

Report on Corrupt Procurement Practices of a Senior Officer at the Shire of East Pilbara

1 October 2026

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THE INVESTIGATION

What the Commission investigated

- 1 Mr Bevan Klein was the Manager Operations for the Shire of East Pilbara (**SOEP**) between 18 October 2021 and 19 December 2023.¹
- 2 Mr Richard Batchelor is the sole director and shareholder of Dick Tracey Contracting Australia Pty Ltd (**Dick Tracey**).²
- 3 Mr Richard Carroll and Mr Damien Fogarty are the directors of VicFlow Pty Ltd (**VicFlow**) and VicFlow Civil Pty Ltd (**VicFlow Civil**). They are also the shareholders in those companies, together with their wives.
- 4 Mr Klein was Manager Capital Works for the Towong Shire Council in 2021. Prior to that he was the Senior Project Advisor, Transport and Main Roads at the Sunshine Coast Council.
- 5 Dick Tracey performed work for the Sunshine Coast and Towong Shire Councils during the time Mr Klein was employed by those Councils. VicFlow and VicFlow Civil (together, the **VicFlow Companies**) also performed contract works for the Towong Shire Council while Mr Klein was Manager Capital Works. As a result, Mr Batchelor and Mr Carroll knew Mr Klein before he was appointed Manager Operations for SOEP. Mr Klein cited Mr Carroll as a referee when he applied for the position. However, he never fully disclosed the nature and extent of relationships with Mr Batchelor and Mr Carroll and his past dealings with their respective companies.
- 6 Mr Klein described his duties for SOEP as 'running operations' for three depots at Newman, Nullagine and Marble Bar and delivering capital works projects for SOEP. He was responsible for engaging contractors to undertake those projects.³
- 7 SOEP usually engaged contractors by awarding a tender and/or issuing a purchase order. The tender or order described the work to be performed and specified the contract value.
- 8 Mr Klein had authority to raise requisitions and issue purchase orders to a value of \$30,000 plus GST.⁴ He could authorise payment of invoices submitted against purchase orders he had issued.
- 9 During the time that Mr Klein was the Manager Operations, SOEP:

¹ Exhibit 02471-2024-0050 (primary return made under the *Local Government Act 1995*).

² Representations were made on behalf of Dick Tracey and the VicFlow Companies that their corporate identities should be anonymised. The Commission concluded that it was in the public interest that the companies be named given the seriousness of the conduct that has been disclosed in the Commission's investigation and the findings that have been made about their involvement in that conduct.

³ Private examination of Mr Bevan Klein, 24 June 2025, pp 8-9.

⁴ Exhibit 02471-2024-0053 and see Exhibit 02471-2024-0065 (Procurement and Tender Procedures Policy).

- issued 263 purchase orders to Dick Tracey (one was cancelled);⁵
 - paid \$5,970,986.32 to Dick Tracey ;⁶
 - issued 31 purchase orders to VicFlow (two were cancelled);⁷
 - paid \$1,294,399.70 to VicFlow, on 111 invoices issued by the company;⁸
 - issued 56 purchase orders to VicFlow Civil (four were cancelled);⁹
 - paid \$4,665,723.37 to VicFlow Civil, on 72 invoices issued by the company.¹⁰
- 10 On 26 July 2024, the Commission received a notification from SOEP under s 28 of the *Corruption, Crime and Misconduct Act 2003 (CCM Act)*.
- 11 Section 28 obliges the heads of government agencies, including the Chief Executive Officer of a local government, to notify the Commission of any matter which they suspect on reasonable grounds concerns or may concern serious misconduct. The Commission must be notified as soon as reasonably practicable after the notifying person becomes aware of the matter.
- 12 Mr Steven Harding is the Chief Executive Officer of SOEP. The notification by SOEP satisfied his obligation under s 28.¹¹
- 13 SOEP had reviewed payments authorised by Mr Klein to Dick Tracey and the VicFlow Companies and noted that Mr Klein had apparently:
- (a) Favoured Dick Tracey and VicFlow Civil in awarding contracts and authorising significant variations to the scope of contract works;
 - (b) Provided confidential information to Dick Tracey and the VicFlow Companies about quotations submitted by competitor contractors;
 - (c) Issued numerous purchase orders for a contract value that was at or near the limit of his delegated authority.

⁵ Exhibit 02471-2024-0573.

⁶ Exhibit 02471-2024-0030. In addition, the Sunshine Coast Council paid Dick Tracey \$1,612,450.90 and Towong Shire Council paid \$120,692 to the company.

⁷ Exhibit 02471-2024-0571 and Exhibit 0247-2024-0578. The total value of the purchase orders issued was \$1,583,896.

⁸ Exhibit 02471-2024-0578. VicFlow was only paid on 102 invoices.

⁹ Exhibit 02471-2024-00572.

¹⁰ Exhibit 02471-2024-0578. The total value of the purchase orders issued was \$5,606,799.05. There was one invoice delivered by VicFlow Civil which was not paid by SOEP.

¹¹ The representations made by Mr Harding and SOEP referred to Mr Harding having voluntarily notified the Commission. Mr Harding was, in fact, under an obligation to notify the Commission; contrary to the representation made on his behalf, the obligation imposed by s 28 of the CCM Act is mandatory. The Commission did not accept the submission that it should tailor its report to Parliament so as to encourage voluntary notifications for that and other reasons relating to the functions performed by the Commission.

14 SOEP also noted that:

- (a) There was limited information about the contract works in the purchase orders issued by Mr Klein and the invoices submitted by Dick Tracey and the VicFlow Companies. Consequently, it was difficult to verify whether the work had been undertaken;
- (b) There was no evidence of value for money assessments on the contracts which were awarded by Mr Klein with the result that the contracts appeared to be overpriced;
- (c) There were 'apparent recurrent and concerning procurement patterns and trends between Mr Klein, Dick Tracey and VicFlow Civil'.

15 The Commission assessed SOEP's notification by conducting a preliminary investigation under s 32 of the CCM Act. The Commission subsequently formed an opinion under s 22 that serious misconduct may have occurred.

16 The Commission decided to investigate whether Mr Klein had corruptly taken advantage of his position as a public officer to obtain a benefit for himself or others or to cause detriment to any person (Operation Jarman).

Why the Commission investigated

17 The Commission reasonably suspected that Mr Klein had deliberately exercised his delegated authority as Manager Operations to favour Dick Tracey and the VicFlow companies and to corruptly confer a benefit on those companies and himself.

18 Serious misconduct frequently involves:

- (a) Deceptive conduct by a public officer to circumvent procurement control procedures and policies;
- (b) Inadequate procurement controls;
- (c) Insufficient supervision and oversight by managers and decision makers.

19 The Commission's preliminary investigation suggested that those common aspects of serious misconduct may have been present in the process by which work orders were issued to Dick Tracey and the VicFlow Companies and the corresponding invoices approved and paid.

20 The Commission had also been concerned by notifications and allegations about possible serious misconduct, facilitated by poor procedures, in regional local authorities.

How the investigation was conducted

21 The Commission examined Mr Klein and Mr Batchelor in June 2025. Mr Klein denied receiving any payment or benefit for awarding contracts to Dick Tracey and the VicFlow Companies. Mr Batchelor denied making any payments to or conferring any benefit on Mr Klein.

- 22 The Commission did not have access to information stored on the mobile phones of Mr Carroll and his wife, Ms Ashlea Carroll, at the time Mr Klein and Mr Batchelor were examined. Subsequent analysis of that information disclosed numerous suspicious messages suggesting that Mr Carroll and Ms Carroll had given Mr Klein gifts in return for contract work awarded to the VicFlow Companies.
- 23 Mr Carroll and Ms Carroll were examined by the Commission in September 2025. Mr Carroll confirmed that benefits (in the form of gifts) had been provided to Mr Klein in return for contract work. His evidence, and information stored on his mobile phone, indicated that Mr Klein had solicited the benefits in many instances.
- 24 The Commission has a capacity development function.¹² Consistent with that function, the Commission was interested in the procurement policies and procedures adopted by SOEP during the term of Mr Klein's employment and whether they had changed following the notification to the Commission. Consequently, the Commission also examined the President of SOEP, Mr Anthony Middleton, and Mr Harding.
- 25 Mr Klein stated in his examination that he planned to travel to the Philippines at the end of June, returning to Perth in mid-July 2025. The Commission proposed to further investigate aspects of the examination evidence given by Mr Klein and Mr Batchelor. Accordingly, it was anticipated that Mr Klein would be examined again on his return to Australia. He has not yet returned to Australia.
- 26 The Commission delayed finalising its investigation in the hope that Mr Klein would return from the Philippines or other avenues for completing the investigation might emerge. That has not occurred - it is stated in representations made on his behalf that he has significant health conditions and financial problems which prevent him from returning to Australia.
- 27 In the circumstances, the Commission considers it is in the public interest for the matters disclosed in its investigation to date to be reported to Parliament under s 84 of the CCM Act.

Section 86 of the CCM Act

- 28 Section 86 of the CCM Act provides that before reporting any matters adverse to a person or body in a report to Parliament, the Commission must give the person or body a reasonable opportunity to make representations to the Commission concerning those matters. The Commission provided a draft of its report to Mr Klein, Mr Batchelor, Mr and Ms Carroll and Mr Fogarty. A copy of the draft report was also sent to SOEP and Mr Harding as the Commission proposed to make findings on, and a recommendation about SOEP's policies and procedures.
- 29 The fact that a draft report is provided to a person or entity does not mean that the Commission has formed an opinion that is adverse to the person or entity. The Commission

¹² Section 21AB, CCM Act.

adopts a liberal view of s86 in determining who should be invited to provide representations. Moreover, the Commission provides an opportunity for a person to make a representation whenever it is merely possible that an adverse matter will be included in a report.

- 30 In finalising this report, the Commission carefully considered representations from, or on behalf of, Mr Klein, Mr Batchelor, Mr Carroll, SOEP and Mr Harding.

What the Commission found

Findings about Mr Klein's conduct

- 31 The Commission would have ordinarily put the examination evidence given by Mr Carroll and Ms Carroll to Mr Klein as part of its investigation process. The Commission carefully considered whether it could make findings that were adverse to Mr Klein in circumstances where he could not be further examined.
- 32 The Commission makes findings and forms opinions on the balance of probabilities, after taking into account the seriousness of the issues to be decided.¹³ The Commission concluded it could make findings about aspects of Mr Klein's conduct to that standard having regard to:
- (a) The evidence given by Mr Carroll and Ms Carroll and the information extracted from their mobile phones. Mr Carroll made significant and numerous admissions concerning his dealings with Mr Klein and through him, SOEP. The admissions were not only against his interests but also those of the VicFlow Companies, Ms Carroll, Mr Fogarty and Ms Fogarty (as a shareholder in the VicFlow Companies). The admissions were corroborated by the mobile phone information. The Commission accepted the evidence given by Mr Carroll and Ms Carroll;
 - (b) The inferences available from the number and form of purchase orders issued by Mr Klein to Dick Tracey and the VicFlow Companies and the payment of the corresponding invoices. Mr Harding's evidence about the administrative processes adopted by SOEP was consistent with the inferences drawn by the Commission;
- 33 There were differences in the evidence given between Mr Harding and Mr Klein on some significant issues. Further, in a representation made on his behalf, Mr Klein accused Mr Harding, Mr Middleton and Mr Carroll of lying to protect their reputations.
- 34 It was apparent that Mr Harding was concerned in giving evidence by what Mr Klein's conduct might reveal about his position and the management of SOEP generally. At times, the tenor of his evidence was self-serving. However, apart from Mr Klein's statements, there was nothing in the evidence received by the Commission which was inconsistent with Mr Harding's evidence. In particular, there was no evidence given by Mr Carroll, or in the text messages downloaded from his phone, that suggested Mr Harding had knowledge of or involvement in

¹³ See *Briginshaw v Briginshaw* (1938) 60 CLR 336.

Mr Klein's dealings with Mr Carroll and the VicFlow Companies. The Commission accepted Mr Harding's evidence.

- 35 It follows that the Commission accepted Mr Harding's evidence where it materially differed from that given by Mr Klein. In making that finding, the Commission took into account the significant differences between Mr Klein's evidence and the evidence given by Mr Carroll and Ms Carroll and the information retrieved from their mobile phones.
- 36 As noted above, the Commission accepted the evidence of Mr and Ms Carroll. It accepted the evidence of Mr Middleton and rejected the representation made on behalf of Mr Klein that Mr Harding, Mr Middleton and Mr Carroll were lying in their evidence to the Commission.

Mr Klein's conduct

- 37 The Commission found that:
- (1) The procurement and tender policy during the time Mr Klein was employed by SOEP prescribed that:¹⁴
 - (a) Purchasing that exceeded \$250,000 in total value had to be put to public tender;
 - (b) Purchasing to a value of between \$100,000 and \$250,000 required three written quotes from suppliers using a formal request for quotation process which included a detailed scope of works;
 - (c) Purchasing to a value of between \$10,000 and \$100,000 required three written quotes before a purchase order could be issued. A declaration of quotes form had to be completed and attached to the purchase order.¹⁵
 - (2) Mr Klein had delegated authority to issue purchase orders to a value of \$33,000 (\$30,000 plus GST) and to authorise payment of invoices up to that amount.
 - (3) Mr Klein had a relationship with Mr Batchelor, Mr Carroll and Mr Fogarty prior to commencing employment with SOEP. Mr Klein provided maintenance and consulting services to Dick Tracey while it was performing work for SOEP. He did not seek permission from Mr Harding to undertake the work and did not declare a conflict of interest. Mr Klein did not declare any conflicts of interest in dealing with Dick Tracey and the VicFlow Companies except for one occasion when he declared a conflict as part of a tender process. The declaration merely referred to VicFlow in a list of contractors and did not provide any information about the nature of his relationship with its directors and his previous dealings with the VicFlow Companies.

¹⁴ Exhibit 02471-2024-0065; 02471-2024-0066 and 02471-2024-0067.

¹⁵ The prescribed values are net of GST.

- (4) SOEP and Dick Tracey entered into a written contract under which Dick Tracey was to provide vegetation maintenance services for an annual payment of approximately \$800,000 (the **Vegetation Maintenance Contract**). The scope of the Vegetation Maintenance Contract was defined by a list of works but it also provided that additional 'ad hoc' works could be requested by SOEP.
- (5) Mr Klein routinely issued 'ad hoc' purchase orders to Dick Tracey for what was supposedly work outside the scope of the Vegetation Maintenance Contract. With few exceptions, the value of each purchase order was \$33,000. In the period April - December 2023, Mr Klein issued ad hoc purchase orders to Dick Tracey for a total value of approximately \$1.66 million.
- (6) Mr Klein also issued numerous purchase orders to the VicFlow Companies, each for an amount of \$33,000.
- (7) The purchase orders issued by Mr Klein, and the corresponding invoices, contained vague descriptions of the contracted work. As a consequence, it was not possible to properly assess whether the contracted work was necessary, had been satisfactorily completed and represented value for money. It was also not possible to determine whether the ad hoc work fell outside the scope of the Vegetation Maintenance Contract.
- (8) VicFlow Civil entered into contracts for the dry and wet hire of equipment to SOEP. Mr Klein issued purchase orders to VicFlow which referred to the contracts even though VicFlow was not a party to the contracts. Further, Mr Klein issued purchase orders to Dick Tracey that purported to be for a contract to which the company was not a party.
- (9) Mr Klein authorised payment of the purchase orders he had issued to Dick Tracey and the VicFlow Companies. On occasions, he authorised payment of invoices even though the contracted work had not been undertaken or completed.
- (10) In some instances, the purchase orders and invoices related to a single project. By issuing multiple purchase orders, Mr Klein was able to avoid the limit on his delegated authority and SOEP's procurement procedures.
- (11) Mr Klein did not always obtain written quotes before issuing purchase orders to Dick Tracey and the VicFlow Companies. In other instances, an oral quote was provided to Mr Klein. There was also a practice of Mr Klein discussing quotes with Mr Carroll before they were submitted by the VicFlow Companies.
- (12) On occasions, Mr Klein sent bundles of purchase orders to the VicFlow Companies and invoices were submitted before the work specified in the corresponding purchase order had been completed. There were also instances where the VicFlow Companies completed work without a price being agreed. Mr Klein would suggest an amount to

be paid in consultation with Mr Carroll. On other occasions, projects were varied without Mr Klein issuing fresh purchase orders.

- (13) There was a pattern of Mr Klein issuing purchase orders to the VicFlow Companies and the companies submitting corresponding invoices at inflated prices. Further, the VicFlow Companies endeavoured to recover the cost of providing gifts and benefits to Mr Klein in the invoices it rendered to SOEP. Mr Klein knew of those matters. He also knew that Mr Carroll and Mr Fogarty wanted to claim the cost of the gifts and benefits as business expenses for taxation purposes.
- (14) On occasions Mr Klein sought to find work for the VicFlow Companies in order to benefit the companies.
- (15) The effect of Mr Klein's conduct was to favour Dick Tracey and the VicFlow Companies over other possible contractors - that is, Mr Klein conferred a benefit on Dick Tracey and the VicFlow Companies.
- (16) The VicFlow Companies provided numerous gifts and other benefits for Mr Klein as a reward for and to further secure the contract work allocated to the VicFlow Companies. Mr Klein solicited most of the benefits he received.
- (17) The relationship between Mr Klein and the VicFlow Companies involved a corrupt exchange of benefits - Mr Klein received gifts from the VicFlow Companies and the VicFlow Companies received work sourced from Mr Klein.
- (18) Mr Klein deceived SOEP and deliberately exploited weaknesses in its procurement processes.

Mr Batchelor and Dick Tracey

- 38 The Commission might have further examined Mr Batchelor in light of the evidence given by Mr Carroll and Ms Carroll. However, the Commission decided not to do so.
- 39 The Commission has jurisdiction to investigate and express opinions about the conduct of public officers. Mr Klein was a public officer while employed by SOEP. Mr Batchelor, Mr Carroll and Ms Carroll are not public officers. The purpose of their evidence was to assist the Commission to investigate allegations made against Mr Klein.
- 40 Accordingly, the Commission's investigation was directed to whether Mr Klein had engaged in serious misconduct as defined by the CCM Act and, if so, how that had occurred. Without further examining Mr Batchelor, the evidence obtained from all available sources clearly established, in the Commission's opinion, that Mr Klein had engaged in serious misconduct in his dealings with the VicFlow Companies and also, how he had been able to benefit himself and the VicFlow Companies (and their shareholders). In addition, the evidence enabled the Commission to identify weaknesses in SOEP's procurement procedures which were exploited by Mr Klein.

- 41 The Commission's investigation has been conducted jointly with the Western Australian Police Force. WA Police are, of course, able to further investigate whether Mr Batchelor has committed a criminal offence in his dealings with Mr Klein and SOEP should they elect to do so.
- 42 In the circumstances, the Commission concluded it was not in the public interest to use its limited resources to further investigate the dealings between Mr Klein, Mr Batchelor and Dick Tracey. However, there were aspects of those dealings which further illustrated the policy failures and misconduct risks associated with SOEP's procurement practices.

SOEP's processes

- 43 The Commission found that:
- (1) There was no effective oversight of the way in which Mr Klein performed his duties as a manager;
 - (2) There was no system by which the volume of purchase orders issued by Mr Klein to individual contractors, and the number of invoices he authorised for payment, could be readily monitored;
 - (3) Until December 2023, financial reports provided to Mr Harding and the Council listed each item of expenditure for the reporting period but did not separately report on the total amount paid to each contractor;
 - (4) The financial reports to the Council made it difficult to identify the volume of work allocated to a contractor and the total amount of money paid to that contractor;
 - (5) There was no separation of functions between issuing purchase orders and payment of the corresponding contractor invoices so that Mr Klein was able to issue numerous purchase orders to Dick Tracey and the VicFlow Companies and authorise payment of their invoices;
 - (6) Due to the lack of oversight, Mr Klein was able to:
 - (a) Issue purchase orders that contained only vague and very general descriptions of the contract works to be undertaken by Dick Tracey and the VicFlow Companies;
 - (b) Issue a large number of ad hoc purchase orders to Dick Tracey outside of, and despite, the Vegetation Maintenance Contract;
 - (c) Issue numerous purchase orders for exactly the amount of his delegated authority;
 - (d) Issue purchase orders to VicFlow which referred to contracts made with VicFlow Civil notwithstanding that VicFlow was not a party to the contracts;

- (e) Issue purchase orders without obtaining the required number of quotes;
 - (f) Issue purchase orders or batches of purchase orders for single projects for amounts above his delegated authority;
 - (g) Authorise payment of invoices before the contract work had been completed;
 - (h) Routinely contravene SOEP's procurement and tender policy.
- (7) There was no way of testing whether the work to be performed under the purchase orders issued to Dick Tracey and the VicFlow Companies represented value for money as written quotes from other contractors were not routinely obtained before Mr Klein issued the orders;
- (8) It was largely left to Mr Klein to determine whether work had been performed according to the purchase orders he had issued and whether the work was to an acceptable standard;
- (9) It was also left to Mr Klein to determine what work was to be undertaken by Dick Tracey, the VicFlow Companies and other contractors and whether it was necessary for Dick Tracey to undertake ad hoc work or whether the required work fell within the scope of the Vegetation Maintenance Contract or a previously issued purchase order.
- 44 Mr Harding and the Council knew that Dick Tracey and the VicFlow Companies were performing ongoing and substantial contract work for SOEP. However, they did not appreciate the extent to which Mr Klein was issuing purchase orders at the limit of his authority, the amount of ad hoc work Dick Tracey was performing and the total amount that had been invoiced by Dick Tracey and the VicFlow Companies. That was because of the process and system failures identified above.
- 45 Mr Harding, the Council's Audit, Risk and Governance Committee and the Council did not know:
- (a) Whether work performed by Dick Tracey under an ad hoc purchase order was, in fact, outside the scope of the Vegetation Maintenance Contract;
 - (b) Whether work performed by Dick Tracey and the VicFlow Companies had been invoiced at a reasonable price and represented value for money;
 - (c) Whether Dick Tracey and the VicFlow Companies had undertaken all the invoiced work and if so, whether the work had been completed to a satisfactory standard;
 - (d) What impact the work contracted to Dick Tracey and the VicFlow Companies had on SOEP's budget position over the course of a financial year.
- 46 SOEP and Mr Harding submitted that they relied on Mr Klein in relation to the matters referred to in paragraph 42. They were, of course, entitled to rely on Mr Klein to properly perform his

duties as Manager Operations. However, the fact that they did not know about the matters referred to in paragraph 42 reflects the lack of supervision of Mr Klein and consequently, his ability to act without regard to SOEP's policies and procedures. The matters were of fundamental importance to ensuring the Shire received value for money through a properly administered procurement process.

- 47 Following Mr Klein's departure, an SOEP employee inquired into the contract work undertaken by Dick Tracey and the VicFlow Companies. He produced a series of memoranda which formed the basis of SOEP's notification to the Commission. The fact that the true nature and extent of Mr Klein's conduct was not appreciated until after his departure reflects the breakdown in SOEP's procurement processes.¹⁶
- 48 The Commission has not investigated what might have been thought to be an obvious question - whether someone in SOEP's administration ought to have identified the risk of procurement misconduct by Mr Klein while he was still employed by SOEP. The Commission's investigation did not disclose a reasonable suspicion of serious misconduct by any other SOEP employee and the Commission does not have jurisdiction over allegations of maladministration. Consequently, the Commission focused on SOEP's procurement policies and processes and their application - that is, on how Mr Klein was able to engage in serious procurement misconduct. The Commission's objective was to assist SOEP to enhance its capacity to prevent misconduct.

The Commission's opinion of misconduct

- 49 Section 3 of the CCM Act defines 'serious misconduct' as misconduct by a public officer of a kind described in s 4(a), s 4 (b) or s 4(c). Section 4(b) states that misconduct occurs if a public officer corruptly takes advantage of the public officer's office or employment as a public officer to obtain a benefit for himself or herself or for another person or to cause detriment to any person.
- 50 The Commission formed an opinion of serious misconduct by Mr Klein under s 4(b) of the CCM Act. The Commission formed that opinion as it found that:
- (a) Mr Klein solicited and received gifts from Mr Carroll in return for awarding contract work to the VicFlow Companies. By doing so, Mr Klein conferred a benefit on himself, the VicFlow Companies and Mr Carroll, Ms Carroll, Mr Fogarty and Mr Fogarty's wife as the companies' shareholders;
 - (b) Mr Klein took advantage of his position as Manager Operations to confer the benefit – he used his delegated authority to issue purchase orders and authorise payment of

¹⁶ Shortly before Mr Klein left SOEP's employ, a councillor raised with Mr Harding the amount of contract work that had been awarded to Dick Tracey. However, according to Mr Harding, the councillor's concern was with whether the Vegetation Maintenance Contract should be rewritten to better reflect the scope of the work being performed by the company.

invoices and he used his position as Manager Operations to circumvent SOEP's policies and proper procurement processes;

- (c) Mr Klein acted corruptly – he exercised his powers as Manager Operations for the private purpose of benefitting himself, the VicFlow Companies and Mr Carroll, Ms Carroll, Mr Fogarty and Mr Fogarty's wife and not for the public purpose of advancing the interests of SOEP. His conduct was deliberate, dishonest and not impartial.

- 51 An opinion that serious misconduct has occurred is not, and is not to be taken as, a finding or opinion that Mr Klein or any other person referred to in this report has or may have committed a criminal or a disciplinary offence.¹⁷

Recommendation

- 52 As will be explained, SOEP has implemented changes to its procurement processes. Notwithstanding those changes, the Commission has made a recommendation about reviewing those processes. The recommendation is noted at the end of this report.

¹⁷ See CCM Act, s 217A.

DICK TRACEY AND THE VICFLOW COMPANIES

The VicFlow Companies

- 53 Dick Tracey and the VicFlow Companies had not contracted with SOEP prior to Mr Klein commencing with the Shire in October 2021.
- 54 VicFlow owns and hires out heavy machinery including excavators, water trucks and a mobile concrete batch plant. VicFlow Civil carries on business as a civil engineering contractor. It performs earthworks and engineering works such as drainage and road infrastructure.¹⁸
- 55 Mr Carroll stated VicFlow was initially engaged by SOEP to supply hire equipment.¹⁹ Subsequently, VicFlow Civil undertook concreting and floodway work.
- 56 In 2023, following a tender process, VicFlow Civil and three other companies were appointed to a panel of pre-qualified suppliers for the hire of equipment to SOEP. The panel contract was referred to as RFT05-2022/23.
- 57 VicFlow Civil was awarded two contracts under RFT05-2022/23, one for wet hire and the other for the dry hire of equipment.²⁰
- 58 Between 2021 to 2024, 87 purchase orders were issued to the VicFlow Companies to the value of \$7,190,695, resulting in total payments in excess of \$5.96 million.²¹

Dick Tracey

- 59 Dick Tracey provided a range of vegetation maintenance services including slashing and mowing, high pressure cleaning, graffiti removal and pothole repair.²²
- 60 In January 2022, Mr Klein arranged for Dick Tracey to be added to SOEP's list of creditors.²³ In September 2022, SOEP issued request for tender RFT 02-2022-23 in relation to vegetation services. Mr Klein chaired the panel and the contract was ultimately awarded to Dick Tracey (this was the Vegetation Maintenance Contract). According to Mr Harding, Mr Klein 'mentioned' Dick Tracey but did not formally declare a conflict of interest despite his previous dealings with Mr Batchelor and Dick Tracey.²⁴ He also stated that the tender and contract would not have been approved by the council had the conflict been declared.
- 61 In 2023, Mr Klein raised 49 purchase orders in favour of Dick Tracey which were described as 'ad hoc work in accordance with RFT 02-2022/23'. The combined value of the purchase

¹⁸ Private Examination of Mr Carroll, 10 September 2025, pp 18-19.

¹⁹ Mr Carroll, 10 September 2025, p 18.

²⁰ Exhibit 02471-2024-0085 and 0247-2024-0086.

²¹ Exhibit 02471-2024-0578.

²² Private Examination of Mr Batchelor, 24 June 2025, p 4.

²³ Exhibit 02471-2024-0098.

²⁴ Exhibit 02471-2024-0072 and private examination of Mr Harding, 14 October 2025, p 51.

orders was \$1,892,000. The purchase orders were in addition to the annual contract price for the Vegetation Maintenance Contract of \$734,151 - hence, the description 'ad hoc'.²⁵ Forty-six of the purchase orders were at Mr Klein's maximum authorisation of \$33,000.

- 62 Mr Klein also raised purchase orders worth over \$960,000 in favour of Dick Tracey in relation to RFT 05-2022/23, notwithstanding that the company never submitted a tender and was not awarded a contract under RFT 05-2022/23.

²⁵ Exhibit 02471-2024-0074.

MR KLEIN

The employment of Mr Klein by SOEP

- 63 Mr Harding commenced at SOEP in March 2021. Previously, he had been the Director of Technical Services at the Shire of Broome. Mr Klein had been the Manager Operations for the Shire for a period during which Mr Harding was a director. He had reported to Mr Harding. Mr Klein subsequently left the Shire and travelled to the Northern Territory.
- 64 Mr Harding stated that he had contacted Mr Klein when SOEP was experiencing a difficulty in hiring an Manager Operations. Mr Klein applied for the position, citing Mr Harding as a referee. Mr Harding stated that he was unaware he had been nominated by Mr Klein to act as a referee.²⁶
- 65 Mr Klein reported to Mr Harding for about 12 months following his appointment. A Director of Infrastructure was then appointed and Mr Klein reported to him.²⁷
- 66 Mr Klein resigned from SOEP in December 2023. He advised Mr Harding that he had been diagnosed with a debilitating illness. Mr Klein confirmed the diagnosis in his examination but said it was not reason for his resignation. He subsequently commenced working at the Shire of Tammin.²⁸
- 67 Mr Klein and Mr Batchelor gave evidence that Mr Klein performed maintenance and consulting work for Dick Tracey. Mr Harding stated he was not aware of Mr Klein's secondary employment with the company. He would not have approved the arrangement had he known.²⁹

The benefits received by Mr Klein

- 68 Mr Klein gave evidence that he did not request nor receive any gifts or other benefits from Dick Tracey or either of the VicFlow Companies. The Commission did not accept that evidence in relation to the VicFlow Companies having regard to:
- (a) The evidence given by Mr and Ms Carroll;
 - (b) Statements made by Mr Klein, Mr Carroll, Ms Carroll and Mr Fogarty in text messages which they had exchanged;
 - (c) The number of purchase orders issued to the VicFlow Companies and the value of the payments made to the companies;

²⁶ Mr Harding, p 34.

²⁷ Mr Harding, p 43.

²⁸ Mr Klein, 24 June 2025, pp 70-71.

²⁹ Mr Harding, pp 85-86.

(d) The evidence concerning Mr Klein issuing batches of purchase orders to the VicFlow Companies.

69 Mr Carroll and Ms Carroll each admitted that the gifts and other benefits conferred on Mr Klein by the VicFlow Companies included:

Benefit	Value
Seafood vouchers ³⁰	\$1,000
Mobile Phone ³¹	\$1,649
Laptop ³²	\$1,299
Barbeque ³³	\$1,698
Ice Machine ³⁴	\$787
Clothing Vouchers ³⁵	\$5,500
Battery Operated Toolkit ³⁶	\$3,569
Cash Benefit ³⁷	\$12,500
Total Value	\$28,002

70 Other benefits included airport lounge passes, meals, alcohol and payments for hotel accommodation.³⁸

71 In September 2022, VicFlow purchased a 2014 Mitsubishi Triton from Mr Klein for \$40,000. The purchase price recorded with the Western Australia Department of Transport (**DOT**) was \$17,000.

72 The difference between the actual and recorded purchase price was put to Mr Klein in his examination. He stated that Mr Carroll had offered to purchase the vehicle for \$40,000 and that it was worth this amount as various aftermarket accessories had been fitted (such as roof racks, a bull bar and a fridge). Mr Klein also claimed that another person, who he described as 'a bloke that worked at Home Hardware in Newman', had offered to purchase the vehicle for \$35,000.³⁹ Mr Klein's evidence did not explain the sale price notified to DOT.

73 Evidence later obtained by the Commission from Mr Carroll's mobile phone showed that in August 2022, Mr Klein, Mr Carroll and Mr Fogarty exchanged texts about the possibility of

³⁰ Mr Carroll, pp 50-57; private examination of Ms Carroll, 10 September 2025 pp 26, 28-39.

³¹ Mr Carroll, 10 September 2025, pp 62-63.

³² Mr Carroll, 10 September 2025, pp 62-63.

³³ Mr Carroll, 10 September 2025, pp 58-60.

³⁴ Mr Carroll, 10 September 2025, pp 58-60, 66; private examination of Ms Carroll, p 42.

³⁵ Mr Carroll, 10 September 2025, pp 48, 68-72; Ms Carroll, pp 35 - 36.

³⁶ Mr Carroll, 10 September 2025, pp 69, 72-75; Ms Carroll, 10 September 2025, p 36.

³⁷ Mr Carroll, 10 September 2025, pp 76-81. The cash benefit relates to the purchase of the Mitsubishi Triton by VicFlow from Mr Klein.

³⁸ Mr Carroll, 10 September 2025, pp 44-45, 47-49, 56, 65, 67, 75; Ms Carroll, p 42.

³⁹ Mr Klein, 24 June 2025, p 34.

paying for a holiday cruise for Mr Klein. The idea was rejected by Mr Carroll in a text sent to Mr Fogarty:

'Hard for us to claim that, so rather buy him other shit. That's why I thought the ute might be a good one. We can pay overs for a shit-box and he gets the cash'.

- 74 The reference to the ute was to the Mitsubishi Triton that was subsequently purchased. The Commission inferred the reference to 'hard for us to claim that' was to the possibility of claiming a benefit to Mr Klein as a business expense for tax purposes.
- 75 Mr Carroll was examined about what he meant by 'paying overs'. He said 'over's' were paid for the Mitsubishi Triton because 'we weren't paying for a bloody cruise or something like that'.⁴⁰ He admitted that VicFlow paid an inflated price for the vehicle to provide a cash benefit to Mr Klein in return for Mr Klein providing further contract works and looking favourably on the VicFlow Companies.⁴¹
- 76 Mr Carroll was unable to give a precise estimate of the true value of the vehicle. However, he stated that it was more than \$17,000 and less than \$40,000 - the value was 'somewhere in the middle'. On that basis, the benefit to Mr Klein was in excess of \$10,000.⁴² Mr Carroll added that purchasing the vehicle solved a problem for the VicFlow Companies but he also agreed that it conferred a benefit for Mr Klein: 'frees up money for him'.⁴³
- 77 The effect of the evidence on the purchase of the Triton raised a further issue for investigation: whether a fraud had been committed by understating the purchase price of the vehicle for stamp duty purposes. The Commission was not aware of the issue when Mr Klein was examined and accordingly, it has made no finding on the matter.

Soliciting benefits

- 78 The way in which gifts were negotiated between Mr Klein and Mr Carroll was illustrated by text messages they exchanged about buying seafood for Mr Klein's birthdays:⁴⁴

[Counsel Assisting]: *Again, a conversation between Mr Klein and yourself, 6 June 2022. The top number is your number in the blue. You ask what Mr Klein's plan is for his birthday weekend, Mr Klein responds, 'Got an Airbnb in Perth. Going to have a look around, birthday will be at the house, seafood and drinks I reckon'.*

He's also attached a copy of the address for the Airbnb. Your next message to Mr Klein, 'Righto, well you know the drill'.

This is on, again, the 6 June 2022. What's the drill? --- Birthday. Always you'd get him seafood for his birthday.

⁴⁰ Mr Carroll, 10 September 2025, p 80.

⁴¹ Mr Carroll, 10 September 2025, p 81: 'we definitely paid, yeah - we paid overs for it'.

⁴² Mr Carroll, 10 September 2025, p 79.

⁴³ Mr Carroll, 10 September 2025, p 79.

⁴⁴ Mr Carroll, 10 September 2025, p 50.

This was a birthday gift to Mr Klein? --- Yeah.

Every year? --- I think so, yeah. We definitely did seafood at least twice, maybe three times but certainly for his birthday we'd always get him seafood.

79 The messages continued with Mr Klein texting, '[t]hanks mate not sure how close a seafood wholesaler is but I'm sure it will be all good'. Mr Klein and Mr Carroll each searched for a supplier, with Mr Carroll suggesting a place that could provide vouchers. Subsequently, Ms Carroll organised for a voucher to the value of \$500 to be issued by the seafood supplier with the details of how to redeem the voucher being sent by text to Mr Klein.⁴⁵

80 Mr Carroll was asked by counsel assisting how it was that Mr Klein was comfortable asking for gifts and other benefits. He replied:⁴⁶

I don't know, maybe the relationship evolved to such a point that he would every now and then, he would just say 'can you do this?' or 'can you pay for this?' or 'can you buy this?'.

His evidence continued:

[Counsel Assisting]: So, it was always the case that he asked you for certain things? ---Yeah. Yeah, I don't think we ever sort of -- I don't think we ever offered anything unless he asked. The situations with say beer and stuff, he'd say -- he was a pretty heavy drinker so he'd always ask us to buy him beer or something like that ...

81 The Commission was satisfied that Mr Klein solicited most of the gifts and other benefits that were provided by Mr Carroll and the VicFlow Companies.⁴⁷ An expectation of gifts and benefits developed as part of the dealings between Mr Klein and the VicFlow Companies.

The reason for the gifts and benefits

82 Mr Carroll was asked why he provided a particular benefit to Mr Klein. He replied:⁴⁸

A lot of the times we -- Mr Klein did -- he helped us for a lot of things as well. We sort of felt somewhat indebted to Mr Klein when we started our business. Like I said earlier, we had no opportunities, we -- we thought we would have opportunities and Mr Klein sort of took a risk on us and gave us a go, and gave us our first runs. There were situations there where we couldn't get, you know, trade accounts, as an example. We struggled to get, you know, oil filters for our machines and stuff like that because no one would give us credit. So, there was -- early, early on, we were always leaning on Mr Klein to help us, you know, be a trade reference, or something like that so, he would do a lot of that for us so we felt somewhat indebted to him for that. There were situations where we were tendering for big jobs in Melbourne and we had to put project references in there and at the time we didn't have many runs on the board so we would put Mr Klein down as not just a trade reference to help us get credit but also like a project reference.

⁴⁵ Exhibit 02471-2024-0410.

⁴⁶ Mr Carroll, 10 September 2025, p 47.

⁴⁷ There was other evidence that Mr Klein solicited gifts including a BBQ and ice machine (Mr Carroll, 10 September 2025, p 59 and exhibit 02471-2024-00) and a laptop (Mr Carroll, 10 September 2025, p 62).

⁴⁸ Mr Carroll, 10 September 2025, p 45.

And, did you feel indebted to him for the works that he was providing to you at the Shire of East Pilbara? --- Not necessarily, to be honest, a lot of that work was a burden on us. He'd forever be saying, 'I need you to come and fix this right away.' And it's like, we were trying to run a business and we were starting to get off the ground, we were starting to get off the ground in Melbourne and then he'd sort of pull us over there and a lot of it became a burden for us.

It was a burden but you were making million[s] of dollars in return in any event? --- We were making good margin, yeah. Yep. Like I say, we always – I guess, a way we justified it to ourselves to make those sacrifices, we certainly applied good margin to those jobs.

- 83 Mr Carroll then denied that the reason for gifts and other benefits to Mr Klein was to ensure that SOEP would provide continuing work for the VicFlow Companies through Mr Klein issuing purchase orders. He denied that the benefits were a bribe.⁴⁹ However, he later reflected on that evidence:⁵⁰

Like, I was reflecting just over the break then about when you were talking about bribes and whatnot, and my understanding of a bribe is like, you know, you give this and you get that sort of thing, and there was never anything like that. That's not an example of that. It was – yeah, I don't know why we necessarily did other than being asked to supply those items.

And did you receive anything in return from Mr Klein? --- No.

But the items were purchased to provide Mr Klein a financial benefit? --- Yes.

Was the purpose to ensure ongoing works at the Shire of East Pilbara? --- Again, I wouldn't say that was our intent. That wasn't that purpose. I mean, sure, upon reflection you look at it and think that that was a – that was an outcome perhaps, but it certainly wasn't a cause-and-effect type situation. Like you suggested earlier with the plaque, you know, it wasn't a case of, 'If you do this, you get this.' But, yeah, when you – upon reflection you look at it and think that the outcome is that for sure.

Okay. So what are your thoughts now upon reflection about why you were agreeing to provide those benefits? --- Again, I sort of – we were lent on, like that example there, to supply certain items. We did that. There was a – there was an element of, I guess, a 'thank you' for some of that stuff he did with trade references, et cetera, like that. But there was never an arrangement of, 'If you buy me this, you will get this job,' or, 'If you buy me this I will do this.' It was never anything like that. Sure, I guess the outcome may have been that, but it's certainly not – it wasn't the intent.

Okay. So you accept though that the outcome was you providing benefits to Mr Klein, the VicFlow Companies benefitted in terms of receiving works from the Shire – ongoing work from the Shire of East Pilbara? --- Yeah. I mean, we would – we would be looked upon favourably, sure. But, yeah, not – not specific – nothing specific.

...

And is your position that purchasing the phone and the laptop were not a bribe? --- Well, again, my – my definition is probably wrong. My understanding of a bribe is, 'If you do this, you get that,' but if that's not the – that's not the case, that's not our understanding of what

⁴⁹ Mr Carroll, 10 September 2025, p 47.

⁵⁰ Mr Carroll, 10 September 2025, p 63.

was happening. But if that – certainly there would be an element of looked upon favourably post that. But, yeah, the definition of a bribe, I'm probably unclear myself.

84 And later, giving evidence about the purchase of the Mitsubishi Triton, Mr Carroll stated that he did not expect a 'trade' in return but 'some work ... or to be looked upon favourably'.⁵¹ He accepted that being looked upon favourably meant keeping a business relationship with Mr Klein so that he would continue finding and providing work for the VicFlow Companies.

85 The effect of Mr Carroll's evidence was also captured in his answer to questions from his counsel:⁵²

[Counsel representing Mr Carroll]: So, what were you thinking when you made the first initial gift to Mr Klein? --- Again, that it was inappropriate. It made me feel a little bit uncomfortable, but yeah. Inappropriate.

So, then why did you provide the gifts in early 21 to Mr Klein? --- I guess we were desperate for work, and we thought that that would assist in the Shire of East Pilbara looking favourably on us as a supplier.

86 Mr Carroll accepted that he knew Mr Klein was favouring the VicFlow Companies.⁵³

Accounting for the cost of the benefits

87 As mentioned earlier in relation to the sale of the Mitsubishi Triton motor vehicle, Mr Carroll and Mr Fogarty wanted to ensure that the cost of providing benefits to Mr Klein could be claimed as a business expense for tax purposes. There was a similar text exchange between Mr and Ms Carroll about vouchers that were given to Mr Klein for the purchase of clothes:⁵⁴

[Counsel Assisting]: So you understood at that point that Mr Klein's attempting to get as much out of you as he can? --- Yeah.

Go to page 8, please. Ms Carroll asks, 'He' – meaning Mr Klein – 'said \$3000?' You say, 'Yes.' Can you go to page 9, please. You respond saying, 'PPE, uniform, workwear.' Ms Carroll responds, 'Okay, so can go down as protective shit.' Scroll down, please. You respond saying, 'I reckon. Shirts, pants, shoes.' Stop there, please. Page 10 here, Ms Carroll says, 'Yep, I'll rec it as a credit for the shop and put it down PPE for employees. Especially if Jim is heading there, looks reasonable.'

Is it the case that Ms Carroll is saying that the voucher for Mr Klein will be put down – will be reconciled against the business as PPE for your employees? --- It looks that way, yeah.

Would you often treat gifts for Mr Klein in this way? --- As in, trying to reconcile them? Yeah, yep. There was a – there was an – just brings another one to mind with, say, tools as an example. Like, he asked us to buy him some tools and it was – from a reconciliation perspective it's like, 'Yeah, tools, that's reasonable.'

It makes sense to reconcile it as a VicFlow company expense? --- As what it is, yeah.

⁵¹ Mr Carroll, 10 September 2025, p 81.

⁵² Mr Carroll, 11 September 2025, p 37.

⁵³ Mr Carroll, 11 September 2025, p 88.

⁵⁴ Mr Carroll, 10 September 2025, p 69.

88 Mr Carroll also stated that the VicFlow Companies attempted to recover the cost of providing benefits to Mr Klein by incorporating the cost in invoices sent to SOEP after the benefit had been provided.⁵⁵ The connection between providing Mr Klein with a benefit, charging back the cost of the benefit and maintaining the relationship with Mr Klein was illustrated by the following passage in Mr Carroll's evidence:

You've agreed that you overpaid for the Triton for the purpose of Mr Klein in receiving a benefit? --- Yeah.

Yes. Did you expect anything in return from Mr Klein? --- Like everything else, not necessarily a trade, but some work, yeah, or to be looked upon favourably.

And did you receive anything in return from Mr Klein? --- There was – again, the timing I'm not clear on, but there was purchase orders issued and works on those purchase orders, yeah.

Was that directly after the purchase had been completed? Did you understand them to be hand in hand? --- There was work on the table anyway which was why we needed a vehicle. So we were talking about – and that's where that exchange with Mr Fogarty was we needed a vehicle over there for some work. So there was work already on the table. So, yes, in and around that time for sure there was – there would have been a (indistinct) sort of issue.

Was the additional money – the overs that were paid for the car – charged back to the Shire of East Pilbara? --- Indirectly, yeah. Like the other things, I'd imagine.

And that was to ensure that you kept the business relationship with Mr Klein. Is that right? --- Yeah.

And he would keep finding work and providing work for the VicFlow Companies? --- Yeah.

⁵⁵ Mr Carroll, 10 September 2025, p 72.

THE BENEFIT TO VICFLOW COMPANIES

Payments

- 89 The amounts paid by SOEP to the VicFlow Companies were summarised earlier and, as has been explained, the VicFlow Companies attempted to recover the cost of providing benefits to Mr Klein by incorporating the costs into invoices rendered to SOEP.

Sourcing work for the VicFlow Companies

- 90 VicFlow acquired a concrete batching machine for the purpose of undertaking work for SOEP. The machine represented a significant investment and Mr Carroll and Mr Fogarty were concerned to ensure there would be sufficient work available to justify the expenditure. Consequently, the decision to purchase the machine was made in consultation with Mr Klein.
- 91 In that context, Mr Carroll was asked about text messages exchanged in December 2022 between Mr Klein, Mr Fogarty and himself. The effect of the text messages was that:
- (a) Mr Carroll and Mr Klein discussed gift vouchers that had been provided to Mr Klein;
 - (b) Mr Klein enquired whether there was anything he could do to assist with the purchase of the batching machine;
 - (c) Mr Carroll responded by suggesting that Mr Klein could 'sort' a few purchase orders;
 - (d) Mr Klein confirmed that he could do that; and Mr Carroll then sent a text to Mr Fogarty indicating that he had been 'greasin' them wheels' – a statement which Mr Carroll confirmed referred to the effect of providing vouchers to Mr Klein.⁵⁶
- 92 Mr Klein subsequently advised Mr Carroll that he would 'come up with some work' for the machine.
- 93 On 16 January 2023, Mr Carroll sent a text message to Mr Klein which stated, '... [a]ccountant keen for us to lock something juicy in to offset spending'. Mr Carroll explained that the VicFlow Companies' accountant was keen for work to be generated to offset the investment in the batching machine. Mr Klein later responded with, '...did you see my email mate. Will that help?'.⁵⁷
- 94 Mr Carroll advised that Mr Klein sent through proposed works to the value of \$1 million following the exchange.⁵⁸ He agreed that the texts suggested that Mr Klein was willing to find work for the batching machine that was not currently required to be undertaken by SOEP.

⁵⁶ Exhibit 02471-2024-0430; Mr Carroll, 10 September 2025, p 70.

⁵⁷ Mr Carroll, 11 September 2025, pp 88-89; Exhibit 02471-2024-0435 (text exchange between Mr Fogarty and Mr Carroll).

⁵⁸ Mr Carroll, 10 September 2025, p 89; Exhibit 02471-2024-0434.

- 95 In an associated exchange of texts between Mr Fogarty and Mr Carroll, Mr Fogarty commented that Mr Klein 'knows his role'.
- 96 Mr Carroll accepted that this meant Mr Klein knew that it was his role to continue to generate purchase orders and find work for the batching machine.
- 97 Similarly, on 10 June 2023 Mr Klein sent a text message to Mr Carroll which stated, '... I just want to make you a million over the next few weeks, mate, with no problems'.⁵⁹ The Commission did not have an opportunity to ask Mr Klein about the message, or about his practice of generating works for the VicFlow Companies on Mr Carroll's request, but the import of the message was obvious.
- 98 Mr Carroll also stated that:
- (a) There were invoices delivered around June 2023 for work that had not been performed. The invoices were rendered so that they fell within the financial year ending 30 June 2023;⁶⁰
 - (b) There were occasions when Mr Klein provided a budget figure and enquired about what work could be done by the VicFlow Companies within the figure.⁶¹ Mr Klein would seek Mr Carroll's assistance in scoping budgets;⁶²
 - (c) Mr Klein was 'very good' at allowing the VicFlow Companies to use SOEP equipment in undertaking contract work.⁶³
- 99 Sourcing work for the concrete batch machine was not the only instance of Mr Klein setting aside work for the VicFlow Companies. On 20 September 2022, Mr Klein sent an email to Mr Carroll listing a series of projects 'earmarked' for VicFlow Civil. Five projects were identified with the email stating the budget allocated for each project. The total value of the projects was approximately \$1,652,000.⁶⁴
- 100 Mr Klein gave evidence to the Commission that he had discussed earmarking the projects referred to in the email with Mr Harding. The allegation was denied by Mr Harding. He stated he had not previously seen the email. He added that no work should be 'preapproved to any contractor'; that the information contained in the email should not have been disclosed to Mr Carroll; and he would have fired Mr Klein had he seen the email.⁶⁵

⁵⁹ Mr Carroll, 11 September 2025, p 18.

⁶⁰ Mr Carroll, 10 September 2025, p 90.

⁶¹ Mr Carroll, 10 September 2025, pp 87-99.

⁶² Mr Carroll, 10 September 2025, p 91.

⁶³ Mr Carroll, 10 September 2025, p 92; Exhibit 02471- 024-0435.

⁶⁴ Exhibit 02471-2024-0166.

⁶⁵ Mr Harding, pp 98-99

- 101 The Commission accepted Mr Harding's evidence having regard to the findings made about his evidence and that of Mr Klein.

The amounts charged to SOEP

- 102 Mr Carroll denied deliberately overcharging SOEP. However, he added that the VicFlow Companies 'definitely applied healthy margins ... large margins'.⁶⁶
- 103 On 9 March 2023, Mr Carroll and Mr Fogarty exchanged text messages. Mr Carroll commenced the exchange by stating he had sent Mr Klein nearly \$1.1 million worth of tenders, with \$200,000 to follow the next day.⁶⁷ He had spoken to Mr Klein and expected 'a bit of pushback but reckon I get it to over 1 mil.' Counsel assisting examined Mr Carroll about the balance of the text exchange:

If you could go down to page 2, please. The top message says:

'... Was perfect playbook. He said he was hoping to pay for the material with that same budget, but reckons that he can pull it from somewhere else, based on the submissions'.

What's the perfect playbook a reference to? --- Probably a dealing that I had with him, or a conversation that I had with him. A few years ago now, I don't really know. But it seems – I don't know, it must have been a conversation that had with him about - - -

Him being Mr Klein or Mr Fogarty? --- Yeah.

Did you understand the case to be that Mr Klein was figuring out how he could work it so that VicFlow Civil Pty Ltd would be paid over \$1 million? --- Materials maybe he was supplying – based on that, I would say that our submission was that the materials would be in our scope, and he's suggesting that he could pay for them himself and get them delivered, so it would be less scope for us, and that he'd be able to supply the materials.

He would supply the materials, but you would still be paid the same amount as if you were supplying them? --- Don't know.

Is that likely to be the case? --- Yes.

Could you scroll down, please. You then go on to say:

'Fat as fuck margins'.

Is that in relation to the tender submissions? --- Yep.

And reference to overcharging for work?---Yep, high margins, yep.

A symbiotic relationship

- 104 The nature of the relationship between Mr Klein and the VicFlow Companies, through Mr Carroll and Mr Fogarty, was well illustrated by an exchange of texts between Mr Klein and Mr Carroll in March 2023.⁶⁸ The exchange commenced with Mr Klein messaging Mr Carroll:

⁶⁶ Mr Carroll, 10 September 2025, p 44.

⁶⁷ Exhibit 02471-2024-0453.

⁶⁸ Exhibit 02471-2024-0432.

Mate if we have the capacity I would like a really good extensive kit of battery operated power tools and then maybe next time a good sized petrol pressure cleaner. These are for the Philippines and my retirement projects mate.

- 105 Mr Carroll responded, 'yep no dramas mate, wanna keep it all Makita?' There followed a further exchange about a particular set of tools and how they might be delivered to Mr Klein. It was then suggested that Mr Carroll travel to the Philippines when Mr Klein retired. Mr Carroll responded, 'Bloody oath! Except you're not allowed to retire yet'. Mr Klein responded '4 years mate. We need to make sure you guys are all good first', with Mr Carroll replying 'for sure mate, its bloody appreciated!' Mr Klein then added, 'yeah mate we will look after you'.

SOEP

- 106 SOEP covers 372,571 square kilometres. It advertises that it is the largest shire in Australia and, indeed, the world.
- 107 The challenge of providing services to such a large area is exacerbated by the difficulty in attracting employees to the Pilbara. As a result, SOEP is often reliant on contractors who frequently charge a premium for working in the region. Mr Klein and Mr Carroll referred to inflated prices as 'the Pilbara tax'.⁶⁹ While the difficulty of competing with the mining industry for contractors and workers can be readily understood, it should mean that local government bodies in the North-west of the State are alert to the risk of overcharging and the need to test the value for money proposition in awarding contracts.

SOEP'S revenue and expenditure

- 108 SOEP's operating revenue and expenditure for the financial years 2021-2022 to 2023-2024 were:⁷⁰

Financial Year	Operating Revenue	Expenditure
2021-2022	\$55m	\$51m
2022-2023	\$72m	\$64.2m
2023-2024	\$86.6m	\$50.9m

- 109 Expenditure on 'maintenance and contracts' in those financial years was \$16.6 million (2021-2022), \$22.5 million (2022-2023) and \$23.6 million (2023-2024).
- 110 The total amount paid by SOEP to Dick Tracey and the VicFlow Companies was \$11.93 million.

SOEP'S procurement policies and procedures

Legislative framework

- 111 Regulation 11A(1) of the *Local Government (Functions and General) Regulations* 1996 (**the Regulations**) requires local governments prepare, adopt and implement a purchasing policy in relation to goods and services worth \$250,000 or less. Regulation 11A(3) further provides that:

A purchasing policy must make provision in respect of —

- (a) *the form of quotations acceptable; and*
- (ba) *the minimum number of oral quotations and written quotations that must be obtained; and*

⁶⁹ Mr Klein, p 90; Mr Carroll, 11 September 2025, p 22.

⁷⁰ SOEP's Annual Report for 2021-2022 to 2023-2024. Mr Harding stated that the principal sources of funding for the Shire were fees and charges, rates and sewage charges. The Shire also receives grants from State and Federal Government and from private sources.

- (b) *the recording and retention of written information, or documents, in respect of —*
 - (i) *all quotations received; and*
 - (ii) *all purchases made.*

112 Division 2 of pt 4 of the Regulations concerns tenders by local authorities. Subject to exceptions, tenders are to be publicly invited before a local government enters into a contract for another person to supply goods or services if the consideration under the contract is, or is expected to be, more or worth more than \$250,000. The regulations prohibit contract splitting to avoid the obligation to publicly tender and local governments are required to follow a prescribed procedure in giving public notice of a tender and receiving and opening tenders. A contract for the supply of goods or services entered into with a successful tenderer must not be varied unless the variation is necessary in order for the goods or services to be supplied and does not change the scope of the contract.

The procurement and tender policy

113 The objectives of the SOEP's Procurement and Tender Procedures Policy were to ensure that all purchasing activities:

- *Demonstrate that best value for money and outcomes are attained for the Shire;*
- *Are compliant with relevant legislations, including the Act and Regulations;*
- *Are recorded in compliance with the State Records Act 2000 and associated records management practices and procedures of the Shire;*
- *Mitigate probity risk, by establishing consistent and demonstrated processes that promotes openness, transparency, fairness and equity to all potential suppliers;*
- *Ensure that the sustainable benefits, such as environmental, social and local economic factors are considered in the overall value for money assessment; and*
- *Are conducted in a consistent and efficient manner across the Shire and that ethical decision making is demonstrated.*

114 The policy contains principles designed to ensure there is 'fair and equitable treatment of all parties' at all stages of the purchasing process. The principles include that 'full accountability' is to be taken for all purchasing decisions; all processes, evaluations and decisions are to be 'transparent, free from bias and fully documented in accordance with applicable policies, record keeping practices and audit requirements'; and any actual or perceived conflicts of interest are identified, disclosed and appropriately managed.

115 Consistent with div 2, pt 4 of the Regulations, the procurement and tender procedures policy prescribed procurement thresholds and requirements. In particular:

- (a) Three written quotes are required where the value of the goods or services to be procured was between \$10,000 and \$99,000. A purchase order can only be raised after the quotes have been received. Electronic evidence of the quotes received must be

retained and a declaration of quotes form must be completed and attached to the purchase order in SOEP's records;

- (b) A formal request for quotations with a scope of works/goods and services to be supplied must be created and quotes obtained from three suppliers for purchase orders worth between \$100,000 - \$249,000. A recommendation report is required and must be endorsed by the CEO. A purchase order is then created in consultation with the CEO or a director;
 - (c) A tender process must be followed for purchase orders over \$250,000. The CEO can approve an invitation to tender if the work is allowed for in the budget but otherwise, permission to go to tender must be obtained from Council.
- 116 The policy also deals with situations where there is likely to be only one supplier. The proposition must be market tested and the reason why quotations or tenders cannot be sourced through more than one potential supplier must be documented and approved by the CEO and a director.
- 117 The policy expressly prohibits purchase orders being raised retrospectively and multiple purchase order transactions of a similar nature for the purpose of contract.
- 118 Under the policy, Mr Klein, as a manager, was authorised to raise and approve purchase orders between \$10,000 to \$33,000 (including GST), provided that three written quotes had been obtained and the other requirements referred to above had been satisfied.
- 119 The policy did not mandate a process to confirm that goods or services had been received prior to payment. For example, a three-way matching process between a purchase order, a goods/services receipt and an invoice was not required. Mr Harding also gave evidence that SOEP did not have a system by which contracts, purchase orders and invoices were stored in a single file or other location.⁷¹
- 120 Mr Harding stated that he was required to approve any acquisition over \$150,000. The procurement team were responsible for supervising purchases, including those approved by Mr Harding. It was also part of their job to ensure staff received proper training and the Shire's procurement policies were implemented.
- 121 Mr Klein claimed not to have seen the procurement and tender procedure policy.⁷² However, in October 2021 he acknowledged an email from SOEP's Procurement Coordinator advising he was permitted to raise requisitions and approve purchase orders up to \$30,000, net of GST.⁷³ Further, he accepted he was responsible for determining whether work had been completed

⁷¹ Mr Harding, p 106. SOEP advised in its representations that it was implementing a new system so that purchase orders, invoices and contracts would be held in a single administrative location.

⁷² Mr Klein, p 10.

⁷³ Exhibit 02471-2024-0053. Mr Klein was permitted to approve variations within a 10% tolerance of the original purchasing value within his authorised financial limit.

satisfactorily despite the absence of formal procedures to confirm the delivery of goods and services.⁷⁴

Conflicts of Interest Policy

- 122 SOEP's conflicts of interest policy required all employees to declare, describe and manage actual, perceived and potential conflicts of interest.⁷⁵ It was necessary for an officer to complete a disclosure form providing details about the nature of the conflict and proposing a management strategy. The officer was also required to discuss the conflict with their manager, with SOEP's Manager Governance, Risk and Procurement having overall responsibility for recording and supervising reported conflicts.
- 123 On 16 January 2025, Mr Klein declared a 'working relationship' with VicFlow Civil during a tender process for the hire of plant equipment.⁷⁶ He declared working relationships with 11 companies in relation to the plant hire contract.⁷⁷ As previously noted, the contract was ultimately awarded to VicFlow Civil.
- 124 The declaration was in a standard form and was directed to Mr Klein's role in the tender process for RFT05-2022/23 and the need to keep tender information confidential. Mr Klein was not required to, and did not provide, information about the circumstances giving rise to the declared conflict. Consequently, his declaration did not address the conflict that arose out of his previous relationship with Mr Carroll, Mr Fogarty and the VicFlow Companies for the purpose of their dealings more generally with SOEP. Mr Klein did not separately declare a conflict in compliance with SOEP's policy for that purpose and consequently, there was no plan for managing or supervising the conflict.
- 125 Mr Klein also never declared a conflict of interest with Dick Tracey or Mr Batchelor. Mr Harding accepted that Mr Klein's failure to declare his conflicts relating to Dick Tracey and the VicFlow Companies breached SOEP's policy.⁷⁸

Audit, Risk and Governance Committee

- 126 The *Local Government Act 1995* (WA) requires that all local governments establish an audit committee.⁷⁹ A key function of a local government audit committee is to assist councils to fulfill governance and oversight responsibilities in relation to financial reporting.
- 127 SOEP's Audit, Risk and Governance Committee is made up of elected councillors. The CEO is not a member of the committee but attends meetings as an observer.⁸⁰

⁷⁴ Mr Klein, p 15.

⁷⁵ Exhibit 02471-2024-0058.

⁷⁶ Exhibit 02471-2024-0079.

⁷⁷ Mr Klein, p 69.

⁷⁸ Mr Harding, p 51.

⁷⁹ *Local Government Act 1995* (WA), s 7.1A.

⁸⁰ Private examination of Mr Middleton, 6 October 2025, p 25.

PROBLEMS WITH SOEP'S PROCUREMENT PROCESSES

- 128 The Commission accepted that Mr Klein deceived SOEP and deliberately exploited weaknesses in SOEP procurement processes. However, the fact that his conduct went undetected for almost two years highlights the extent of those weaknesses.

Mr Carroll's evidence

Process

- 129 Mr Carroll gave evidence that the scope of the work to be undertaken by the VicFlow Companies often changed, the scope of some projects being increased and the scope of others reduced. The scope of the work for each project would be represented by a series of purchase orders with a practice of 'just paying the purchase orders on the table' rather than going back and reissuing purchase orders to reflect the changes in scope across projects.⁸¹ The idea was that it would 'all come out in the wash'.
- 130 Mr Carroll agreed that it was not unusual for Mr Klein to cut corners; that the procurement process was 'pretty loose'. There were occasions where work was undertaken without a price being agreed, with Mr Klein enquiring on completion whether a suggested amount would cover the cost of the work that had been undertaken. The procurement process was, as Mr Carroll put it, 'reverse engineered'. There were yet other occasions in which Mr Klein had indicated a certain amount of funding was available and had asked Mr Carroll what could be done with the funds.⁸²
- 131 Mr Carroll also admitted that Mr Klein had requested that the VicFlow Companies submit invoices that were within Mr Klein's authority of \$33,000 on the understanding that he would approve the costs claimed without further inquiry from other SOEP staff members:⁸³

They were not purchase orders. There was already a purchase order for an amount. I always found this strange, because I think that was his limit for purchase orders, but these purchase orders were already issued. ... These were progressive claims, and these were a means of us trying to help with our cashflow, but it was also a way of trying to get spend early on those projects.

- 132 Mr Carroll confirmed that the purchase orders to which the requests referred were for more than \$33,000. The Commission inferred that the purpose of Mr Klein's requests was to ensure other SOEP staff did not discover that he had issued purchase orders beyond his delegated authority.

⁸¹ Mr Carroll, 10 September 2025, p 87.

⁸² Mr Carroll, 10 September 2025, p 88.

⁸³ Mr Carroll, 10 September 2025, p 95.

Communications with Mr Klein

- 133 Mr Carroll stated he would communicate with Mr Klein about the gifts and benefits by using Mr Klein's personal email address. He also used Mr Klein's personal email address to communicate about contract work, including when he submitted a quote or an invoice. He would then send an email to Mr Klein's SOEP address.
- 134 When asked why he would communicate first with Mr Klein, Mr Carroll referred to what he described as 'drivers': '[s]ometimes they had drivers with – say end of financial year, they would try and get – there was times where we would have invoiced work not done yet, because he needed the invoices in before the end of the financial year'. As a result, there were 'a lot of times' where progress claims would be submitted early to get a KPI 'ticked' before the work had been undertaken. However, he also accepted that his communications were not something that Mr Klein would want on his work email server and that, on occasions, Mr Klein had requested his personal email address be used.⁸⁴
- 135 Mr Harding stated that Mr Klein had a budget but no KPIs: "the KPI was, 'get the job done' I guess".⁸⁵ Accordingly, it was not clear how Mr Carroll came to understand that work was invoiced early to achieve a SOEP KPI. The Commission assumed that his understanding was derived from something he was told by Mr Klein.
- 136 The Commission was unable to determine whether a "get the job done" approach without specified KPIs contributed to an administrative environment in which Mr Klein was able to consistently contravene SOEP's policies and subvert proper processes. However, it did suggest that the Shire was primarily concerned with outcomes over processes and accountability.
- 137 The Commission noted that this aspect of Mr Harding's evidence was apparently consistent with the tenor of a representation made on behalf of Mr Klein – that Mr Klein had advised Mr Harding on occasions that he was over budget but he had been advised to 'just keep doing what you are doing'. Mr Klein also stated in the representation that he had not received a performance appraisal and that Mr Harding and Mr Middleton had praised his work.
- 138 Whether Mr Harding and Mr Middleton praised Mr Klein's work is not to the point – they did not know the true nature of Mr Klein's dealings with Mr Batchelor and Mr Carroll and their respective companies. Further, the Commission's concern with Mr Harding's evidence about a 'getting the job done' approach is with the risk that proper processes and accountability can be degraded by an undue focus on achieving outcomes.

⁸⁴ Mr Carroll, 10 September 2025, pp 45-46.

⁸⁵ Mr Harding, p 43.

Purchase orders

- 139 A fundamental failure in SOEP policies and procedures was the absence of checks and balances on purchase orders. There was no, or no effective, oversight of the use by Mr Klein of his delegated authority. That was manifested in a variety of ways.

Multiple purchase orders

- 140 Mr Klein was able to generate numerous purchase orders at the limit of his delegated authority. As noted earlier, Mr Klein issued 263 purchase orders to Dick Tracey and a total of 87 purchase orders to the VicFlow Companies. Many of the purchase orders were for \$33,000. For example, Mr Klein caused 49 'ad hoc' purchase orders to be issued to Dick Tracey in the period April-December 2023, of which 46 orders were for the sum of \$33,000.
- 141 The ad hoc purchase orders were summarised in a spreadsheet produced by SOEP as part of the Commission's investigation but which had been prepared by Dick Tracey.⁸⁶ Mr Klein stated in his examination that the purchase orders related to major ongoing works. He claimed to have been instructed by Mr Harding to issue a monthly purchase order to the maximum value of his delegated authority for each project.⁸⁷
- 142 Mr Harding denied that allegation. He stated that he first saw the spreadsheet after Mr Klein left working for SOEP; the spreadsheet was located when Mr Klein's emails were interrogated by SOEP. He was aware that ad hoc work was being undertaken but not the extent of the work. Further, he could not say what work had been done pursuant to each purchase order; all he saw was invoices delivered by Dick Tracey that described the work performed as 'additional landscaping works'.⁸⁸ He had not seen the purchase orders and could not say if they represented value for money.
- 143 The Commission accepted Mr Harding's evidence that he did not instruct Mr Klein to issue the purchase orders referred to in the spreadsheet prepared by Dick Tracey. Mr Carroll's evidence, and the text messages he exchanged with Mr Fogarty and Mr Klein, established that there was a pattern of Mr Klein issuing numerous purchase orders, including in batches, to the VicFlow Companies without Mr Harding's authority. Further, it is to be assumed that Mr Harding would have authorised a limited number of purchase orders above Mr Klein's delegated authority if they had related to major ongoing projects.
- 144 It is to be inferred that Mr Klein was splitting purchase orders to avoid SOEP's procurement policies.

⁸⁶ Exhibit 02471-2024-0205.

⁸⁷ Mr Klein, p 59.

⁸⁸ Mr Harding, p 56.

Ad hoc purchase orders

- 145 The value of the ad-hoc purchase orders issued to Dick Tracey for April - December 2023 was \$1,892,000. There were obvious questions about the amount of ad hoc work allocated to Dick Tracey given that it was supposedly providing services to SOEP under the Vegetation Maintenance Contract. That was especially as the contract contained a broad description of the work to be performed: 'the contractor ... shall undertake a range of vegetation services including but not limited to turf maintenance, garden bed maintenance, playgrounds and barbeque maintenance, non-irrigated verge maintenance, sign cleaning and litter collection.' Further, the contract specified numerous sites around Newman where the vegetation services were to be provided.
- 146 Mr Harding considered that the high volume of ad hoc payments was explained by the difficulty SOEP experienced in hiring workers and its consequent reliance on contractors. He did not believe there was a problem with authorising ad hoc work as such but accepted that the purchase orders issued by Mr Klein lacked information about the scope of the proposed work. He also considered that Mr Klein ought to have provided information, for example in the form of a spreadsheet, showing the scope of the work completed against each purchase order.⁸⁹
- 147 The Commission had difficulty in understanding how the amount of ad hoc work performed by Dick Tracey did not attract closer scrutiny by the Shire's administration. No attempt was apparently made to reconcile the work undertaken on an ad hoc basis with the work that was to be performed under the Vegetation Maintenance Contract. That was especially as, according to Mr Middleton, there was a concern expressed by other contractors about the amount of work that was directed to Dick Tracey - and Mr Middleton was not the only councillor who was concerned by the amount paid to the company during 2023.
- 148 Further, there was evidence that Mr Klein may have been able to issue ad hoc purchase orders well above his delegated authority. For example, exhibit 0247-2024-0203 was a purchase order issued to Dick Tracey in August 2023 for \$330,000. Mr Harding could not recall whether he had seen the purchase order but agreed that an order for that amount would need to have been approved by him. In fact, the purchase order was unsigned (and it is to be noted that, according to SOEP's procurement and tender policy, the purchase order could only have been issued through a tender process; there was no evidence that such a process had been followed).

Purchase orders issued to the VicFlow Companies

- 149 There was evidence that Mr Klein authorised payments of invoices rendered by VicFlow which referred to RFT05-2022/23 notwithstanding that VicFlow was not a party to any contract made under that panel contract (and the Commission inferred that the invoices reflected what was

⁸⁹ Mr Harding, pp 60-61.

stated on the corresponding purchase orders). Mr Harding stated that he was not aware of payments having been made to VicFlow supposedly under RFT05-2022/23.

150 Mr Harding was taken in his examination to the minutes of a Council meeting held on 23 July 2023 in which payments to VicFlow and VicFlow Civil were listed in a transaction report as referring to RFT05-2022/23. The entries for the payments followed one after the other.⁹⁰ Mr Harding stated he had not picked up the fact that the payment to VicFlow was stated to have been made under a contract to which it was not a party; indeed, he had not been aware that VicFlow and VicFlow Civil were different companies.⁹¹

151 Mr Harding stated that he was not concerned about the total amount paid to the VicFlow Companies given the projects that were being undertaken by SOEP. He was not aware prior to Mr Klein's departure of any perception that the VicFlow Companies had been favoured over other possible contractors.⁹²

Quotations

152 The evidence indicated that Mr Klein did not adhere to the requirement for obtaining three quotations before initiating a purchase order for more than \$10,000. The fact that Mr Klein issued 46 purchase orders for exactly \$33,000 across nine months indicates that quotes were not being sought for the work the subject of each invoice. Mr Carroll gave evidence that the VicFlow Companies submitted quotes but in consultation with Mr Klein.

Limited information

153 The purchase orders generated by Mr Klein contained limited information which made it impossible to determine what work was to be undertaken. The following purchase order provides an example:⁹³

Quantity	Description	Unit Value	Line Value
3.00	Adhoc Vegetation Works around Newman as Ordered in Accordance with RFT02-2022/23 its contract conditions and pricing.	\$33,000.00	\$99,000.00
2.00	Adhoc Vegetation Works around Newman as Ordered in Accordance with RFT02-2022/23 its contract conditions and pricing.	\$88,000.00	\$176,000.00
1.00	Adhoc Vegetation Works around Newman as Ordered in Accordance with RFT02-2022/23 its contract conditions and pricing.	\$55,000.00	\$55,000.00
TOTAL INCLUDING GST			\$330,000.00

⁹⁰ Exhibit 02471-2024-0615.

⁹¹ Mr Harding, pp 93-94.

⁹² Mr Harding, p 94.

⁹³ Exhibit 02471-2024-0203.

- 154 Mr Klein was unable to provide a satisfactory answer when pressed about how the 'quantity' and 'unit value' were determined.⁹⁴ The purchase orders issued by Mr Klein to the VicFlow Companies were similarly opaque.
- 155 Mr Harding gave evidence that he could not determine whether the ad hoc work undertaken by Dick Tracey was within or outside the scope of the Vegetation Maintenance Contract because of the lack of any meaningful description of the work to be performed in the purchase orders issued by Mr Klein or in the invoices rendered by Dick Tracey. The most he could say was that he observed vegetation maintenance work being done around Newman at the relevant time.⁹⁵
- 156 Mr Harding stated that early during Mr Klein's employment he queried why invoices had been submitted without the required accompanying information. However, he also said there were difficulties in attaching documents using SOEP's then accounting and business management system.⁹⁶
- 157 Whatever the difficulties with SOEP's accounting systems, there were 'red flags' that were not apparently pursued or detected by the Shire's management: multiple purchase orders issued at the limit of Mr Klein's delegated authority; invoices delivered by Dick Tracey that contained vague descriptions of the work performed; purchase orders that also contained only general descriptions of the contracted work; invoices submitted without quotes; and the large number of ad hoc purchase orders. The fact that Mr Harding was concerned about the Shire's procurement processes from the outset of his appointment as CEO made it even more surprising that those problems were not fully identified and rectified.

Overseeing completion of contract work

- 158 A further problem with the contract work performed by the VicFlow Companies and Dick Tracey was the lack of a formal procedure for ensuring work was completed prior to contractors being paid. Mr Klein was responsible for checking completion of the works authorised by the purchase orders he generated. He had authority to sign off work as being completed and accordingly, to authorise payment of contractor invoices.⁹⁷
- 159 Mr Klein stated that SOEP employees would check that contracted work had been completed. He was asked whether he kept any record of the checks that were made. He said he would check the completed works onsite, take photographs and would occasionally drive around town with Mr Harding to inspect projects.⁹⁸ He also kept records in a 'day book' which he said he had left at SOEP's offices on his departure.
- 160 Mr Harding confirmed that Mr Klein was responsible for checking whether contracted work had been satisfactorily completed. He stated he never saw Mr Klein take photographs of

⁹⁴ Mr Klein, p 62.

⁹⁵ Mr Harding, pp 62-63.

⁹⁶ Mr Harding, p 95.

⁹⁷ Mr Harding, p 44.

⁹⁸ Mr Klein, pp 41, 46, 61, 63-64.

completed works and was not aware of photographs of contract works being left by Mr Klein with SOEP. He did not routinely inspect projects with Mr Klein - he could only recall driving around with him on one occasion and that was to assess cyclone damage. However, he did recall raising with Mr Klein one invoice rendered by VicFlow but, despite that concern, he only questioned whether SOEP had received value for money from the work performed by the company. He added that he had little information from which he could make such an assessment.⁹⁹

161 Mr Harding stated he was not concerned about the amount of money being paid to the VicFlow companies as they were engaged in substantial, and therefore costly, projects. He said he had no reason to doubt that proper processes had been followed or to consider whether the purchase orders for the contract works were legitimate.¹⁰⁰

162 Mr Harding stated that there were invoices rendered by the VicFlow Companies after Mr Klein left SOEP which he refused to pay as he was not satisfied that the invoiced work had been actually undertaken. He said that the VicFlow Companies did not pursue payment of those invoices.¹⁰¹

Payment

163 Invoices for work done under purchase orders issued by Mr Klein were also dealt with by him. He was able to authorise payment within the limit of his delegated authority. He authorised payment by signing the invoice; it was then passed to the finance department for payment.¹⁰²

164 The effect of Mr Carroll's evidence was that the invoices delivered by the VicFlow Companies either matched the purchase orders issued by Mr Klein or were split up so that they were within his delegated authority.

165 It was apparent that Mr Klein could, within his delegated authority, raise a purchase order and authorise payment of an invoice for work done pursuant to the order. There was no separation of functions between issuing a purchase order, certifying completion of the contract work and payment of the resulting invoice. As a result, there was no independent check on the contract works authorised by Mr Klein and paid for by SOEP.

Reporting

166 Mr Harding stated that quarterly meetings were held with all staff who had purchasing authority to review what projects were being undertaken. The finance department was present at the meetings and would go through what had been spent against budget and delivery times. However, the meetings were not documented. Otherwise, Mr Harding did not

⁹⁹ Mr Harding, p 96.

¹⁰⁰ Mr Harding, p 94

¹⁰¹ Mr Harding, p 96 and see footnotes 7 - 10.

¹⁰² See for example, Mr Klein, p 43.

routinely meet with Mr Klein to discuss particular projects but he did meet with him monthly for approximately twelve months until a Manager of Engineering was appointed.

- 167 A financial pack was provided to the Councillors for each Council meeting. The pack contained a list of all transactions that had been entered into by SOEP in the previous month. Council voted on accepting the payments made by the Shire. However, the approval was retrospective as the payments had already been made.¹⁰³ The process was, and is, in compliance with regulation 13(i) of the *Local Government (Financial Management) Regulations 1996*.
- 168 The transaction report to Council did not group transactions according to individual suppliers/contractors; rather the report contained a long list of individual transactions. The monthly reports also did not show how much had been ordered by the Shire from particular suppliers/contractors as the financial year progressed. Consequently, the way the financial reports were presented to the Council, made it difficult to identify the extent to which SOEP had acquired services from Dick Tracey and the VicFlow Companies and to match payments against budget.
- 169 As previously noted, a further problem with the transaction reports was that the description of the work performed by Dick Tracey was so general that it was not possible to determine what work had been undertaken as part of the Vegetation Maintenance Contract and what work had been completed under ad hoc purchase orders. Presumably, the information in the transaction reports reflected what was stated in the relevant purchase orders so that the lack of information in the reports reflected the lack of information in the corresponding purchase orders.
- 170 The length of the transaction reports was another problem. As an example, the report for November 2023 was 24 pages containing hundreds of transactions itemised in small not easily read print. According to Mr Harding, the transactions reports would refer to in excess of 2,000 transactions.¹⁰⁴ To compound the problem, the agenda and accompanying papers for the November 2023 council meeting was 255 pages.¹⁰⁵ Although the Council papers were circulated a week in advance of meetings, the volume of material must have been challenging for councillors – especially the detail in the transaction listings.
- 171 Nevertheless, the minutes of the meeting of Council held on 25 August 2023 recorded an answer to a question on notice concerning the amounts paid to Dick Tracey. At the meeting, two councillors put on notice further questions about Dick Tracey.¹⁰⁶
- 172 The issue of the payments made to Dick Tracey was again raised by a councillor at a Council meeting in December 2023.¹⁰⁷ The councillor requested that an internal audit be undertaken.

¹⁰³ Mr Harding, p 17.

¹⁰⁴ Mr Harding, pp 62, 63 and 67.

¹⁰⁵ Exhibit 02471-2024-0683.

¹⁰⁶ Exhibit 02471-2024-0616.

¹⁰⁷ Exhibit 02471-2024-0619.

That may have been prompted by the fact that the financial report for that meeting more clearly disclosed the amounts being paid to the company.

- 173 Mr Harding stated that he did a 'back of the envelope' calculation following the questions raised by Council.¹⁰⁸ The calculation showed it was cheaper to use Dick Tracey than to use employed staff. Mr Harding did not know the extent of the ad hoc work performed by Dick Tracey so his calculation was not based on comparing the cost of Dick Tracey providing services and the cost of employing staff to perform the same work. Rather, he estimated the number of employees that would be required to undertake what he described as the 'vegetation works'.¹⁰⁹
- 174 While Mr Harding's 'back of the envelope' calculation attempted to address a value for money question about the work performed by Dick Tracey, it did not directly consider the extent of the ad hoc work and why the work did not form part of the Vegetation Maintenance Contract. The calculation also did not focus on Mr Klein's practices in generating the purchase orders for the work. Consequently, the fact that most purchase orders issued by Mr Klein were for an amount that equated to the limit of his delegated authority was not identified.
- 175 The Commission considered that there were at least two reasons why Mr Harding's review did not get to the real problem: the lack of information contained in the purchase orders issued by Mr Klein and the way that transactions made by SOEP were reported. Mr Harding stated that the large number of transactions entered into by the Shire was one reason why he had not become aware of the large number of purchase orders issued by Mr Klein at the limit of his authority – the Shire had a substantial capital budget and works programme.¹¹⁰ However, it is most likely that a properly conducted 'internal audit' would have revealed some 'red flags' around Mr Klein's procurement practices.

Supervision of Mr Klein

- 176 SOEP did not have a Director of Infrastructure when Mr Klein commenced as Manager Operations. Consequently, he initially conferred with Mr Harding about what infrastructure and maintenance work was required. Subsequently, a Director of Infrastructure was appointed; Mr Klein reported to him.¹¹¹ However, Mr Harding said that Mr Klein had a substantial degree of autonomy to "get things done".¹¹²
- 177 Mr Harding did not routinely record any direction he gave to Mr Klein or any discussion he had with him. Mr Harding never saw Mr Klein keeping notes of his activities or making some form of record. No diary or day book was found after Mr Klein left SOEP.¹¹³

¹⁰⁸ SOEP stated in its representations that it did not have an internal auditor at the time and no capacity to conduct an internal audit. It has now engaged an internal auditor. That is a welcome step - the Commission regards an internal auditing capacity as important in combating and reducing the risk of misconduct in an agency.

¹⁰⁹ Mr Harding, pp 72-73.

¹¹⁰ According to SOEP's representations, the Shire's capital budget at the relevant time was approximately \$105 m.

¹¹¹ Mr Harding, p 38.

¹¹² Mr Harding, p 39

¹¹³ Mr Harding, p 41.

178 The effect of the evidence received by the Commission was that there was little supervision of Mr Klein's performance as Manager Operations for SOEP. That, of course, was borne out by his conduct and the fact that it remained undetected for about two years.

Mr Harding's evidence

179 Mr Harding stated that there were significant problems around the Shire's procurement processes when he commenced:

- (a) There was no oversight of transactions that were completed within a manager's delegated authority;
- (b) There was only one person overseeing SOEP's procurement function. The Shire did not have a governance manager;
- (c) As noted earlier, there was and remains a difficulty in competing with the mining sector for workers. Consequently, the Shire was and still is heavily reliant on using external contractors for undertaking capital works and maintenance.

180 The effect of those and the other problems referred to above was captured in this exchange in Mr Harding's examination:¹¹⁴

[Commissioner]: So effectively there was no means of managing the process by which Mr Klein was issuing purchase orders or ad-hoc work each month and an invoice is being paid on those purchase orders each month so long as he remained inside his delegated authority? --- That's correct. And that's where we've actually put the extra measures in place because I – forgetting Mr Klein, I had concerns that I had no oversight on the 33,000 and below transactions, which is why we've put on three more people and they're getting randomly checked as well as making sure the attachments are included in the report, and I have my independent auditor doing additional checking on the process.

And there is no means of checking whether or not the cost claimed by the contractor represented a fair price? --- At that time in relation to the ad-hoc works I would say that is correct, sir. That is certainly different now we are expecting a scope to be included, understanding what the work – it might be as simple as installing 30 metres of fence or whatever it is. We would know exactly what that order is for.

181 Mr Harding stated he was not aware of Mr Klein receiving gifts or benefits from any contractor while working for SOEP. He was not aware of that until it was put to him during his examination. Mr Klein's acceptance of the gifts was a breach of the obligations imposed by the Shire's Code of Conduct.

Changes at SOEP

182 Mr Harding gave evidence that he was dissatisfied with the procurement policies when he commenced at SOEP; in particular, he had no oversight over transactions made by managers within their delegated authorities. He said he changed the methodology within the first two

¹¹⁴ Mr Harding, p 65.

weeks of his tenure. The changes included making the Procurement Coordinator 'the most powerful person' in procurement as all procurements must be managed by her.¹¹⁵ He implemented qualitative and quantitative components to the procurement policy to ensure that quotes were reviewed independently without having regard to the price.

183 Mr Harding further advised that:

- (a) A statement of business ethics was developed in August 2022.¹¹⁶ The purpose of the statement was to make it clear how the Shire was to do business. There was no equivalent statement before he commenced with the Shire. Mr Harding thought that the statement had been provided to all SOEP's contractors but he was not certain that this had occurred;
- (b) SOEP appointed a governance manager in late 2021 and had engaged an additional three employees to form a procurement team with the Procurement Coordinator. At least two people were required to approve the payment of invoices;¹¹⁷
- (c) The procurement team now conducts spot checks and scrutinised invoices to ensure that 'paperwork is in line with policy'.¹¹⁸ They are also responsible for ensuring staff are trained in the Shire's procurement policies and procedures. Any purchase through a request for quote 'goes through a process, specifically with the team of four'.¹¹⁹ The process applies to any request for quote purchase over \$10,000.¹²⁰ Further, variations to purchase orders are now more closely monitored;
- (d) Annual reviews of SOEP's procurement policies have been introduced;
- (e) SOEP engaged an internal auditor approximately two years ago;¹²¹
- (f) Employee induction includes training in SOEP's procurement policies and refresher courses are held;¹²²
- (g) SOEP is introducing a new electronic administrative and accounting system.

¹¹⁵ Mr Harding, p 7.

¹¹⁶ Exhibit 02471-2024-0063.

¹¹⁷ Mr Harding, p 109.

¹¹⁸ Mr Harding, p 21.

¹¹⁹ Mr Harding, p 21.

¹²⁰ Mr Harding, p 21.

¹²¹ Mr Harding, p 27.

¹²² Mr Harding, p 26.

RECOMMENDATION

- 184 The Commission acknowledges Mr Harding's evidence regarding the changes that have been made to SOEP's procurement procedures. Nevertheless, the Commission recommends that the Shire engages its internal auditor or other consultant to undertake a complete review of its procedures. The focus of the review should be on ensuring that:
- (a) There is a separation of functions between issuing purchase orders and authorising payment of invoices;
 - (b) There is compliance with the policies relating to request for quotes, tenders and multiple quotations and there are processes in place to check compliance;
 - (c) The changes that have been made to monitor the use of delegated authorities by directors and managers are sufficient;
 - (d) There is an effective process for ensuring that contracted work has been satisfactorily completed before payment or progress claims are processed;
 - (e) Decisions made by management about works and projects to be undertaken are properly documented;
 - (f) Meetings between the CEO, directors and managers are regularly programmed and the outcomes recorded;
 - (g) There are appropriate reporting processes for management, SOEP's Audit, Risk and Governance Committee and the Council.