	Awada Civil Option I: 92,000.00 Option 2: 85,000.00
(\$, ex GST) Quote GWAC submitted to Council (\$, ex GST)	66,700.00	Ist quote 319,700.00 Subsequent quotes w/ adjusted scope Stage 1: 218,250.00 Stage 2: 202,250.00	49,420.00
Was the quote sent to Mr Cossu + amended? (Y/N, \$)	۲ 66,700.00	Y Stage I: <b>319,700.00</b> Stage 2: <b>202,250.00</b>	Y 49,420.00
Original quote GWAC sent to Mr Cossu (\$, ex GST)	56,200.00	Stage 1: 126,000.00 Stage 2: 152,250.00	17,470.00
Conflict of interest declaration (Y/N)	Z	~	z
Mr Cossu on evaluation panel (Y/N)	N/A	~	A/A
Relevant procurement policy	T 25-16 fencing panel <i>(GWAC</i> <i>was not</i> <i>fencing</i> <i>panel</i> )	Selective quote	Selective quote
Project title	Belmore stadium – fencing	Milperra Drain – clearing and grubbing SI	Leslie Street Depot cleaning
Quote no.	Q300-21	Q317-21	Q245-22

#### Table 7: Council RFQ projects involving GWAC continued

	31,460.00	35,405.70	64,201.50	52, 250.00
Total GWAC received (inc GST)				
D. J / (f)	28,600.00	60,000.00 (for both fencing and civil works – GWAC only did the civil works)	40,000.00	45,000.00
Budget (\$) Reference check by Mr Cossu (Y/N)	z	Z	Z	Z
Variations GWAC claimed (\$, ex GST)	N/A	18,095.00	13,820.00	10,000.00
GWAC contract with Council (\$, ex GST)	28,600.00	16,192.00	44,545.00	<b>47,500.00</b> (Sum of (Sum of variation + later 10,000 variation)
	4,200.00 Awada Civil	z	<b>172,145.00</b> Mack Civil <b>45,315.00</b> KJ Civil	
Other quotes received (\$, ex GST)				
Quote GWAC submitted to Council	53,625.00	16,192.00	44,545.00	37,500.00
(\$, ex GST)	e) (e)			
Was the quote sent to Mr Cossu + amended? (Y/N, \$)	Y 3,150.00/ day (Cossu texted rate to Clarke)	≻	Z	z
Original quote GWAC sent to	N/A	Ist quote: 11,670.00 2nd quote: 41,975.00	44,545.00	37,500.00 (This was treated as a variation to previously planned Belmore stadium roof works)
Mr Cossu (\$, ex GST) Conflict of interest declaration	z	N/A	Z	Z
(Y/N)				
Mr Cossu on evaluation panel (Y/N)	V/N	Z	A/A	₹/Z
Relevant procurement policy	Selective quote	T25-15 fencing panel <i>(GWAC</i> <i>was not</i> <i>fencing</i> <i>fencing</i> <i>panel)</i>	Selective quote	Selective quote (Single select)
Project title	Ewen Park Outdoor Learning (salvage of timber from Kingsgrove Rd to Leslie St – Ewen Park)	Vale of Ah (DOLA) – dog off-leash area and additional works	Ewen Park folded lawn – demolition and regrading	Belmore stadium roof temporary works and scaffolding (purlin inspection)
Quote no.	Q234-22	Q154-22	Q248-22	Q256-22

Total GWAC received (inc GST)	539,971.30	18,359.06
Budget (\$)	95,000.00	50,000.00
Reference check by Mr Cossu (Y/N)	z	z
Variations GWAC claimed (\$, ex GST)	<ul> <li>147, 350.00 (Uplifted by Mr Cossu ffrom an 87, 350 GWAC quote – amended quote still the cheapest of 4 bidders)</li> <li>205, 283.00 (No competing quotes on the basis GWAC was already on site)</li> <li>48, 700.00 (Uplifted by Mr Cossu ffrom a 38, 200 GWAC quote)</li> </ul>	N/A
GWAC contract with Council (\$, ex GST)	89,550.00	25,677.00
	139,476.00 Steel Biz 246,975.00 Monument Environments	52, 390.00 Terracon 132, 395.00 Shotcrete 148,750.00 Brookvale
Other quotes received (\$, ex GST)		
Quote GWAC submitted to Council (\$, ex GST)	89,550.00	25,677.00
Was the quote sent to Mr Cossu + amended? (Y/N, \$)	Y 89,550.00	A/A
Original quote GWAC sent to Mr Cossu (\$, ex GST)	49,550.00	A/A
Conflict of interest declaration (Y/N)	z	₹Z
Mr Cossu on evaluation panel (Y/N)	<i>≻</i>	z
Relevant procurement policy	Selective quote	Selective quote
Project title	Belmore Sports Ground – box gutters and roof repairs	Undercliffe retaining wall
Quote no,	Q315-22	Q100-23

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#### Table 7: Council RFQ projects involving GWAC continued

	Unknown		Minimum of 32,517.10
Total GWAC received (inc GST)	Ę		
	Unknown		70,000.00 revised to 78,000.00
Budget (\$) Reference check by Mr Cossu (Y/N)	z		Z
Variations GWAC claimed (\$, ex GST)	N/A		18,353.97
GWAC contract with Council (\$, ex GST)	lst quote: <b>14,040.00</b>	2nd quote (different scope): 40,510.00	42,230.00
Other quotes received	40,920.00 Half Ball Enterprises	101,453.00 MSA	86,818,43 Awada Civil 69,744.00 Monument 78,077.00 Acron
(\$, ex GST)		ate e): :nt <b>00</b>	0 30 88 88 45 0 0 16
Quote GWAC submitted to Council (\$, ex GST)	lst quote: <b>14,040.00</b>	2nd quote (different scope): 40,510.00	Ist quote: 42,230.00 Quotes for extra scope work: 9,667.08 13,527.68 2,000.00 4,414.30 943.00
Was the quote sent to Mr Cossu + amended? (Y/N, \$)	≻		z
Original quote GWAC sent to	lst quote: <b>4,070.00</b>	2nd quote (different scope): <b>35,550.00</b>	42,230.00
Mr Cossu (\$, ex GST) Conflict Of interest declaration (Y/N)	A/A		Ψ/Z
Mr Cossu on evaluation panel (Y/N)	z		Z
Relevant procurement policy	Selective quote		quote
Project title		duplication Stage I hoardings	Sefton Golf Course – new golf cart shed
Quote no.	Q107-23		Q174-23

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#### Independent Commission Against Corruption

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