

Report into bribery  
and corruption in  
maintenance and  
service contracts within  
North Metropolitan  
Health Service

16 August 2018



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## INTRODUCTION

- [1] When does the cost of doing business or building working relationships become a bribe?
  - a) When senior public officers are the constant recipients of expensive meals and personal travel within Australia and overseas.
  - b) When contracts involving public funds are inflated to cover the cost of largesse lavished on the public officers.
  - c) When various contractors collude to spread work about to pay for the gifts and benefits so freely given.
- [2] For many years in North Metropolitan Health Service (NMHS), all this and more, corrupted the contractual arrangements for building maintenance and essential services.
- [3] Only when a whistleblower contacted the Commission did an investigation uncover the breadth of wrongdoing.
- [4] Whatever may be the practice in the private sector (and the Commission doubts that the behaviour would be acceptable), public servants should receive no reward for doing the job they are paid to do, except 'thanks'.
- [5] NMHS had proper policies and procedures in place. These were ineffective to prevent what happened.
- [6] Warning signs were left unexplored. Fear for their jobs prevented some NMHS officers from speaking out.
- [7] Over the course of a six to 10 year period, a group of building and facility maintenance contractors invoiced NMHS for tens of millions of dollars of work. An introduction to the group of favoured building contractors was coveted and actively sought.
- [8] How did those contractors gain entry to that special group? How did they establish close relationships with public officers working at NMHS? How did they get the favoured treatment?
- [9] Public officers employed within the executive management at NMHS ensured those contractors received work and that their invoices were authorised for payment.
- [10] Two senior public officers were notable for the financial influence and prominence that attached to their executive leadership at NMHS - Mr John Fullerton, former Executive Director of Facilities Management at

NMHS and Mr David Mulligan, former Executive Director of Perth Children's Hospital Integration.

- [11] Various contractors paid tens of thousands of dollars for the public officers and sometimes their partners, to travel interstate and overseas. They renovated the private residence of Mr Fullerton. Some contractors extended regular invitations to public officers for expensive, boozy lunches. They took the public officers to entertainment venues in Northbridge and to upscale restaurants.
- [12] Corrupt relationships became firmly established.
- [13] More than \$125,000 was spent on lunches for NMHS employees over a decade. More than \$150,000 was spent on travel for the benefit of Mr Fullerton and Mr Mulligan. The travel was interstate and overseas, both economy and business class.
- [14] In return, the public officers awarded some of these contractors multiple NMHS contracts. They also authorised the payment of many invoices to NMHS that covered corrupt payments. These were a layer of 'fat' that some contractors added to legitimate invoices to recoup the money they spent on lunches, travel, accommodation and cash payments. On occasion, money added to NMHS invoices were purely for greed rather than to recoup money spent on 'gifts'.
- [15] Sometimes, those who engage in unlawful or improper conduct, seek to excuse it by rationalising that it is a normal, accepted practice in the sector. They try to suggest that those who sit in judgment do not understand the realities of obtaining work as a contractor. It is described as business development and claimed as a tax deduction. This is an attempt to deflect proper scrutiny and accountability. The standards that apply to the allocation of short term building maintenance projects by public officers are no different to the standards of honesty and integrity that must apply to all persons engaged in the process of public decision making.
- [16] These standards expect and value integrity, accountability, transparency, and honesty. They require decision making that is free from influence and free from a conflict of interest. Adherence to these standards ensures that the right outcomes are achieved; public monies appropriately expended; and public confidence in decision making is maintained.
- [17] Is it wrong for a public officer to use an existing network of contacts to drive business by quickly allocating short term building contracts? It can be argued that for lower value contracts, it is not wrong. However, the engagement of contractors must be fair, transparent and provide value

for money. It may be efficient. But public officers are held to a higher standard of accountability because they are not spending their own money. When an individual who holds public office is confronted with choosing between the duties and demands of their position and their own private interests, they are expected to defend the public purse. And they are expected to act fairly.

## **Bribes and fraud**

- [18] Regular and expensive gifts and gratuities given to some NMHS public officers were bribes. Systematic manipulation of procurement practices was financial fraud.
- [19] This investigation uncovered the allocation of lucrative work at NMHS hospitals and services, including Sir Charles Gairdner Hospital (SCGH), PathWest, Graylands Hospital, Midland and Joondalup Health campuses. Also involved was the allocation of work by NMHS for the integration of the QEII site into the new Perth Children's Hospital.<sup>1</sup> Contracts ranged in value from \$10,000 up to \$600,000.
- [20] Corruption is not a solo activity. It requires agreement between the public officer who holds the power to allocate public funds, and the person who offers and provides the public officer the private benefit or 'gift'.
- [21] At NMHS, a middle man, Mr Grant Alexander, was recruited by the public officers as a Project Manager. He was the 'fixer' and facilitator for Mr Fullerton and Mr Mulligan. He was the conduit between the public officer and the person offering the public officer the gift. He facilitated the financial benefit up to the public officer and made arrangements to return the favour to the gift giver.
- [22] At NMHS, Mr Fullerton, and to a lesser extent, Mr Mulligan, were widely rumoured to be regularly out to lunch with contractors. Witnesses examined and/or interviewed by the Commission knew of whispers that it was occurring, but the practice was not openly questioned or challenged. In this silence, the culture of complacency grew. It became accepted practice. With the imminent voluntary redundancy of Mr Fullerton in late 2016, the Commission believes some contractors looked to the future and started to cultivate and groom potential new decision makers.

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<sup>1</sup> Note: The allocation of work relating to the integration of the two sites was separately handled to the allocation of contracts to build the new Perth Children's Hospital.

- [23] Mr Shaun Ensor, Acting Manager of Area Facilities Development at SCGH and Princess Margaret Children's Hospital became one of the new decision makers. From early 2016, he was courted with expensive lunches that coincided with decisions he made to award work or approve invoices. By the end of 2016, one contractor alone had spent over \$5,000 on restaurant meals where Mr Ensor had been in attendance. The magnitude took Mr Ensor by surprise when exposed by the Commission.
- [24] The Commission heard evidence of serious misconduct of the following types:
- public officers accepting gifts of interstate and overseas travel and accommodation from contractors in return for awarding them work;
  - public officers accepting gifts of expensive restaurant meals, entertainment and alcohol in return for awarding work;
  - public officers receiving tens of thousands of dollars in cash payments from contractors in return for awarding them continued work;
  - a public officer using contractors to renovate his private residence at a discount and then facilitating the building contractors to fraudulently invoice NMHS approximately \$170,000 for works carried out on his private residence; and
  - public officers facilitating contractors to fraudulently invoice NMHS to cover the costs of the corrupt benefits of travel, accommodation, meals, entertainment and cash they received.
- [25] The emphasis of this investigation focused on serious misconduct at its most egregious: corrupt relationships resulting in the misuse and theft of public funds.
- [26] The Commission has been told by many of the contractors that the gifts of hospitality, alcohol and travel given to Mr Fullerton, Mr Mulligan and Mr Ensor were given without any expectation of obtaining particular work at NMHS. The cost in some cases is said to be insubstantial with no expectation to obtain a benefit. Similarly, some public officers have told the Commission that the gifts of hospitality and travel did not impact on the procurement decisions they made on behalf of NMHS.
- [27] Each public officer held a financial delegation to be exercised at their discretion. They exerted control as to where the discretion was exercised. Several contractors recognised this and used gift giving and hospitality as a means of building a relationship with the public officer. The public officer will naturally favour the person with whom he has a relationship, or he will direct or ask a colleague to favour that person. The contractor,

by buying the public officer a meal, is fostering the relationship and the opportunity to be favoured (or the opportunity to influence) rather than buying a specific procurement project (although this was the case with two contractors).

- [28] The insidious nature of the conflict of interest that develops from allowing public officers to privately benefit is that a direct connection between a particular lunch date and a particular procurement decision is difficult to prove. The conflict of interest, once established in relation to a particular contractor, colours all decisions then made by that public officer.
- [29] There was a range of engagement in corrupt conduct and not all the contractors engaged were participants in all the corrupt activities identified. Specific roles are detailed in the report.

## **A warning to other agencies**

- [30] Procurement fraud is a well-recognised type of fraud usually, though not always, involving a corrupt public officer.
- [31] This investigation highlights some common features of procurement fraud:
  - a) bribes;
  - b) conflicts of interest;
  - c) collusive tendering/bid rigging;
  - d) inflated invoices; and
  - e) contract variations.
- [32] There are many maintenance and service contracts in government, awarded and administered by mid-level and senior public officers.
- [33] How certain are departmental heads, Directors General and Chief Executive Officers that behaviour identified in this investigation is not happening under their noses?

# CHAPTER ONE

## Summary of the investigation: Operation Neil

### An investigation begins

- [34] On 3 September 2014, the Commission received an anonymous allegation that the Executive Director of Facilities Management NMHS, Mr Fullerton, favoured certain companies when awarding WA Health project work. It was also alleged that procurement practices were not routinely followed when contracts for project work were awarded.
- [35] On 24 October 2014, the Commission referred the allegations back to WA Health for investigation and action to be documented in a detailed report. WA Health advised their intention to commence an investigation.
- [36] On 26 April 2015, WA Health provided the Commission with a report which found there were serious issues of concern regarding procurement practices in the NMHS Facilities Management Directorate. The report stated 'In summary there was little or no evidence found of adherence to the basic tenets of good procurement and contract management and this is compounded by inadequate administration and record keeping practices'.<sup>2</sup> The report detailed improvements which could be made in systems and processes around procurement.
- [37] The report failed to address the conduct of any particular public officer. While the will to improve procurement processes is recognised, WA Health did nothing to deal with the public officers who were responsible. WA Health did not deal adequately with the initial allegations. Procurement practices at NMHS were tightened, but Mr Fullerton's corrupt activities continued and increased.
- [38] The Commission continued engagement with WA Health between April and December 2015.
- [39] WA Health appointed an internal investigator to examine further. In March 2016, preliminary findings caused WA Health to request the Commission consider an investigation into alleged serious misconduct. The Commission commenced an investigation in April 2016.
- [40] The Commission investigation initially focused on activities surrounding the renovation of Mr Fullerton's private residence during 2015. The exposure of serious misconduct during that period was the catalyst for

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<sup>2</sup> North Metropolitan Health Service: Sir Charles Gairdner Hospital - Facilities Management Procurement Review Document.

the procurement practices of NMHS to be scrutinised prior to, and after 2015. As a result, the Commission investigation uncovered evidence of public officers obtaining corrupt benefits as far back as 2003 and continuing into the present. It uncovered evidence of numerous contractors aiding the corruption by supplying benefits.

- [41] As the Commission investigation drew to a conclusion, it has become apparent that many of the initial allegations made by the anonymous whistleblower<sup>3</sup> have been proved correct.

### **Coercive powers**

- [42] The Commission investigation has been lengthy and comprehensive, and necessitated the use of the full suite of statutory coercive powers including the power to examine witnesses under oath.

### **Power to obtain documents**

- [43] The Commission issued over 80 notices to compulsorily obtain documentary evidence.<sup>4</sup> The documents obtained were wide ranging and were obtained in hardcopy or imaged from electronic devices.
- [44] Analysis of the volume of documents was time consuming. It was important to identify relationships and establish patterns of behaviour (the regularity of travel events and lunch appointments are an example).
- [45] The absence of documents produced in response to a Commission request is informative. The Commission was disappointed that WA Health were unable to locate some documents that it would expect to exist. An example is the absence of letters of engagement between NMHS and Pukete Alexander Projects Pty Ltd trading as 'PA Projects' (Mr Grant Alexander) during the period August 2013 to April 2015. The result of this particular omission is the question of whether Mr Alexander fell within the Commission's jurisdiction as a 'public officer', was not able to be definitively answered. This is despite Mr Alexander project managing tens of millions of dollars in NMHS works during the four year period his company was engaged by and received more than \$2m from NMHS for the same. It raises the question whether documents of the engagement of Mr Alexander during that time period ever existed.

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<sup>3</sup> The Commission has interviewed the whistleblower but will maintain the person's anonymity.

<sup>4</sup> *Corruption, Crime and Misconduct Act 2003* (CCM Act) s 95.

### **Search warrants**

- [46] On 24 August 2017, the Commission executed a search warrant at the home of building contractor, Mr Philip Wood and a search warrant at the business premises of Fox United Building Pty Ltd (Fox).
- [47] Forensic analysis of the electronic devices seized, corroborated by evidence obtained during the private examinations of Mr P Wood and Mr Alexander, confirmed that Mr P Wood had attempted to delete key documents and destroy evidence relevant to the investigation. Mr P Wood admitted to trying to delete and destroy these documents. The key documents were forensically retrieved and it has been confirmed that their contents record itemised corrupt financial payments.

### **Surveillance**

- [48] The Commission placed key persons of interest under surveillance after obtaining relevant warrants under the *Surveillance Devices Act 1998* (WA) and the *Telecommunications (Interception and Access) Act 1979* (Cth). As a result, the Commission became aware that attempts had been made to destroy evidence. The Commission also identified collusion between particular witnesses in regard to what evidence they would provide and/or had provided once the investigation became generally known by persons of interest.
- [49] The Commission conducted 21 private examinations over the period August 2017 to May 2018. Summonses to attend to give evidence were served on all the contractors named in this report as well as public officers. Additional witnesses who could provide contextual evidence were also examined or participated in voluntary interviews with Commission officers.

### **Examinations**

- [50] Examinations are an opportunity for a witness to give the Commission information under oath that is relevant to the scope and purpose of the inquiry. If during the course of the investigation the Commission has reason to suspect a witness has engaged in wrongdoing, examination is an opportunity for the witness to comment.
- [51] Examinations are conducted by experienced counsel appointed to assist the Commissioner in the investigation. Witnesses have the right to legal representation. Most witnesses were represented.
- [52] The Commission received evidence in private examinations from multiple witnesses. They included non-public officers who were professionally involved with Mr Fullerton, Mr Mulligan, Mr Alexander and Mr Ensor. The

majority of witnesses gave evidence about Mr Fullerton and Mr Mulligan, in their roles as NMHS Executive Directors who corruptly and systemically sought and received bribes.

[53] Some contractors were compelled to participate in examinations on more than one occasion. In verifying or corroborating earlier evidence from a witness, the Commission became aware that the witness had either lied during their evidence, or had deliberately omitted to inform the Commission of relevant facts.

[54] For example, on one occasion, a building contractor to NMHS (Mr P Wood) was questioned about a competitor who had quoted for a particular project alongside his company. He was asked under examination about his association with the competitor:

*Have you or at that time had you had an historical relationship with him?---Yes. Yep. A long term, yes.*

*A friendship or just a professional association?*

*---Professional association; but again our relationship between myself and Shane Cary, you know, I'll have him as a friend on Facebook. I have – you know, he is a client of mine. We do work for them on an ongoing basis. Fox United's – again this client list, it's small but we do work for a lot of those project management type companies.<sup>5</sup>*

[55] In attempting to verify his evidence, the Commission identified that Mr P Wood (Director of Fox) was also a silent owner of Aurora Project Group Pty Ltd (Aurora). This was relevant to the Commission's investigation into whether contractors Fox and Aurora were encouraged by public officers to collude on price when applying for project work at NMHS.

[56] Mr P Wood was resummoned to give evidence before the Commission at a later date:

*You did not say you are a part-owner in his company, did you, Aurora Projects?---No, but I can – I did not keep that away as anything specific. It was I said I had a professional relationship with him.*

*Why was it that you didn't say that you actually owned part of this company?---Um, it didn't come into my mind at the time. I didn't think that that was – I said I had a professional relationship with him.*

*It didn't come into your mind at the time?---No.*

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<sup>5</sup> P S Wood transcript, private examination, 30 January 2018, pp 15-16.

*That's your evidence?---Yes. It was not - - -*

*A few days after you gave evidence here, did you then try and divest yourself of that shareholding?---Yes, I did. Yes, I did. Yes.<sup>6</sup>*

- [57] Another building contractor was summoned to the Commission to give further evidence after having one week earlier given evidence on oath that exonerated a public officer from serious misconduct. After reflection and seeking legal advice, the witness asked to be resummoned to the Commission. The witness gave evidence that he had lied under oath the week earlier. The building contractor admitted to paying \$75,000 in travel expenses and approximately \$10,000 in hospitality (in the form of business lunches) and gifts during the period his company sought work from NMHS.
- [58] Predominately, the examination process resulted in the witnesses admitting to their role in possible corruption. Admissions from witnesses were not proffered immediately but eventually obtained when the witnesses were confronted with the Commission's analysis of the documentary and surveillance evidence.
- [59] A notable exception was the witness Mr Alexander, Director of PA Projects and contracted Project Manager to NMHS. Mr Alexander gave the Commission early assistance with his full and frank evidence under oath. His evidence has been consistently corroborated by other witnesses and primary source documents. He was intimately involved in corruption, actively facilitating Mr Fullerton and Mr Mulligan's corruption. However, unlike some other witnesses, Mr Alexander was honest in examination and assisted the Commission throughout the investigation.
- [60] Because corruption is a secret activity, witnesses such as Mr Alexander are vital to a law enforcement agency because they can unravel the dark threads. For this reason and because of his cooperation, the Commission does not recommend any prosecution against Mr Alexander be commenced.
- [61] Before this report was finalised, the Commission gave every person adversely referred to in the draft an opportunity to make representations. Many responded and each representation has been considered. Where appropriate, the Commission has amended the report.

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<sup>6</sup> P S Wood transcript, private examination, 29 March 2018, pp 2-3. It was suggested to and accepted by P S Wood that he was a part owner of Aurora Project Group Pty Ltd.

- [62] A common theme in examination or response was that the lunches were part of business development or building relationships. Business was usually discussed. There was no advantage to the contractor because work did not necessarily follow from lunches or other benefit given. For some, the amount spent on lunches was relatively insubstantial.
- [63] In some responses, it was contended the actions were those of individuals, not the company. These responses miss the point. The Commission's view is that while business may have been discussed, that was a subterfuge for the public officer to be treated to fine dining. If not to gain at least the possibility of a benefit or influence, why spend the money?
- [64] The fact that the actions were those of individuals is immaterial. The 'relationship building' was for the benefit of the company, performed through its agent.

## CHAPTER TWO

### Procurement procedures and practices

#### WA Health

- [65] WA Health comprises Department of Health, six Health Service Providers and Health Support Services. Department of Health provides management of the health system as a whole, while the Health Service Providers are statutory authorities governed by Health Support Boards. NMHS is one such Board. Each Board is independently administered and accountable for its financial performance.

#### North Metropolitan Health Service

- [66] NMHS is responsible for the management of major Perth metropolitan hospitals, campuses and services: SCGH, Queen Elizabeth II Medical Centre (QEII), Osborne Park Hospital, Graylands Hospital, King Edward Memorial Hospital, Perth Children's Hospital<sup>7</sup> and Joondalup Health Campus. NMHS is also responsible for major medical services including NMHS Mental Health and NMHS ambulatory care and was until the beginning of July 2018, responsible for PathWest. As at 1 July 2018, PathWest was established as a managed statutory authority.
- [67] NMHS provides health services to more than 36 per cent of Western Australia's population.<sup>8</sup>
- [68] NMHS is a statutory authority governed by the NMHS Board. The senior executive leadership until December 2016, included Mr Fullerton and Mr Mulligan.

#### Procurement practices

- [69] WA Health has rigorous policies and procedures regarding procurement. However, unless the culture of the organisation requires compliance and commitment to the policies and procedures and sees them through to implementation, they are in vain.

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<sup>7</sup> Until its opening in May 2018, the Perth Children's Hospital site was operated by Strategic Projects overseen by the Department of Finance. Upon project completion, management of the facilities moved to NMHS. Prior to project completion, NMHS's role with the Perth Children's Hospital was in relation to the integration of the facilities with the remainder of the QEII site.

<sup>8</sup> Government of Western Australia North Metropolitan Health Service, *About Us* <http://www.nmahs.health.wa.gov.au>.

- [70] The procurement policies and procedures in operation at NMHS for building maintenance and facilities management during the relevant period were clear.<sup>9</sup> Purchase methods varied depending on the value of the proposed contract. Procurement officers required approval for a procurement process, or not; depending on their financial delegation. Financial delegation thresholds differed according to the seniority of the position held by the public officer.
- [71] What should have occurred during a procurement process at NMHS was the following:
- Contracts worth up to \$20,000, could be directly sourced by the procurement officer without obtaining quotes from other suppliers.<sup>10</sup>
  - Contracts worth between \$20,001 and \$50,000 required the procurement officer to request a verbal quote from at least two contractors. An evaluation report for verbal quotes template must have been used. The quotes were then subject to a desktop evaluation process and written acceptance provided to the successful contractor.<sup>11</sup>
  - Contracts worth between \$50,001 and \$250,000 required the procurement officer to obtain written quotes from two to five suppliers. An evaluation panel must have been established. Written acceptance letters were to be sent and contract award details published on the Tenders WA website.<sup>12</sup>
  - Contracts worth over \$250,000 were to be put to open public tender utilising the assistance of the Department of Finance.<sup>13</sup>
- [72] Exemptions from competitive procurement processes could be obtained but a process of documentary approval was required. Procurement was also to be conducted subject to the WA Health policies regarding the management of conflict of interests and the acceptance of gifts.
- [73] Documentary evidence of the process should have been available. This would have included client request forms (to initiate the purchase and record quotes received), purchase orders and letters of engagement.

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<sup>9</sup> Office of the Chief Procurement Officer, Government of Western Australia, Department of Health, *Guide to Procurement and Contract Management for WA Health, Goods & Services and ICT* (October 2015, version 4).

<sup>10</sup> Ibid 16.

<sup>11</sup> Ibid 17.

<sup>12</sup> Ibid 18-19.

<sup>13</sup> Ibid 20.

- [74] The Commission expected to be able to inspect these documents from NMHS' holdings in respect of all procurement undertaken in the period January 2015 to December 2016. However, there were significant gaps and some documents produced were unsigned.
- [75] Most contractors to NMHS examined by the Commission were unaware of the standard requirements regarding procurement at NMHS, despite having each invoiced NMHS for hundreds of thousands of dollars of work over several years.<sup>14</sup>
- [76] The Commission has found evidence that procurement practices at NMHS were poorly understood by public officers and deliberately not followed in order for the purported purpose of 'getting things done'. The repeated failure to comply with required policy and procedures contributed to an apathetic culture within the NMHS that was exploited by Mr Fullerton and Mr Mulligan for their own benefit. In the case of Mr Ensor, the impact of the policies and Code of Conduct that specified how an individual public officer should behave were subjugated to the allure of the free lunch. Mr Fullerton and Mr Mulligan had the seniority and financial delegation to exercise their powers corruptly for considerably more personal benefit.
- [77] Corruption hides in poor processes and lazy oversight.

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<sup>14</sup> For example, Mr T Wood was asked in examination the project value that required tendering rather than quoting. He replied "I couldn't tell you". Mr T Wood has invoiced \$10m of work to NMHS over the last 20 years. A R Wood transcript, private examination, 31 January 2018, p 4.

## CHAPTER THREE

### The public officers

#### **Mr John Fullerton - Former Executive Director of Facilities Management, North Metropolitan Health Service**

- [78] Mr Fullerton held this position for over five years prior to his voluntary redundancy in December 2016. He reported directly to the NMHS Chief Executive.
- [79] His responsibilities included oversight of the maintenance personnel, security personnel, campus managers and project officers at NMHS facilities already identified. Mr Fullerton also had oversight of additional WA Health campuses at Swan District Hospital, Kalamunda Hospital and Princess Margaret Children's Hospital.
- [80] Mr Fullerton's primary responsibility was to supervise the operations of the NMHS facilities management and to allocate resources to meet the servicing and maintenance of these physical facilities. Mr Fullerton held a delegation to spend up to \$1m to meet this responsibility. He was required to ensure the management of the servicing and maintenance facilities was conducted in a manner 'congruent with the whole-of-health governance framework' and which met 'all public sector compliance & accountability requirements'.<sup>15</sup>
- [81] Prior to becoming Executive Director of Facilities Management, Mr Fullerton held a financial delegation of \$500,000 as SCGH Campus Manager. After moving into the directorship role, he distanced himself from direct project management by outsourcing to contractors or a handful of NMHS employed project managers. Potential NMHS contractors received a request to tender or quote through the project manager rather than directly from Mr Fullerton.
- [82] From mid-2016, it became known that Mr Fullerton would be leaving his position by the end of that year. With the departure of Mr Fullerton, some favoured contractors who had been supplying him corrupt benefits saw their work fall away considerably at NMHS. Other contractors saw it as an opportunity to groom the next public officers in line.

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<sup>15</sup> Job Description Form, Executive Director Facilities Management, Position Number: 000199 (November 2009).

**Mr David Mulligan - Former Executive Director of Perth Children's Hospital Integration, North Metropolitan Health Service**

- [83] Mr Mulligan commenced working at WA Health in 1999 and was appointed to his substantive role as the Executive Director of Clinical Planning and Redevelopment in 2011. He also reported directly to the NMHS Chief Executive. As Executive Director of Perth Children's Hospital Integration, Mr Mulligan was employed by NMHS and was responsible for the integration of QEII into Perth Children's Hospital.
- [84] Mr Mulligan's role concerned project management of large new NMHS building works projects and he had oversight of projects worth over \$50m that required input from other government agencies. Such projects included the State Cancer Centre, the multi-deck car parking facility at SCGH, the building of St John of God Midland Public Hospital and the \$300m redevelopment of the Joondalup Health Campus.
- [85] Mr Mulligan had an active role in the initial stages of the site integration of the new Perth Children's Hospital to the existing QEII. He was a member of the Perth Children's Hospital Project Control Group for 12 months. For the 12 months prior to leaving NMHS, Mr Mulligan was appointed Executive Director of Perth Children's Hospital Integration. He was appointed to this position at NMHS on 3 March 2016 but commenced work in mid-February 2016.<sup>16</sup>

**Mr Shaun Ensor - Former Acting Manager of Area Facilities Development, North Metropolitan Health Service**

- [86] Mr Ensor was, until recently, the Acting Manager of Area Facilities Development at NMHS. Mr Ensor left the employ of NMHS on 26 June 2018 after accepting a voluntary severance scheme package. From May 2014 and during the period Mr Fullerton was Executive Director of Facilities Management, Mr Ensor reported directly to him as the Acting Facilities Manager for SCGH. He had previous experience in the same role at Princess Margaret Children's Hospital.
- [87] From May 2014, Mr Ensor was responsible for the maintenance and repair of the NMHS buildings located at SCGH and QEII campus. As a procurement officer, he held a financial delegation of \$20,000 and was able to directly source contractors for projects up to that amount without seeking further approval.

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<sup>16</sup> Contract signed on 3 March 2016 with a commencement date of 15 February 2016.

- [88] Mr Ensor started to accept offers of hospitality from Ms Natalie Bell of Gowdie Management Group Pty Ltd (Gowdie) in 2015 after the completion of a successful project. In a period of just over two years, Gowdie spent \$5,353 on hospitality in the form of expensive lunches that were attended by Mr Ensor. The frequency of lunch invitations increased substantially in the latter half of 2016, such that Mr Ensor was being feted every fortnight. Ms Bell and Mr Ensor gave evidence that alcohol was typically consumed at the lunches. Ms Bell referred to the practice as 'business development'. Although denied by Ms Bell, an inference is open that Mr Ensor was being groomed to give favourable consideration to future bids by Gowdie.
- [89] Mr Ensor also socialised with other vendors who contracted onsite at NMHS, such as Mr Anthony Williams of New Zealand Holdings Pty Ltd trading as 'Westside Fire Services' (Westside), and accepted hospitality from contractors.<sup>17</sup> Mr Ensor was involved in awarding and/or managing work performed at NMHS by those contractors.

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<sup>17</sup> The Commission's investigation is ongoing. It is anticipated that further vendors who have participated in and/or facilitated serious misconduct and/or criminality at NMHS will be identified by the Commission at another time or referred to the Department of Finance.

## CHAPTER FOUR

### Contractors to the public sector

#### **Mr Grant Alexander - Pukete Alexander Projects Pty Ltd trading as 'PA Projects'**

- [90] Mr Alexander was initially employed by Aurora Projects Pty Ltd<sup>18</sup> as a Project Director with full time responsibility for one client, NMHS. While performing this role, he met Mr Fullerton during 2010/2011. He was introduced by Mr Mulligan.
- [91] Mr Alexander left employment with Aurora Projects Pty Ltd in 2011. At the suggestion of Mr Mulligan, Mr Alexander formed a consultancy company in late 2011 for the purpose of creating a corporate structure to invoice NMHS for project management services. PA Projects was a business owned by him and his wife.
- [92] Mr Alexander, through PA Projects, was initially appointed by Mr Mulligan to consult with NMHS in relation to the development of the groundworks for the new Perth Children's Hospital site adjacent to SCGH. Mr Alexander assisted in the integration of the new hospital with the existing site facilities.
- [93] Mr Alexander was soon identified by Mr Fullerton and appointed to manage his projects. He managed the procurement process on Mr Fullerton and Mr Mulligan's behalf until the point where the public officer was required to exercise his financial delegation and award the tender. Mr Alexander had direct and regular access to Mr Fullerton and Mr Mulligan. At Mr Fullerton and Mr Mulligan's direction and/or facilitation, he was able to manipulate the procurement process for the personal financial benefit of both public officers.
- [94] Mr Alexander also benefitted financially. Between 2012 and 2016, PA Projects invoiced WA Health \$2,077,965 in project management fees. The majority of invoices referenced NMHS projects.
- [95] Mr Alexander project managed the renovation of Mr Fullerton's private residence in Glen Forrest during 2015 and 2016; and the renovation of Mr Fullerton's mother's house in High Wycombe during late 2014 and early 2015. Mr Fullerton's mother, Mrs Nellie Fullerton, is now deceased.

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<sup>18</sup> This is a separate entity to Aurora Project Group Pty Ltd which has been referred to in this report as Aurora and is managed by S C Cary.

- [96] Management of personal projects for Mr Fullerton was a blatant conflict of interest when Mr Alexander was receiving NMHS work from Mr Fullerton. Importantly, the situation presented Mr Alexander and Mr Fullerton with the opportunity to personally benefit from Mr Fullerton's power and authority to spend public funds.
- [97] At Mr Fullerton's direction, Mr Alexander arranged for part of Mr Fullerton's house renovation to be covertly and fraudulently invoiced to NMHS. Certain NMHS building contractors were engaged to work on Mr Fullerton's private residence. In return, they were guaranteed work at NMHS and used those projects to present invoices for payment that related to the house renovation.
- [98] Mr Alexander spent tens of thousands of dollars on expensive lunches, domestic travel and accommodation for Mr Fullerton and Mr Mulligan. He did this in order to ensure he was continually retained by Mr Fullerton and Mr Mulligan to do project management work at NMHS. Mr Alexander gave Mr Fullerton and Mr Mulligan regular cash payments. Mr Alexander's expenditure on Mr Fullerton and Mr Mulligan was recouped by covertly invoicing WA Health in regular monthly invoices, which he did at their direction and participation.

#### **Mr Philip Wood - Fox United Building Pty Ltd**

- [99] Mr P Wood is a Director of Fox, a building maintenance company which provided building contractor services to government departments as both head and sub-contractor. Mr P Wood had been acquainted with Mr Fullerton since 1994. Fox had been providing building maintenance services to WA Health since 2001. Mr P Wood provided building services to WA Health through another entity from 1996.
- [100] Fox was engaged by Mr Fullerton and Mr Alexander in August 2015 to renovate Mr Fullerton's private residence. In return, Fox was awarded NMHS building maintenance contracts. Mr P Wood used this opportunity to fraudulently invoice NMHS for a portion of the work Fox had performed on Mr Fullerton's private residence. This was an arrangement, facilitated by Mr Alexander but carried out with the knowledge of Mr Fullerton. Mr P Wood stated that he had discussions with Mr Alexander as to how the house renovation job was to "run. But as far as we're concerned, John was the end user, so, you know, any deal that I do with Grant is a deal with John".<sup>19</sup>
- [101] The arrangement was that Fox would bill Mr Fullerton personally on a 'cost plus' basis for the house renovation to a total sum of \$700,000 to

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<sup>19</sup> P S Wood transcript, private examination, 30 January 2018, p 61.

\$900,000. The 'plus' was the builder's margin which ranged from 10 to 30 per cent on top of the cost including placing a margin on materials. In addition, Fox would retain approximately \$100,000 of credits billed to NMHS through invoices submitted for payment in relation to legitimate NMHS projects. The invoicing of the credits was to be done by adding at least five per cent to NMHS project invoices. Half of the five per cent was to be credited against the cost of work carried out by Fox on Mr Fullerton's private residence. The other two and a half per cent was to be retained by Fox as a 'convenience fee' or additional profit margin, as a reward for undertaking the house renovation.

[102] Mr Alexander and Mr P Wood decided which invoices to NMHS could accommodate a portion of the renovation cost or 'invoice fat'. Agreement was documented in a spreadsheet (the retention spreadsheet) authored by Mr P Wood but provided to Mr Alexander periodically for verification. In effect, the retention spreadsheet was the living document that tracked the detail of the agreement between Mr P Wood and Mr Fullerton (through his recruit, Mr Alexander) to obtain corrupt payments from NMHS. The Commission initially obtained a copy of the document during the forensic acquisition and examination of electronic devices seized during the search warrant executed at the offices of Fox.

[103] A copy of the spreadsheet is annexed to this report.<sup>20</sup>

[104] During examination before the Commission, Mr P Wood explained to the Commission how the retention spreadsheet worked:

*So let's say ambo ward I quoted it and it was \$3000, okay. I would have had a discussion with Grant Alexander. He would have said, "I think that we can invoice 10,062 or we can invoice 10 grand, up your quote to \$10,000." The third column, Value Added, would have been the difference between what my job quoted would have realistically been if we'd have been doing it honestly. The second is what he would have said to actually invoice so we added on to that project which should have cost North Metro Health \$3000, we added on an additional 7062, 50 per cent of which was kept by Fox United, 50 per cent went against John's job.<sup>21</sup>*

[105] Fox had guaranteed opportunities to invoice NMHS for the corrupt payments because the arrangement included colluding with competitor contractors on quoted prices. Fox was guaranteed to win projects. On numerous occasions, Fox colluded with competitor building companies Aurora, Latitude XL Pty Ltd. On occasion, Swan Group WA Pty Ltd was involved. Within this group, the practice was referred to as obtaining a 'cover quote'.

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<sup>20</sup> This document has been retyped by the Commission in order to be legible.

<sup>21</sup> P S Wood transcript, private examination, 30 January 2018, p 32.

- [106] The competitors agreed to the practice with the expectation that they would win NMHS projects or other government department projects in the future. As an additional complication, until February 2018, Mr P Wood was secretly part owner of Aurora. This interest was never declared by Mr P Wood to NMHS when he was tendering competitively for projects against Aurora.
- [107] It was important for Mr P Wood to maintain the relationship with Mr Fullerton because it was financially lucrative. Between 2010 and 2016, Fox invoiced WA Health for a total of \$10,144,945 in building maintenance project fees. Fox made a profit on the renovation of Mr Fullerton's private residence, estimated to be in the order of \$190,000.
- [108] Prior to admitting his misconduct, Mr P Wood tried to evade the Commission's investigation. He admitted to purchasing a mobile phone SIM card through a third party for the purposes of covertly communicating with other Commission witnesses. He also attempted to destroy key incriminating documents.

#### **Mr Philip Wood's remorse**

- [109] To his great credit, Mr P Wood has shown genuine and practical remorse. He has accepted that his actions were illegal. He has made restitution to WA Health in the sum of \$49,191, an amount calculated by the Commission. For this, he is to be commended.

#### **Ms Natalie Bell - Gowdie Management Group Pty Ltd**

- [110] Ms Bell is employed by Gowdie to provide project management services to contracted parties. She commenced working with NMHS in mid-2013 and has provided project management services for building facility maintenance projects at NMHS campuses on a continuing basis. As part of her role with Gowdie, Ms Bell was tasked with developing new business. In that capacity, Ms Bell routinely took Mr Fullerton and Mr Ensor out separately for long lunches at a restaurant of their choosing. The restaurant bill was paid using the Gowdie business credit card. Ms Bell acquitted the monthly expenditure on the credit card statements as 'BD - NMHS' or 'business development - NMHS'.
- [111] Ms Bell described the purpose of business development as 'relationship building' so that she could get more or continuing work at NMHS. She was given an uncapped budget by her employer for such a purpose.

- [112] Between 2013 and 2016, Gowdie invoiced WA Health a total of \$1,656,193 in project management fees, of which, 95 per cent related to projects conducted at NMHS campuses.
- [113] Mr Ensor was a participant in lunches paid for by Gowdie to the value of \$5,353 over a period March 2015 to June 2017.

**Mr Liam Howard - Howzat Constructions Pty Ltd**

- [114] Mr Liam Howard established and ran Howzat Constructions Pty Ltd (Howzat) as a sole trader from 2012 until September 2016. Between 2012 and 2016 Howzat invoiced NMHS a total of \$1,690,405 in fees for building and maintenance services. The highest billing year was 2015 which coincided with the period during which Howzat was working on Mr Fullerton's house renovation.
- [115] Howzat also worked on the renovation of Mrs N Fullerton's private residence from mid-October 2014 to March 2015. Howzat commenced work on Mr Fullerton's private residence in January 2015 and left the site in late August 2015 after being replaced by Fox.
- [116] During 2015 and 2016, Howzat was awarded numerous significant NMHS projects.
- [117] Mr Howard invoiced Mrs N Fullerton and Mr Fullerton for their house renovations on a 'cost plus' basis. Mrs N Fullerton paid Howzat cash in the sum of \$60,000 to \$70,000 for the renovation of her private residence. Mr Fullerton's invoices were sent to his private residence but were handled by Mr Alexander. Mr Alexander arranged for those invoices to be paid by Mrs N Fullerton.
- [118] Mr Howard was instructed by the onsite project manager, Mr Alexander, to invoice NMHS for a portion of the house renovation cost relating to both renovations. This was done covertly by increasing the value of NMHS quotes and contract variations as agreed with Mr Alexander.
- [119] The agreement was that Howzat would quote the project as expected by adding a builder's margin. The quote would then be further increased by negotiation between Mr Howard and Mr Alexander to account for a portion of the house renovation.
- [120] Mr Howard was awarded three main projects at NMHS in order to invoice NMHS for the house renovations. The process of awarding each of those contracts was fixed in order to achieve the desired result of awarding Howzat the project.

- [121] Mr Howard maintained a handwritten ledger of individual invoices submitted to NMHS in relation to particular jobs. He recorded the portion of the invoice that was to be credited against what Mr Fullerton owed for his house renovation.
- [122] Mr Howard invoiced NMHS a total of approximately \$3,500 that related to Mrs N Fullerton's renovation. He did this over four invoices. In relation to Mr Fullerton's private residence, NMHS were invoiced a total of \$43,700 by Howzat.
- [123] Although Mr Howard did not speak directly to Mr Fullerton about the work he obtained at NMHS, or about the practice of falsely invoicing NMHS, he was confident Mr Fullerton knew of the arrangement "How do you know that Mr Fullerton was aware of this? ---Well, he was the only one to really get any benefit for it. Grant [Mr Alexander] was never going to get any benefit from it ..." <sup>22</sup>
- [124] On several occasions, Mr Howard directly approached Mr Fullerton to request NMHS pay his invoices. Mr Fullerton then directed the speedy payment of those invoices, some of which were the false invoices containing payment for the house renovation.

#### **Mr Shane Cary - Aurora Project Group Pty Ltd**

- [125] Aurora is a commercial fit-out and office refurbishment building company established in 2009. The Commission notes that this company is unrelated to Aurora Projects Pty Ltd, a separate entity that historically provided contracted services to NMHS. There is no evidence of any misconduct by Aurora Projects Pty Ltd. Mr Shane Cary was a founding Director of Aurora and co-owner with three others that included Mr P Wood as a silent partner. Mr P Wood received dividends on an annual basis until he divested himself of the last of his remaining shareholding in February 2018, during the course of the Commission investigation and after he had given evidence at a private examination on 30 January 2018. During that examination he omitted to inform the Commission that he was a business partner and financial beneficiary of Aurora.
- [126] Mr P Wood's shareholding was deliberately obscured. This was achieved by creating a separate entity that held the shares in Aurora, which in fact, belonged to Mr P Wood.

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<sup>22</sup> L G Howard transcript, private examination, 31 January 2018, p 9.

[127] Mr P Wood and Mr Cary used the covert shareholding to their advantage when tendering competitively against each other. They colluded with each other and Mr P Wood facilitated the collusion with other building contractors when pricing quotes for NMHS.

[128] Mr Cary stated:

*Phil rang me one day and said, "Shane, would you be interested in being on a closed tender for Charlie Gairdners?" I said, "What's this – what's that about?" He said – his comment was, "We have a thing where three of us are pricing this job, pricing the work at Charlie Gairdners and, in essence, we take turns as to who wins the job."<sup>23</sup>*

[129] Within six months, Aurora were requested by letter from Mr Alexander to submit a quote for work to be undertaken refurbishing three offices in T Block at SCGH. Mr P Wood provided Aurora with the dollar amount to quote to ensure their quote was materially higher than Fox's quote.

[130] On the same day, Aurora received from Mr P Wood a second request from Mr Alexander to submit a dummy quote backdated to October 2015. The job was to convert an existing office on the ground floor of T Block into two new offices.

**Mr Anthony Wood - Starnet (WA) Pty Ltd trading as 'IT Communications and Electrical Services'**

[131] Mr Anthony Wood (known as Tony) is a Director of Starnet (WA) Pty Ltd trading as 'IT Communications and Electrical Services' (IT Communications).

[132] Mr T Wood's company started working with WA Health in 1997. Predominately, IT Communications have worked for WA Health at NMHS sites and NMHS was IT Communications' major client. Mr T Wood met Mr Fullerton back in 1997. Their wives are friends and Mr T Wood has a friendship with Mr Fullerton that extends to socialising outside of work.

[133] Mr T Wood told the Commission that Mr Fullerton has been responsible for engaging the services of IT Communications at NMHS from the commencement of the relationship. Mr Fullerton denied this and told the Commission that IT Communications was awarded projects through another department, apart from a fibre optic run project in April 2016.

[134] IT Communications invoiced NMHS a total of \$4,258,183 over the period 2010 to 2016, but Mr T Wood estimated that over the history of the relationship, the total value of work done at WA Health by IT Communications, was possibly \$10m.

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<sup>23</sup> S C Cary transcript, private examination 19 February 2018, p 12.

- [135] Despite this, Mr T Wood told the Commission that on the occasions IT Communications was contracting directly with NMHS, Mr Fullerton requested he submit a quote and directly engaged his company.
- [136] Mr T Wood was shown a letter of engagement drafted by Mr Alexander for the signature of Mr Fullerton. The letter was for the installation of a fibre optic cable run in the basement of L Block and was dated January 2016. Mr Alexander's evidence was the letter was a sham as he was requested by Mr Fullerton in August 2016 to draft 'five or six such letters'. It is more likely that Mr Fullerton engaged Mr T Wood's services without following any formal procurement process.
- [137] When questioned regarding the L Block project, Mr T Wood said he 'couldn't say' whether he had received the letter, he didn't think he had ever seen a copy of the general conditions of contract referred to and couldn't say whether he received a purchase order from Mr Fullerton.
- [138] IT Communications performed work on Mr Fullerton's house renovation in 2015 and have carried out adhoc electrical jobs at his private residence since 2012. The work performed during the house renovation period in 2015 was directly arranged by Mr Fullerton, not Mr Alexander. Mr Fullerton asked Mr T Wood for the invoices to be sent to his mother, addressed to her company and falsely referencing the scope of work done as works done for her company, Western Refrigeration. Mr Fullerton agreed this was the case "I just told him how to knock the invoices up".<sup>24</sup> Mr T Wood complied with this request. The invoiced work was paid by Mrs N Fullerton and totalled \$42,615.
- [139] Mr T Wood's evidence was that he went to lunch with Mr Fullerton between six to 10 occasions alone or with other NMHS contractors. He admitted to paying for Mr Fullerton on occasions. Mr Fullerton stated the lunch appointments with Mr T Wood were more frequent as they occurred three or four times a year and that Mr T Wood paid. Mr T Wood denied that he always paid and maintained that Mr Fullerton paid for lunch on occasion. The Commission notes this would be contrary to the normal practice between Mr Fullerton and the other contractors who regularly took him out to lunch.
- [140] Mr T Wood paid over \$6,000 in travel costs for the benefit of Mr Fullerton (and on one occasion, for his wife, Mrs Jacqui Fullerton) to travel to Melbourne and/or Canberra over two weekends during 2009 and 2010. Despite being presented with this evidence, Mr T Wood failed to recall that Mr and Mrs J Fullerton had flown to Canberra in 2009 or to

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<sup>24</sup> J B Fullerton transcript, private examination, 3 April 2018, p 24.

Melbourne in 2010, and could not say why IT Communications would have paid for those flights.

- [141] Mr T Wood and his wife attended the wedding of Mr Fullerton's son in Canada along with Mr and Mrs J Fullerton, Mr Williams of Westside and his partner.
- [142] Mr T Wood denied inflating his invoices to NMHS to account for work performed at Mr Fullerton's private residence. He also denied knowledge of the practice by other shareholders. Mr T Wood told the Commission he did not see any correlation between the personal friendship he had with Mr Fullerton and the fact that IT Communications was obtaining sustained, lucrative contract work at NMHS; and denied that the personal relationship increased the likelihood of him obtaining work at NMHS.
- [143] The Commission does not accept this denial. Mr T Wood initially told the Commission he had never paid for travel on behalf of Mr Fullerton and, to the contrary, that Mr Fullerton had actually paid for Mr T Wood's wife to travel. When shown the evidence of travel paid and taken in 2009 and 2010 which he failed to recall, Mr T Wood was likely attempting to minimise gifts paid to Mr Fullerton.

**Mr Garth Delavale - Axis Fire Solutions Pty Ltd trading as 'One Fire Group'**

- [144] Mr Garth Delavale started One Fire Group (One Fire) in May 2008 as a fire protection company concentrating on the 'passive' fire business that ensures buildings have structural fire protection compliant with the Australian Standards. Mr Delavale stated he attempted to grow "the passive side of our business by targeting people like North Metro [NMHS]".<sup>25</sup>
- [145] One Fire was directly sourced by Mr Fullerton to undertake work at NMHS. It was for this reason that Mr Delavale began paying for domestic travel for Mr Fullerton and his wife. He also took Mr Fullerton out to lunch.
- [146] Between 2009 and 2016, Mr Delavale spent \$8,600 on meals attended by Mr Fullerton. On nearly every occasion, Mr Fullerton brought his personal assistant to lunch with him. On two occasions, Mr Mulligan accompanied Mr Fullerton and his personal assistant.
- [147] Mr Delavale told the Commission that the restaurants most frequented were Matilda Bay Restaurant and Galileo Buona Cucina Restaurant. Alcohol selected by Mr Fullerton was consumed by all present. The lunch

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<sup>25</sup> G N Delavale transcript, private examination, 29 May 2018 p 4.

appointments were made by Mr Fullerton or his personal assistant, who would send an electronic meeting request. One Fire always paid the bill.

- [148] Mr Delavale initially travelled with Mr Fullerton to the US, visiting Las Vegas, Los Angeles and San Francisco in April 2007 for a three week holiday. On that occasion, Mr Delavale was working for Westside. Mr and Mrs J Fullerton's travel to the US was paid for by Westside.
- [149] Between 2009 and 2014 (inclusive), One Fire paid for travel once a year to Melbourne for Mr Fullerton, and on one occasion, for Mrs J Fullerton to accompany him. The exception was 2010 when Mr Fullerton suggested to Mr Delavale that they travel to Melbourne on 9 July 2010 to see a '... [H]awthorn/Cats game at the MCG on Saturday the 10<sup>th</sup> of July and get the late flight home on the Sunday after shopping.'<sup>26</sup> Mr Delavale does not recall that this trip eventuated, but stated it was indicative of how the trips were organised.
- [150] One Fire paid approximately \$4,600 in airfares for Mr Fullerton and his wife to fly to Melbourne. Mr Delavale assumed that One Fire paid for Mr Fullerton's accommodation in Melbourne but was unable to definitively recall, or verify the amount. On occasion, Mr Fullerton accompanied the One Fire directors to the football in Melbourne as their guest.
- [151] Mr Delavale conceded that One Fire had paid for Mr and Mrs J Fullerton to travel and that the company had not been reimbursed, with one exception. Mr Delavale stated that at Melbourne airport on 12 May 2013, Mr Fullerton gave him a white envelope containing cash in the sum of \$1,400. Mr Delavale claimed the cash was repayment of the travel expenses paid for by One Fire.
- [152] While the One Fire directors normally included some business meetings in their travel itinerary to Melbourne, Mr Delavale stated that Mr Fullerton's reasons for travel appeared to be personal.
- [153] Mr Delavale stated that the purpose of paying for Mr Fullerton's travel was to "keep the relationship strong" and "the potential of work at the hospital, I could see there was a mountain of potential of work, so the service industry, so you perform the best you can and obviously build relationships".<sup>27</sup>
- [154] The Commission believes this approach worked very successfully for One Fire as the generous gifts to Mr Fullerton were rewarded with an increase in invoiced project work at NMHS. One Fire invoiced NMHS a total of

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<sup>26</sup> Email from J B Fullerton to G N Delavale, 10 March 2010.

<sup>27</sup> G N Delavale transcript, private examination, 29 May 2018, p 33.

\$1,116,845 between 2008 and 2016. In the five years from commencement of the business in 2008, invoicing to NMHS by One Fire increased 9000 per cent. After 2013, work for One Fire at NMHS was limited to urgent works and there was a resulting decrease in invoicing so that from 2014, payment to One Fire from NMHS halved. At the same time, One Fire ceased paying for any of Mr Fullerton's private travel.

**Mr Ian Tremain - QED Environmental Services Pty Ltd**

- [155] QED Environmental Services Pty Ltd (QED) is a business that assesses the performance of air conditioning systems, reports on air quality and asbestos management, and advises generally on the management of air quality issues. Mr Ian Tremain was the Founder and Managing Director until his retirement at the end of 2015.
- [156] QED has provided services to WA Health for 20 years and over this period Mr Tremain developed a friendship with Mr Fullerton. QED were predominately retained by being awarded many specific low dollar value projects directly by Mr Fullerton. Mr Tremain was normally approached by Mr Fullerton via phone or email to do specific site works at NMHS. QED invoices were sent directly to Mr Fullerton for payment approval.<sup>28</sup> Mr Tremain could only recall tendering for one project, the asbestos management program. The rest of the work allocated to QED by Mr Fullerton was directly assigned due to the low dollar value of each project.
- [157] Mr Fullerton admitted that lower value jobs could be directly assigned by him to a contractor and that this was a practice he used to give QED work at NMHS.
- [158] QED invoiced NMHS on average \$440,000 per calendar year. In total between 2000 and 2016, QED was paid \$7.5m by WA Health, of which the majority was invoiced to NMHS.
- [159] Mr Fullerton discussed potential work for QED during lunch meetings. Mr Tremain told the Commission "he liked to go to lunch and say, look, I've got this problem ... that was his sort of way of getting to find the people he thought would be right to do the works". Mr Tremain always paid the lunch bill because it was assumed that he would. The relationship was of such longstanding that lunch would sometimes include Mr Tremain's daughter, Ms Michelle Scholz, and his son, Mr Ryan Tremain. Both had roles in the management and administration of QED. On occasion, Mr Tremain paid for dinners for the Fullerton family at a restaurant in the Perth Hills.

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<sup>28</sup> I J Tremaine transcript, private examination, 19 February 2018, p 10.

- [160] In total, QED paid for meals attended by Mr Fullerton to the value of \$24,399 at restaurants that included Rockpool Bar & Grill, Nobu at Crown Perth, Coco's in South Perth and Galileo Buona Cucina in Shenton Park. Ms Scholz (QED's former Accounts and Administration Supervisor and Mr Tremain's daughter) stated "when you're ordering something and we want the \$40 wine, he'd want the \$150 wine, you know, and he'll have the entrée, main and dessert, whereas we'd all have maybe just a main".<sup>29</sup>
- [161] Mr Tremain was aware that Mr Fullerton went out to lunch with other contracting and consulting groups regularly, once or twice a week. Mr Tremain was also aware that his former son-in-law, Mr Howard (Howzat), had been asked to invoice some of the house renovation work through the NMHS projects he had been awarded.
- [162] In addition to meals, QED paid for travel for Mr Fullerton and his wife. Mr Fullerton admitted this fact. In November 2012, Mr and Mrs J Fullerton went to Melbourne for the weekend on the QED credit card. The trip included accommodation at Crown Towers and dinners paid for by QED. Other travel paid for by QED included a three week trip to the UK in 2003 for Mr and Mrs J Fullerton which included business class airfares. Mr Tremain's own estimate of money spent on Mr Fullerton's travel was \$25,000 and \$30,000 on lunches.
- [163] Mr Fullerton was asked "How was it that Mr Ian Tremain or QED came to pay for travel and accommodation on your behalf?---It was a gift ..."<sup>30</sup>
- [164] Mr Tremain was asked the purpose of the gift "Why? ---Well, I guess just in the interests of keeping the relationship going. And the purpose of keeping the relationship going was for what?---Well, I guess just to keep, I guess, our name at the forefront ..."<sup>31</sup>
- [165] The relationship between Mr Tremain and Mr Fullerton developed over the two decades, to become one characterised by mutual dependence and habit.

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<sup>29</sup> M C Scholz transcript, private examination, 21 March 2018, p 7.

<sup>30</sup> J B Fullerton transcript, private examination, 3 April 2018, p 5.

<sup>31</sup> I J Tremaine transcript, private examination, 19 February 2018, p 20.

[166] Ms Scholz described the relationship:

*... you know, we didn't need him but it's just the way he – I think the way he developed his relationship with my dad and then my dad puts the pressure on the boys to say we've got to keep him happy; but we didn't really have to keep him happy, it was just that he just sort of had the impression that we had to.*<sup>32</sup>

...

*We just didn't know how to remove ourselves from him.*<sup>33</sup>

[167] In its response to a draft of this report, QED attempted to distinguish the actions of Mr Tremain from the company QED. It is a distinction without a difference.

#### **Mr Blaise Paris - Latitude XL Pty Ltd**

[168] Mr Blaise Paris is the Managing Director of Latitude XL Pty Ltd (Latitude), a small construction company which does commercial fit-out and building projects. On occasion for specific projects, Latitude subcontracted the building services of Fox and had done so for the previous 10 to 15 years. This resulted in a longstanding, professional relationship between Mr P Wood and Mr Paris.

[169] Latitude was used by Mr P Wood to provide dummy quotes for two projects at NMHS in T Block. Fox had been promised the contract to provide three new offices and to convert an existing office into two new offices. The request for quote was made from Mr Alexander to Latitude in two emails received on 4 and 5 January 2016.

[170] At the time of the email request, it was obvious the T Block minor building works were already complete and Latitude were asked by Fox to submit a retrospective dummy quote with a dollar figure of seven per cent over (for T Block minor works) and 12 per cent over (for T Block creation of new offices) the figures being submitted by Fox. This was accepted by Mr Paris during examination.

[171] Mr Paris' evidence is that he engaged in tender collusion and providing a sham price as requested by Mr P Wood on (at most) five instances as a favour to Mr P Wood. Latitude had no ongoing dealings with NMHS as a contractor and Mr Paris could not recall ever meeting Mr Alexander or Mr Fullerton. It is not suggested that Mr Paris paid bribes to anyone. He did collude however in what may be regarded as aiding another to defraud NMHS.

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<sup>32</sup> M C Scholz transcript, private examination, 21 March 2018, p 8.

<sup>33</sup> M C Scholz transcript, private examination, 21 March 2018, p 12.

## **Mr Wayne Robinson - Swan Group WA Pty Ltd**

- [172] Mr Wayne Robinson is the General Manager for Swan Group WA Pty Ltd (Swan), a building company specialising in fit-out work. Mr Robinson's role is primarily client development and sales. As part of his role, he was provided with a company credit card which he was encouraged to use to incur expenses associated with client hospitality. He initially met Mr Alexander in 2013 while Mr Alexander was engaged by NMHS to project manage specific works. Mr Robinson was introduced to Mr Mulligan. From 2014, Mr Robinson's employer gave him primary responsibility for developing and maintaining the relationship with Mr Mulligan. Mr Robinson never met Mr Fullerton.
- [173] Mr Robinson invited Mr Mulligan to the horse races or (AFL) football on seven occasions between November 2013 and November 2016. Mr Mulligan attended on five of those occasions. During the same time period, Mr Mulligan was offered and accepted numerous gifts of bottles of wine and was offered and accepted hospitality in the form of meals and drinks. Over a two year period, Swan expended a total value of \$3,014 on gifts and hospitality on occasions where Mr Mulligan was in attendance and benefitted.
- [174] Through Mr Alexander, Mr Robinson was requested to provide a request for tender for the construction of a new office in T Block at SCGH. The parties to the request colluded in order for Fox to win the project on price. Soon after, by letter dated 10 May 2016 to Mr Fullerton, Mr Alexander indicated that Fox would be the successful bidder against Swan and Aurora.
- [175] Mr Robinson told the Commission there was a practice at NMHS involving Mr Alexander obtaining a 'cover price' from Swan for particular projects. Mr Robinson said it was a practice amongst building contractors to help each other in this manner. In particular, Mr Robinson nominated Fox as a company that colluded with other vendors in price fixing. Mr Robinson's employer has acknowledged that 'cover pricing' is a practice used in the construction industry in Western Australia but was unaware that Mr Robinson was engaging in the practice on behalf of Swan at NMHS.
- [176] On one occasion, Mr Alexander sent a text message to Mr Robinson with an image and a request for 'a price'. Accompanying the image was a number that indicated 'the price' Swan were to submit. Swan had no intention of winning the tender and knew that the work had already been allocated to another builder. Mr Robinson said he knowingly participated

in this activity because he and Mr Alexander had "a decent working relationship around there, so I wanted to help him out".<sup>34</sup>

- [177] A 'decent working relationship' was Mr Robinson's characterisation of a corrupt relationship to the detriment of the public purse. Mr Alexander told the Commission that Swan agreed to submit fixed price tenders as directed because "They were virtually guaranteed a project on site" and could benefit by dictating their contract price within reason.<sup>35</sup>
- [178] Swan was awarded the refurbishment of R Block, Level 4 and the refurbishment of V Block in late 2016. Mr Robinson agreed under examination that V Block and perhaps R Block were examples of the agreement with Mr Alexander so that Swan would be 'in the box seat' for winning the tender as a reward for providing cover quotes. Mr Robinson has since recanted from that position and has told the Commission those jobs were awarded to Swan Group on merit.
- [179] Mr Robinson did not have a direct relationship with Mr Fullerton. He has never met him. Rather, his relationship with Mr Mulligan was integral to Swan maintaining a presence on the NMHS sites. Mr Robinson stated he was introduced to Mr Mulligan in early 2015 and that he took Mr Mulligan for meals, drinks and entertainment in order to gain information on upcoming work. In an email to Mr Mulligan on 15 January 2015, Mr Robinson stated 'I was just wondering when we can catch up for a beer or coffee and have a chat about some of those opportunities we were discussing'. They agreed to meet the following week at the Subiaco Hotel. The opportunities discussed were potential projects at NMHS. The cultivation of communication back channels to the NMHS decision makers was very useful in winning tenders. Mr Robinson has told the Commission that the practice of cultivating relationships with potential clients is common practice within the industry.
- [180] Mr Robinson took Mr Mulligan, Mr Alexander and a couple of other contractors to Northbridge for entertainment at the Galaxy Nightclub involving paid hostesses. He estimated that in one evening he paid \$500 to \$600 in entertainment expenses. Within two weeks, Mr Robinson was contacted by Mr Mulligan who told him that he was recommending Swan for the refurbishment of the State Quadriplegic Centre.

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<sup>34</sup> W Robinson transcript, private examination, 20 February 2018, p 10.

<sup>35</sup> G R Alexander transcript, private examination, 18 October 2017, pp 22-23.

- [181] Mr Robinson took several opportunities to provide Mr Mulligan and other clients with hospitality in the form of lunches, alcohol and entertainment such as Melbourne Cup lunches and golf days. In submissions to the Commission, Swan indicated that the company, in reviewing its practices, has introduced new gift and entertainment policies and instituted a more rigorous internal tender process.
- [182] There was no guarantee that as a result of the gifts and hospitality offered to Mr Mulligan and/or Mr Alexander by Mr Robinson that every tender submitted to NMHS by Swan Group would be awarded to them. Client hospitality is expended to maintain good client relationships. It provides the opportunity to influence and be favoured. In the period 2013 to 2016, Swan was paid \$1.61m in fees by WA Health.

**Mr Anthony Williams - New Zealand Holdings Pty Ltd trading as 'Westside Fire Services'**

- [183] Mr Williams has been the Managing Director of Westside since 2004, and in this role has the responsibility for generating work for the business. The business focus is the supply, installation and maintenance of fire protection systems.
- [184] Westside was doing work for NMHS from before 2004. Forty percent of Westside's work originated from the SCGH site. Mr Williams met Mr Fullerton in 2000 when he was in charge of the air conditioning servicing at the SCGH site and a friendship developed. The two socialised outside of work.
- [185] Mr Williams paid for Mr and Mrs J Fullerton to travel interstate to Melbourne and overseas to Canada and the US. The first trip was overseas to the US in 2007 and expenditure on Mr Fullerton and his wife totalled \$14,985, this included airfares and accommodation. Other international travel paid by Westside for Mr and Mrs J Fullerton included a trip to China and Hong Kong in 2009, a trip to Bali in 2010 and a trip to Dubai in 2013.
- [186] Mr Williams paid for Mr and Mrs J Fullerton to travel business class to Canada for their son's wedding in 2014. The cost for Mr and Mrs J Fullerton was \$24,752 and included travel and accommodation in Quebec. Westside was not reimbursed for this expenditure or any travel expenditure made by Mr Williams for the benefit of Mr Fullerton or his family.

- [187] Westside paid for trips to Melbourne for Mr Fullerton each year from 2012 to 2016, inclusive (excluding 2015). Some domestic travel paid by Westside also included air tickets for Mr Fullerton's children. During domestic trips, Mr Williams paid for other travel expenditure such as accommodation expenses, Grand Final tickets and meals. During the 2012 trip to Melbourne, Mr Williams paid \$1,235 on gifts of cologne and shoes for Mr Fullerton. During the 2013 trip to Melbourne, Mr Williams paid for cologne, perfume, a business suit and a shirt for Mr Fullerton at a cost of approximately \$3,770. During the 2014 trip, Mr Williams spent \$1,900 on gifts of clothing for Mr Fullerton. During the 2016 trip, \$900 was spent on gifts of perfume and cologne for Mr Fullerton.
- [188] In total, Mr Williams spent \$32,833 on domestic travel expenses for Mr Fullerton and a further \$59,387 on international travel. In addition, Mr Williams paid for accommodation and meals in Melbourne for Mr Fullerton.
- [189] Westside also paid significant amounts for lunches Mr Fullerton attended. This started earlier than 2010, possibly even from 2005. The total expenditure on meals attended by Mr Fullerton (and on occasion his wife) by Mr Williams was \$7,259.
- [190] It is open to conclude that Westside benefited from these gifts. By 2010 when Westside was paying for significant travel for Mr Fullerton, NMHS paid Westside \$895,713 in fees. In 2014 at the height of expenditure by Mr Williams, Westside received in excess of \$1m from NMHS. Mr Fullerton was largely responsible for granting Westside the NMHS work.

## CHAPTER FIVE

### How North Metropolitan Health Service controls were subverted: Some examples

- [191] Certain projects at NMHS were marked by Mr Fullerton and Mr Alexander as projects where it was convenient to covertly and fraudulently manipulate invoices. This was done in order to recoup from NMHS, monies being spent in renovating Mr Fullerton's private residence, paying for his interstate travel, buying him expensive lunches and giving him cash.

#### Case study - Doctors' common rooms in R Block

- [192] Mr Ensor stated he was not aware of the collusion amongst tenderers or of corrupt payments associated with this project but that he was aware this "was a very bad project. Um, I - I understood that was being run by John and Grant Alexander".<sup>36</sup>
- [193] On 24 March 2015, Howzat submitted a written quote to Mr Fullerton and Mr Alexander in the sum of \$81,400 (including GST) for the demolition of the interior of the Doctors' common rooms.
- [194] Howzat were awarded this project by Mr Fullerton and were instructed by Mr Alexander to use the NMHS invoicing process as an opportunity to recoup agreed amounts relating to work Howzat performed at Mr Fullerton's private residence. Mr Fullerton reviewed and approved Mr Howard's invoices for payment. An example, is Howzat's progress payment invoice number 605311 for \$14,800 emailed to Mr Fullerton for 'approval and processing' on 15 May 2015. On that invoice, \$5,000 had been allocated as a credit for the house renovation.
- [195] The second part of the project was awarded to Howzat as a result of a competitive quote process managed by Ms Bell of Gowdie. The project was managed by a staff project manager who reported to Mr Fullerton. Howzat won the second part of the project through collusion with other competitors and used the invoices to NMHS to pay for the house renovation. Ms Bell has denied any knowledge that she was aware Howzat won the project by collusion. Howzat negotiated the payment of the house renovation by negotiation of individual invoices with Mr Alexander, which were ultimately approved by Mr Fullerton.

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<sup>36</sup> S R Ensor transcript, private examination, 30 May 2018, p 12.

- [196] Payment was made to Howzat by progress payments, each under \$20,000. Variations to the original quote due to night work and increase in the scope of works resulted in the final amount invoiced by Howzat being in excess of \$120,000. Contractual variations were a useful vehicle to overspend on projects without scrutiny.

#### **Case study - R Block, Levels G, 1 and 4**

- [197] Both Levels 1 and 4 R Block building maintenance contracts were won by Fox after collusion with other competitors during the competitive quotation process. They were projects that were earmarked as suitable for Fox to add 'fat' to the NMHS invoices.
- [198] The collusion arrangement was overseen by Mr Alexander in order to ensure that the contractor (Fox), who needed to recoup monies from NMHS for work done on Mr Fullerton's house renovation, had the opportunity to do so.
- [199] Mr Howard (Howzat) stated that he wanted to put in a competitive bid for R Block, Level 4 because he had already done maintenance on the ground level. However, he was dissuaded because it had been earmarked for awarding to Fox:

*It was an arrangement where there were other occasions where you had to price high so that they could come in low?---Yeah, there was one time that I remember in, um, R Block, I think it was level 4, um, where I initially put a price in and then I got told to make it higher because I wasn't going to get that job. It would be - - -*

*Who told you that?---Grant Alexander.<sup>37</sup>*

- [200] Mr Alexander stated the tender documentation was prepared by himself for Mr Fullerton's approval. Mr Ensor was then allocated the project management by Mr Fullerton and had no input into the selection of tenderers or development of the scope of works.
- [201] This was done for a particular purpose. Mr Alexander stated that although on paper it looked like Mr Ensor was wholly responsible for the project, this was not the reality:

*John was being careful to ensure that wherever Fox was winning projects, he didn't - he had distanced himself from those projects by putting it on to his own project managers at a point where they didn't really have any ability to influence that.<sup>38</sup>*

- [202] The R Block, ground floor demolition work was awarded to Howzat in mid-2015 for the purpose of recouping costs of the house renovation work. From invoices commencing mid-July 2015, Howzat invoiced NMHS

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<sup>37</sup> L G Howard transcript, private examination, 31 January 2018, p 17.

<sup>38</sup> G R Alexander transcript, private examination, 19 October 2017, p 13.

\$82,914 of which, 22 per cent or \$18,500 related to work performed on Mr Fullerton's house renovation.

**Case study - Queen Elizabeth II Medical Centre and Hollywood Private Hospital consultant access walkway**

- [203] Mr Alexander invoiced NMHS for work carried out by PA Projects to project manage this build. In invoicing NMHS, Mr Alexander stated he added a percentage to his invoices to account for the considerable time he spent managing the renovation of Mr Fullerton's private residence, including onsite. This was done at Mr Fullerton's direction and participation and Mr Fullerton was aware of the value of the invoices.
- [204] Mr Fullerton ensured he was at arms' length from the project by allocating Mr Ensor the job of project sponsor in 2016 to start the physical build. Contractors had already been awarded the job at the time of allocation to Mr Ensor. Mr Ensor was not responsible for authorising payment of Mr Alexander's invoices relating to this job. Mr Fullerton retained this authority.
- [205] The actual build was managed by another builder, however, it seems likely that Howzat were asked to tender for the job.<sup>39</sup>

**Case study - T Block Executive offices - two projects for alteration to three offices**

- [206] On 25 November 2015, Fox invoiced NMHS for work carried out on this project. The invoice was a vehicle for Fox to recoup costs of doing work on Mr Fullerton's private residence. The project worksheet has the project sponsor listed as Mr Ensor. He told the Commission he could not account for this as he had no involvement in the project.
- [207] Mr P Wood stated that during this job, he was in daily or weekly contact with Mr Fullerton.
- [208] The project had been divided into two separate portions. One concerned developing an existing office into two new offices and the other, concerned fit-out works for three new offices. Fox had won this latter job with a tender quotation of \$149,800. Fox had successfully been awarded the first portion of the project with a quotation of \$19,916. Fox's competitors (Aurora and Latitude) had each put in a sham quotation for both jobs after colluding with Fox and Mr Alexander on price.

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<sup>39</sup> Diary entry in L G Howard's diary dated April 2015 - 'HH Consultant Access Walkway'.

- [209] The projects were awarded to, and completed by Fox without NMHS formalising the request for quotation process. Mr Alexander reconstructed the procurement document trail several months later, in January 2016.
- [210] By letter dated 6 January 2016 sent via email, Mr Cary of Aurora was requested by Mr Alexander to submit a tender for fit-out works for the three new offices in T Block. The email also contained a request in identical terms addressed to Mr Paris of Latitude. Similarly, Mr Alexander had emailed Mr P Wood on 4 January 2016 to request tender documentation be submitted 'should you wish to submit a tender'. Attached was a letter from PA Projects inviting Fox to tender for the fit-out works for the three new offices. The letter was forward dated two days after the email was sent.
- [211] The request for formal written quotes by Mr Alexander was a sham.
- [212] Mr Cary was taken by surprise on receiving the request for tender and rang Mr P Wood to ask if the letter was "one of those ... where you just want a price?"<sup>40</sup> Mr P Wood contacted Mr Cary by email and advised him of the dollar figure Fox would be submitting together with a request that Aurora submit a quote six per cent higher. The following day, Mr Cary submitted Aurora's quote by letter to Mr Alexander with a quoted price six per cent higher than Fox.
- [213] Mr P Wood contacted Mr Paris of Latitude by email on 6 January 2016, attached the Fox quote for \$149,800 and asked Mr Paris to tender a price 12 per cent over the Fox quote. Mr P Wood emailed:
- Blaiso*
- Attached is what I will be submitting for the exec offices tender which closes next Monday*
- Quote can be emailed to Grant rather than having to be dropped in. You can just do a lump sum rather than tender breakdown with a price 12% over mine please*
- Cheers & thanks*
- Phil Wood*
- [214] For the project requiring the development of an existing office into two new offices, Mr P Wood contacted Mr Paris on 6 January 2016 and asked him to submit a quote that was seven per cent higher than Fox's. Mr P Wood asked Mr Cary to submit a tender that was 13 per cent over the tender price that was to be submitted by Fox. Mr P Wood made it

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<sup>40</sup> S C Cary transcript, private examination, 19 February 2018, p 14.

clear that the request for quotes was a sham as the job had been completed:

*Blaise*

*This is actually a separate quote he requires for a job already completed*

*Please see below & attached. If you can please email him a lump sum (no breakdown required) quote @ approx 7% over the attached that would be great*

*Note quote date 30/10/2015*

*I will have the other one required to be lodged Monday to you today as well. Both have drinks /lunch @ cocos included in them J*

*Cheers*

*Phil Wood<sup>41</sup>*

- [215] In fact, by January 2016, the job had been completed by Fox, invoiced (dated 25 November 2015) and submitted for payment. Payment was authorised in March 2016.
- [216] The payment included an allocation to Fox for work completed on Mr Fullerton's house renovation.
- [217] On a third and separate occasion, Mr Alexander arranged for Fox to win the tender for the construction of one new office in T Block at SCGH. Mr Alexander sought a sham quote, or non-competitive bid from Swan and Mr P Wood sought a sham quote from Aurora. Mr Alexander met Mr Robinson in a coffee shop and told him that "I need another price. I'll text you the number".<sup>42</sup> Mr Alexander then texted Mr Robinson the tender price Fox would submit.
- [218] The documentation indicated Fox were recommended to win the tender.

#### **Case study - Pre-admission Clinic and Level 4, G Block**

- [219] Mr Howard of Howzat was awarded this project by Mr Fullerton. Howzat made arrangements through consultation with Mr Alexander to recoup monies for work he had performed at Mr Fullerton's private residence and at Mrs N Fullerton's private residence.

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<sup>41</sup> Email from P S Wood to B D Paris, 6 January 2016, 'NMHS Tender Minor Works G. 136', attaching Fox quotation.

<sup>42</sup> G R Alexander transcript, private examination, 18 October 2017, p 25.

- [220] Howzat were awarded the contract to demolish and strip out Level 4, G Block at SCGH. Work commenced in early 2015 while Howzat were contracted to commence the building renovation at Mr Fullerton's private residence. This project was considered to be a good vehicle for Howzat to invoice NMHS for work performed at Mr Fullerton's private residence.
- [221] The initial invoicing to NMHS dated 3 April 2015 had an amount of \$2,200 added to it to be credited against the house renovation cost. In total, an amount of \$110,011 was invoiced to NMHS by Howzat, of which, 24 per cent or \$26,200 was related to the house renovation rather than NMHS site works.
- [222] Three invoices submitted for payment by Howzat contained an allocation for renovation work done by Howzat on Mrs N Fullerton's private residence. The total amount allocated towards Mrs N Fullerton's house renovation was \$3,000, over invoicing of approximately \$27,000. The invoices were approved for payment by Mr Fullerton in two instances.

## CHAPTER SIX

### An attempted cover-up to thwart the Commission's investigation

#### Destruction of evidence

- [223] On 7 April 2017, the Commission served a Notice to Produce on Mr P Wood seeking all documentation regarding the renovation of Mr Fullerton's private residence. Thereafter, it was generally known that the Commission was conducting an investigation into activities of public officers at NMHS. This presented Mr P Wood with two problems. Firstly, he kept a copy of the retention spreadsheet in a folder on the top of his desk at work. Secondly, the retention spreadsheet was attached to email traffic between himself and Mr Alexander that was being held on his server. Further, the retention spreadsheet indicated Fox was still owed \$44,395 in retention credits not yet invoiced to NMHS.
- [224] Mr P Wood told the Commission he panicked. He contacted and met with Mr Alexander on 8 April 2017, who then met with Mr Fullerton. All agreed that they needed to keep quiet, "making sure that nobody tells anybody anything, make sure we didn't discuss it et cetera, et cetera and just trying to make sure that no information was provided to you guys".<sup>43</sup>
- [225] Mr P Wood, Mr Fullerton and Mr Alexander conferred with each other in an attempt to create a feasible 'story' and avoid the Commission becoming aware of the corrupt payments concerning the house renovation. Part of the attempt included creating the appearance of legitimate outstanding invoices regarding the house renovation. This would allow for the payment of the outstanding \$44,395 to Fox to withstand scrutiny.
- [226] Mr P Wood stated:
- ... there was a series of emails going backwards and forwards ... where we were trying to hide - and we were using those as a bit of a ruse, trying to make it so that you guys didn't realise that we had that \$49,000 credit.*<sup>44</sup>
- [227] Mr P Wood deliberately held back incriminatory emails from the documents he supplied to the Commission in response to the Notice to Produce.
- [228] The Commission served an additional Notice to Produce on Mr P Wood on 3 August 2017. This Notice had a non-disclosure notation<sup>45</sup> attached.

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<sup>43</sup> P S Wood transcript, private examination, 30 January 2018, p 48.

<sup>44</sup> P S Wood transcript, private examination, 30 January 2018, p 51.

<sup>45</sup> A non-disclosure notation prohibits disclosure of information about the Notice: CCM Act s 99.

[229] Mr P Wood, Mr T Wood and Mr Fullerton had lunch at the Rose and Crown Hotel in Guildford in early August 2017. Mr P Wood said the purpose was to find out details of the Commission investigation from Mr Fullerton. Mr T Wood told the Commission the purpose of the lunch was a friendly 'get together' to which he invited his brother. Mr P Wood stated "I wanted to find out what he knew. I wanted to find out, you know, what was going on; what had been hidden, whether he had been contacted by the CCC et cetera, et cetera".<sup>46</sup>

[230] They discussed the Commission's investigation. Mr Fullerton offered to pay for Mr P Wood to obtain a lawyer, although Mr T Wood asserted that this discussion about legal fees took place without his knowledge.

[231] In a conversation covertly obtained by the Commission, Mr P Wood discussed with Mr Alexander how he could permanently erase the emails referencing the retention spreadsheet from his computer:

Wood: *I didn't send them those ones. The, the biggest issue is that if they ever do a raid and seize my system basically even if I delete them off my personal computer they can always pick 'em up. They can always go back on to the actual main hard drive for my emails and pick 'em up. Uhm, I've spoken to my computer guy and basically said, or a computer guy, and basically said well how do I get rid of this? He said the only way that you can get rid of those emails and make them so they never ever existed is basically to nuke you bloody uhm*

Alexander: *Hard drive.*

Wood: *Nuke your hard drive uh which will look extremely fucken suspect.*<sup>47</sup>

[232] The Commission executed a search warrant at the home of Mr P Wood and at the business premises of Fox on 24 August 2017. The following day, Mr P Wood, at his request, was provided with a new telephone SIM card by Mr T Wood's employee, with the intent of communicating with Mr Alexander and other relevant persons without the Commission being aware. Mr T Wood denies knowledge that the SIM card was provided to his brother for this purpose.

[233] The Commission was able to forensically retrieve three email documents from Mr P Wood's computer system that referenced the credits on the retention spreadsheet. An attempt had been made to delete them.

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<sup>46</sup> P S Wood transcript, private examination, 30 January 2018, p 56.

<sup>47</sup> P S Wood and G R Alexander transcript of conversation, 17 August 2017.

### **Collusion between witnesses**

- [234] In December 2016, Mr Fullerton flew to Melbourne to meet with Mr Alexander to discuss how the outstanding credits to Fox from the house renovation could be cleared.
- [235] Mr Williams and Mr Fullerton met in mid-2017 at the Merrywell, Crown Perth. During the conversation, Mr Fullerton asked Mr Williams to lie about the travel expenditure on him and say he had been repaid in cash. Mr Williams did follow this request during his first Commission examination on 20 March 2018.
- [236] Mr Fullerton admitted he and Mr Williams discussed the Commission investigation on that day and at that location but he denied telling Mr Williams to say he repaid him in cash. Mr Fullerton said "No, I just told him to delete all the files he had [regarding the travel]".<sup>48</sup> Later in his evidence, Mr Fullerton conceded that he did have a conversation about repayment in cash with Mr Williams.
- [237] Mr Fullerton admitted he never repaid Mr Williams in cash for the gifts of travel.

### **Recommendation**

- [238] The Commission recommends a relevant authority give consideration to the prosecution of Mr P Wood for alleged breaches of the *Corruption, Crime and Misconduct Act 2003*.
- [239] The Commission does not recommend Mr Williams be subject to prosecution for lying to the Commission. At his first examination, the Commission is satisfied he did attempt to mislead the Commission. However, after leaving the Commission, he immediately sought legal advice. As a result of that very good advice, he returned for a further examination during which he made full admissions and gave truthful evidence. In these circumstances, the Commission was not ultimately misled. The Commission encourages witnesses who give false evidence to make amends promptly.

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<sup>48</sup> J B Fullerton transcript, private examination, 3 April 2018, p 28.

## CHAPTER SEVEN

### How the conduct remained undetected

- [240] The policies of NMHS were fine. Their implementation was a different matter.

#### **Oversight of North Metropolitan Health Service Directors - Performance review process**

- [241] Between 2011 and 2016, Mr Mulligan received only one formal performance review within the first 18 months in his new role. Otherwise, performance reviews were an informal process subsumed into his weekly meetings with the Chief Executive.

#### **Lack of induction for contractors at North Metropolitan Health Service site**

- [242] Contractors engaged to work onsite at NMHS were subject to a rudimentary induction process, despite the WA Health Code of Conduct explicitly stating that contractors were subject to the same obligations and expectations as public officers under the WA Health Code of Conduct.

*What was the induction process [for a contractor]?---Um, it was – then, it was a single – a single page, um, process, where you ran through a number of line items just so that they were familiar with the process of working on a Health campus.<sup>49</sup>*

- [243] The Commission concludes that the lack of formal and comprehensive induction of contractors resulted in a lack of awareness of the WA Health Code of Conduct and procurement guidelines.

#### **Engagement of Mr Alexander at North Metropolitan Health Service**

- [244] The circumstances of the engagement of Mr Alexander at NMHS in early 2012 was central to the escalation of the serious misconduct from the receipt of gifts of hospitality and travel to include the fraudulent invoicing of NMHS.
- [245] Mr Alexander incorporated PA Projects for the sole purpose of being able to enter into a contract with one client, NMHS. His appointment had been sought and arranged by Mr Mulligan "For what purpose did you incorporate that company?---To undertake consulting works. Was it incorporated for the purpose of consulting works with any particular client?---For the North Metro Health department".<sup>50</sup>

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<sup>49</sup> S R Ensor transcript, private examination, 30 May 2018, p 5.

<sup>50</sup> G R Alexander transcript, private examination, 18 October 2017, pp 2-3.

- [246] Mr Alexander later told the Commission "I'd had a conversation with David Mulligan, who had indicated there was some work there that he would like me to do, but I needed a company to be able to invoice".<sup>51</sup>
- [247] Mr Alexander knew Mr Mulligan from 2010 when Mr Alexander worked full time at Aurora Projects Pty Ltd as a project director for NMHS, who was a client. During 2010, Mr Alexander also met Mr Fullerton.
- [248] Mr Alexander was contracted on six monthly rollover contracts which were renegotiated separately with both Mr Fullerton and Mr Mulligan directly. Mr Fullerton agreed that Mr Alexander generally reported directly to him for those projects, he was engaged directly by Mr Fullerton. As each Executive Director was accountable to a separate cost centre, it was Mr Alexander's understanding that this necessitated the separate billing arrangements. Initially on a retainer of \$20,000 per month with Mr Fullerton, this increased to \$25,000 per month in the latter half of 2015.
- [249] Mr Alexander's appointment was outside the rigour of public sector recruitment in line with Public Sector Commission standards. The flexible contractual arrangement allowed Mr Alexander and Mr Fullerton to negotiate a contractual sum for his services that accommodated the money Mr Alexander was spending on lunches and travel for Mr Fullerton. Mr Alexander explained:
- I explained to him that I can't subsidise lunches and whatever travel you want to do, it's costing me X amount per month, I can't remember exactly what the amount was, and that I need to be able to cover that.*<sup>52</sup>
- [250] At one point in 2016, Mr Alexander had three overlapping contracts with NMHS through Mr Fullerton and Mr Mulligan. This meant that PA Projects was being paid \$18,000 fixed fee for one month under one contract, \$42,000 for a three month contract and \$25,000 per month under a separate contract. The \$18,000 fixed fee contract was entered into by Mr Mulligan for the purpose of Mr Alexander being able to recoup cash payments he was making to Mr Mulligan in 2016.

### **Missing documentation**

- [251] The 'North Metropolitan Health Service: Sir Charles Gairdner Hospital - Facilities Management Procurement Review' Report (the procurement review report) delivered in April 2015, made damning findings concerning the lack of documentation relating to procurement contracts in NMHS Facilities Management.

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<sup>51</sup> G R Alexander transcript, private examination, 18 October 2017, p 3.

<sup>52</sup> G R Alexander transcript, private examination, 18 October 2017, p 32.

- [252] Documentation that was absent included service and maintenance agreements, risk assessments, documents indicating how requests for quotes/tenders were delivered to the market, quote/tender evaluation reports, conflict of interest registers and contract administration documents.
- [253] In some cases, the only documentary evidence produced that confirmed a procurement process had commenced, was the building contractor invoice endorsed for payment. Mr Alexander told the Commission that in order for a contractor to be paid, Mr Fullerton would need to produce an engagement letter, proof of tendering process and approved invoice against the tendered amount. Every contractor engagement letter Mr Alexander drafted for Mr Fullerton to sign, referred to a purchase order being issued, however he didn't "believe there was ever a purchase order issued to any contractor".<sup>53</sup>
- [254] In hindsight, the lack of documentary evidence of procurement was indicative of a deliberate strategy to conceal a corrupt process rather than a lack of understanding of good procurement and contract management. An example is the creation of sham engagement letters addressed to IT Communications regarding the fibre optic cable run in J and L Blocks. Mr T Wood denied receiving those letters. Mr Alexander stated the purpose of creating those letters after the finalisation of the project was "to cover the tracks of the fact that it had not been put in the system before, and John was concerned that he needed to have paperwork in place, because he told me that".<sup>54</sup>
- [255] Despite delivery of the procurement review report, corrupt practices relating to invoicing and procurement continued in NMHS Facilities Management throughout the remainder of 2015 and 2016.
- [256] The procurement review report highlighted the lack of supporting documentation relating to particular procurement projects and resulted in the creation of additional documentary templates. While the more rigorous practice was communicated to staff, it was not routinely followed.
- [257] In October 2015, the NMHS Works Procurement Working Group rolled out a form for recording verbal quotes for projects up to \$50,000. The form included an explicit section to record conflicts of interest. This form was not used by Mr Fullerton, Mr Ensor or by Mr Alexander on their behalf.

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<sup>53</sup> G R Alexander transcript, private examination, 18 October 2017, p 20.

<sup>54</sup> G R Alexander transcript, private examination, 18 October 2017, p 20.

## Awareness of the WA Health Code of Conduct

- [258] The Commission's investigation revealed a lack of understanding by the examined public officers as to the identification and management of conflicts of interest despite all three public officers having completed online training in Accountable and Ethical Decision Making. An inability to identify a conflict extended to a lack of awareness as to how an unmanaged conflict of interest can influence decision making "What's your understanding of what a conflict of interest is?---Well, where my interests in two things – my interest in one thing might benefit my interest in another from joining the dots".<sup>55</sup>
- [259] Mr Ensor was asked his understanding about specifically what was required to be recorded in the conflict of interest portion of the form 'Verbal or Written Quotation Form (up to \$50,000)' required to be used from October 2015 for procurement under \$50,000. He answered "my understanding was it was if we had relationships that were beyond professional relationships".<sup>56</sup> There was a lack of understanding that conflicts of interest could develop as a result of the nature of some professional relationships.
- [260] Similarly, in relation to WA Health policy on receiving gifts, the Commission found two NMHS executives and one manager wilfully disregarded the gift policy or failed to recognise that expensive meals were caught: "did you receive any gifts in your time? ---Of? Yes, but of – again of, um, not of a material value. What kind of gifts?---Yeah, like maybe a bottle of wine".<sup>57</sup>
- [261] Mr Fullerton was fully aware of his obligations to disclose conflicts of interest and to declare offers of gifts. He was aware he would have needed to declare the gift to the Chief Executive and that NMHS had a gift register. His initial response was "I didn't give it much thought at all".<sup>58</sup> He later conceded "I didn't want anyone to know".<sup>59</sup>
- [262] Mr Fullerton was asked about how and why he asked an NMHS contractor to project manage his house renovation:

*Just tell me again how it is that you came to ask Mr Alexander to do this personal work for you?---Just asked him if he could do it.*

*Where were you when you asked him?---I beg your pardon?*

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<sup>55</sup> D L Mulligan transcript, private examination, 10 April 2018, p 12.

<sup>56</sup> S R Ensor transcript, private examination, 30 May 2018, p 7.

<sup>57</sup> D L Mulligan transcript, private examination, 10 April 2018, p 13.

<sup>58</sup> J B Fullerton transcript, private examination, 3 April 2018, p 7.

<sup>59</sup> J B Fullerton transcript, private examination, 3 April 2018, p 53.

*Where were you when you asked him?---At work.*

*You said you considered the conflict of interest. Did you consider that at the time that you asked him to do this personal work for you?---Yeah, that's why I wanted the contract with him – him and my mother.<sup>60</sup>*

- [263] The Commission investigation found no evidence that WA Health contractors were aware the Code of Conduct was applied to their conduct and specifically, their interactions with some NMHS employees. In response to notification by the Commission of the risk of serious misconduct in procurement, NMHS informed the Commission that it has revised and updated the policy relating to acceptance of gifts. Staff education is planned.

### **Entrenchment of a culture of using public resources for private benefit**

- [264] Both Mr Fullerton and Mr Mulligan were responsible for many team members. Their responsibilities were, by design, cascaded down to individual campus managers and localised facilities managers.
- [265] The Commission was told Mr Fullerton did not seek to hide the fact that he regularly left the office to attend a long lunch with contractors. It was an open secret. The contractors were aware that it was a necessary price of doing business with NMHS through Mr Fullerton and Mr Mulligan.
- [266] It was also known to other NMHS executive staff who occupied adjacent offices in T Block. On 10 February 2015, the Executive Director of PathWest sent Mr Fullerton the following email:

*Is Mr Fullerton available on the 20th March (2015, as I know how far ahead you're booked)? Caught up with Russ last week and he can make that day in March. If you're available I'll book Galileo (note spelling!) so you can add to your frequent diner points.*

*Cheers<sup>61</sup>*

- [267] The Commission heard from several witnesses that it was rumoured Mr Fullerton was regularly taken out to lunch by contractors. The witnesses could rarely give any detail and could not recall with whom this had been discussed. Mr Ensor's evidence is typical:

*Were you aware that Gowdie took North Metro Health employees, other than yourself, out to lunch on a fairly regular basis?---Not that regular, no.*

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<sup>60</sup> J B Fullerton transcript, private examination, 4 April 2018, p 20.

<sup>61</sup> Email from S Palladino to J B Fullerton and D J Russell-Weisz, 10 February 2015. Note: The Commission does not suggest it is improper for three WA Health Executives to meet for lunch. This email is instructive for the level of knowledge displayed in relation to J B Fullerton's history of taking lunch at a particular restaurant.

*But you were aware that it was occurring?---Oh, yeah I'd – I'd heard it was occurring.*

*Where had you heard that?---Oh, it was just rumour that people were going out to lunch, in corridor conversation, that sort of thing.*

*And who were you told was going out to lunch?---Oh, you'd hear that, ah, John was out to lunch but - - -*

*Is that John Fullerton?---Yeah, but you'd never know who with, but just that he'd gone for the day, or whatever.<sup>62</sup>*

- [268] Mr Ensor knew Mr Fullerton was being taken out to lunch, probably by contractors but he had no discussion with anyone about whether that was appropriate or not.
- [269] Their absence, regularly at long, alcohol infused lunches, sent the message to staff that it was acceptable to conduct business in this way. When Mr Ensor was asked why he thought he could accept hospitality invitations from contractors, he stated "I guess because I thought if John could do it, I could" and "I guess I accepted it as a bit of an okay practice".<sup>63</sup>
- [270] Mr P Wood was asked about the practice of lunch invitations from contractors. He told the Commission "it was an open - open acknowledgment that that was the way that it was inside there. So, yes, in answer to your question, other contractors did take John out, I guarantee it".<sup>64</sup>
- [271] Mr Alexander stated that in his opinion "it wouldn't be any surprise to anybody in the head office there, [Mr Fullerton] didn't make any secret of it, bragged about it basically".<sup>65</sup>
- [272] Nor did Mr Fullerton hide the fact that he used NMHS contractors to renovate his private residence. It is concerning that Mr Fullerton's colleagues did not appear to appreciate the conflict of interest in such a practice, even if unaware of the means by which contractors were being paid. Mr Mulligan's attitude was the norm "Grant [Alexander] was pretty much the architect and designer and Liam was the builder, initially. I don't – I didn't pay too much attention after it started really because it had no bearing on me or my job."<sup>66</sup>

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<sup>62</sup> S R Ensor transcript, private examination, 30 May 2018, p 24.

<sup>63</sup> S R Ensor transcript, private examination, 30 May 2018, p 61.

<sup>64</sup> P S Wood transcript, private examination, 30 January 2018, p 63.

<sup>65</sup> G R Alexander transcript, private examination, 18 October 2017, p 33.

<sup>66</sup> D L Mulligan transcript, private examination, 10 April 2018, p 58.

[273] Mr Fullerton and Mr Mulligan's disregard of procurement practices sent a message that the means of completing a project were irrelevant as long as the project was completed. Mr Fullerton's use of NMHS contractors to perform private renovation work demonstrated a belief that the maintenance of a strict separation between work and personal financial matters was not necessary. This behaviour telegraphed there was no such thing as a 'conflict of interest' or the offer of a gift that should be refused. The WA Health Code of Conduct was diminished to the point of irrelevance.

#### **Targeting of public officers by private contractors**

[274] The procurement system in relation to projects worth less than \$20,000 was reliant on the public officer possessing knowledge of and confidence in a small number of contractors who they directly sourced, or asked to provide quotes.

[275] Obtaining a high volume of these lower priced contracts was lucrative. Invariably, the procurement officer had a financial delegation that covered the contractual amount which avoided the scrutiny of an approval process by NMHS managers or supervisors. Contractors deliberately targeted procurement officers in order to obtain this work.

[276] Mr P Wood stated:

*... in 2014 I started going back into Charlie Gairdner's [SCGH] trying to redevelop my relationships with key personnel in there, um John Fullerton being one of those but also [two others]. There were - there were, you know, quite a few people that I could get in contact with to potentially get work out of, get the opportunity to actually tender on work and I think the majority of those were controlled by John[Fullerton].<sup>67</sup>*

[277] It is significant that regular lunches, travel and other benefits were offered to public officers by some contractors.

[278] The excuse that these were working lunches sounds hollow when the venues, menus and wine purchased are examined.

[279] Work may well have been discussed, but in the Commission's opinion, the predominant purpose on the part of those contractors who paid for lunches was to groom the public officer in order to be given favourable consideration for work.

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<sup>67</sup> P S Wood transcript, private examination, 30 January 2018, p 11.

## CHAPTER EIGHT

### Mr Fullerton's conduct: Opinions and recommendations

#### Central allegations

[280] A bribe is defined in the Criminal Code:

*The term bribe means any property or benefit of any kind, whether pecuniary or otherwise, sought, offered, promised, agreed upon, given or obtained for the person being or to be bribed or any other person, in respect of any act done or to be done, or any omission made or to be made, or any favour or disfavour shown or to be shown, in relation to the performance or discharge of the functions of any office or employment, or the affairs or business of a principal.*<sup>68</sup>

[281] For years, some contractors at NMHS offered or were asked by Mr Fullerton to offer benefits in exchange for being given significant dollar value contracts with WA Health. The benefits offered were in the form of services, hospitality, travel expenses and cash.

[282] Mr Fullerton obtained a direct benefit of approximately \$170,000 from three NMHS contractors who fraudulently (but covertly) invoiced NMHS for a proportion of the cost of renovating his private residence. Mr Fullerton signed invoices authorising payment by NMHS to those contractors. In effect, the discounted rate the contractors offered Mr Fullerton for his house renovation was paid for by invoicing NMHS. The contractors obtained in return, the financial benefit of contracts for maintenance and services with NMHS.

[283] Since 2005, Mr Fullerton was regularly taken for lunch to expensive restaurants by at least seven contractors. The restaurants were those that met with his approval. So frequent were the lunches that some restaurants referred to Mr Fullerton in the bookings register as a 'VIP'. The direct benefit obtained by Mr Fullerton is estimated as in excess of \$50,000.<sup>69</sup> Those contractors who paid the benefit were the recipients of significant building maintenance contracts from NMHS.

[284] Since 2005, Mr Fullerton, and on occasion his wife, were given gifts of flights, meals, perfume, clothes and accommodation both interstate and overseas by some NMHS contractors. These were paid for by contractors seeking building and/or maintenance contract work at NMHS. The direct benefit obtained by Mr Fullerton and his family is estimated at \$150,000. In return, those contractors obtained regular work at NMHS.

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<sup>68</sup> *Criminal Code* s 1(1).

<sup>69</sup> In his response, Mr Fullerton does not accept the accuracy of the total dollar value for meals, number of restaurant visits and the number of domestic and overseas trips. He did not provide any alternate figures.

[285] During 2016, Mr Fullerton was paid \$6,500 in cash by Mr Alexander. The payments consisted of five payments of \$1,300 each. This was in addition to two adhoc payments of \$200 made by Mr Alexander, once when he was travelling interstate with Mr Fullerton and another occasion in Perth. Mr Fullerton denied receiving any cash payments. However, the Commission has accepted Mr Alexander and other witnesses' evidence as credible and truthful on this point.

[286] In addition to NMHS being fraudulently invoiced for a portion of Mr Fullerton's house renovation costs, invoices from PA Projects paid by NMHS, included a percentage to cover the cost of lunches and travel given to Mr Fullerton. Mr Fullerton authorised these invoices from Mr Alexander for payment by NMHS.

### **Lunches**

[287] Most contractors who worked at NMHS examined by the Commission took Mr Fullerton, at his request, to expensive lunches at restaurants he had approved. The contractor always paid.

[288] Over the course of the professional relationship, the Commission estimates that each contractor listed below spent the following figure on meals attended by Mr Fullerton:

- Gowdie                      \$ 9,150
- PA Projects                \$20,000
- Fox                         \$ 1,000 (estimated)
- IT Communications     \$ 1,000 (estimated)
- Westside                 \$ 7,259
- One Fire                  \$ 8,600
- QED                        \$24,399

[289] Ms Scholz told the Commission "we wouldn't say let's take you to lunch, he would say let's take me to lunch and we'll have this person, this person, this person at the lunch. There was a lot of lunches in Shenton Park".<sup>70</sup>

[290] Mr Fullerton admitted that QED took him to lunch and that the company were indirectly repaid by the award of substantial NMHS contracts over several years.

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<sup>70</sup> M C Scholz transcript, private examination, 21 March 2018, p 12.

- [291] For the majority of contractors, this was the price of doing business with Mr Fullerton and the cost was subsumed into their business operating costs. For Mr Alexander however, the lunches were of such regularity and at such a financial cost, that he felt compelled to recoup the cost through inflating the monthly invoices of PA Projects to NMHS. This was Mr Fullerton's idea.
- [292] The contractors took Mr Fullerton to lunch to maintain the relationship and to increase the likelihood of obtaining further work with NMHS. This outcome also required contractors to maintain relationships with the contracted project managers who worked closely with Mr Fullerton, Mr Alexander and Ms Bell. Lunch appointments often involved the attendance of Mr Alexander and/or Ms Bell.
- [293] Mr P Wood took Mr Fullerton, Ms Bell, Mr Alexander and Mr T Wood to lunch at Galileo's Buona Cucina in mid-2015.
- [294] Mr T Wood took Mr Fullerton to a long lunch three or four times a year.
- [295] Mr Fullerton admitted that Ms Bell took him to lunch once every two weeks.
- [296] Mr Williams from Westside took Mr Fullerton to lunch at least eight times a year since 2005 to a restaurant of Mr Fullerton's choice. This was conceded by Mr Fullerton during examination. Mr Fullerton admitted that Westside obtained indirect benefits from the gifts of lunch and travel in the form of work onsite at NMHS.
- [297] Mr Alexander took Mr Fullerton and Mr Mulligan to lunch once a week for the period 2013 to 2015 to one of the two or three restaurants Mr Fullerton favoured. Mr Alexander was asked about payment for the lunches:
- How did you come to understand that you were expected to pay for the lunches?--He told me, "Put it on my bill."*
- What did he mean, "Put it on my bill"? Which bill?---His monthly bill, his monthly invoice that I would put into him.*
- What were the average costs of these lunches?---Getting towards \$500. It progressed up to, you know, mainly the most expensive wine he could find on the menu.<sup>71</sup>*
- [298] The 'monthly bill' to which Mr Alexander referred was the invoice PA Projects presented to NMHS every month under the terms of their engagement with NMHS.

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<sup>71</sup> G R Alexander transcript, private examination, 18 October 2017, p 34.

**North Metropolitan Health Service invoiced for part of Mr Fullerton's house renovation**

- [299] Mr Fullerton asked Mr Alexander to project manage the renovation of his mother's private residence in High Wycombe and then to project manage a full scale renovation of his private residence at Glen Forrest. The building works commenced in High Wycombe in October 2014 and in Glen Forrest in January 2015.
- [300] Mrs N Fullerton paid significant renovation cost invoices that originated from contractors Howzat and Fox for work completed on Mr Fullerton's private residence.
- [301] Mr Fullerton admitted he had arranged with the Project Manager, Mr Alexander, for the building contractors who had renovated his private residence to be awarded NMHS projects. The same contractors also carried out works on Mrs N Fullerton's private residence, although Mr Fullerton did not admit NMHS projects were awarded solely in response to those renovations.
- [302] Mr Alexander made the tender award recommendations to Mr Fullerton and arranged the payment terms for the contractors renovating the house, with one exception. Three contractors used this mechanism to covertly invoice NMHS for a portion of this cost. These contractors were Howzat, Fox and PA Projects.
- [303] The one exception was IT Communications. Mr Fullerton directly contracted Mr T Wood's company to perform work on the house renovation. Mr T Wood benefited through direct engagement by Mr Fullerton to undertake works at NMHS sites. The Commission has found no evidence to suggest Mr T Wood inflated invoices submitted to NMHS for payment to reflect work completed on the house renovation.
- [304] Mr Fullerton admitted that Fox and PA Projects were fraudulently invoicing NMHS for house renovation services but did not admit the invoicing 'fattening' arrangement was in place for the work undertaken on his private residence by Howzat. However, the Commission is satisfied that the arrangement was in place for all three contractors and was both known to, and facilitated by, Mr Fullerton at the time it was occurring.
- [305] Mr Howard and Mr Alexander admitted to the corrupt relationship between the engagement of Howzat at Mr Fullerton's private residence and the work obtained by Howzat at NMHS until December 2016. These witnesses admitted falsifying invoices submitted to NMHS for the benefit of Mr Fullerton.

- [306] Mr Howard and Mr P Wood have each independently produced a contemporaneous, handwritten ledger detailing the corrupt benefits received by each company. Mr Fullerton personally authorised some of the Howzat invoices for payment by NMHS.
- [307] Given the procurement processes in place at WA Health, the arrangement for NMHS to be invoiced for a portion of Mr Fullerton's private residence work required the award of some NMHS projects to be 'fixed' for the benefit of Howzat and Fox.
- [308] This was done by Mr Fullerton through a conduit. Mr Fullerton directly engaged PA Projects to provide project management services at NMHS. Mr Alexander of PA Projects arranged for Howzat and Fox to tender through the direct quotation system for particular projects. Mr Alexander ensured that Howzat and Fox were the lowest quote on price. Mr Alexander then negotiated the individual quotes and invoices submitted by Fox and Howzat by meeting with Mr P Wood and Mr Howard individually on a regular basis.
- [309] Mr Alexander documented the recommendation to Mr Fullerton that the engagement of preferred contractors Howzat or Fox was approved. This sometimes did not occur until well after the project commenced.
- [310] Negotiations between Mr Alexander and Fox or Howzat included an allocation of funds within the invoice that was in addition to the usual builder's margin and for the purpose of crediting against the price of Mr Fullerton's house renovation. Mr Howard stated "Yeah, he would tell me exactly what - what that [invoice] should be and what we then cut off - taken off John's bill at [address]".<sup>72</sup>
- [311] Mr Howard and Mr P Wood kept detailed ledger records of the invoice numbers, amounts and the percentage that was to be credited against the house renovation cost. Mr Alexander's evidence was that he showed Mr Fullerton the Fox retention spreadsheet.
- [312] The entire house renovation cost was not paid through invoicing NMHS. A portion of the cost of Mr Alexander's services were charged to and paid for by Mrs N Fullerton early in 2015. These charges included a \$15,000 payment for management of the architectural design phase and obtaining the development approval. Further payments were made by Mrs N Fullerton to Mr Alexander in cash.

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<sup>72</sup> L G Howard transcript, private examination, 31 January 2018, p 10.

[313] Mr Alexander, at Mr Fullerton's direction, also accounted for his time and services project managing the renovation by fraudulently invoicing NMHS covertly through ordinary monthly invoices submitted to Mr Fullerton for payment approval.

[314] It was Mr Alexander's opinion that Mr Fullerton did not care what the final cost would be for Mr Alexander to project manage the house renovation to completion. Mr Alexander told the Commission "His expectation was that he just wanted the project at the end. He didn't care how it was - how it was managed to get it there".<sup>73</sup>

[315] Mr Alexander discussed with Mr Fullerton which specific NMHS invoices he should use to add the cost of project managing the house renovation. The discussions took place in Mr Fullerton's office and Mr Alexander would present him with draft invoices for approval or amendment to hide the extra payment:

*What did he say about that to you?---We agreed what each of the projects I was putting them against he was happy with.*

*How was it that you came to choose particular projects? What was it about the project that enabled you to put on that bit of fat?---If it was a project that John had given me directly, and that he was directly looking after, and that was a lot of what I call planning projects, then the hours are a little vague on those, it's unknown, they're not allocated a set amount of hours, whereas a building contract has a set amount of hours that you can quantify; so these were easier to add an hour here or an hour there.<sup>74</sup>*

[316] As an example, on an invoice of \$1,200 relevant to the Hollywood Private Hospital consultant access walkway, Mr Alexander and Mr Fullerton may have allocated \$300 as credit towards Mr Alexander's project management of the house renovation. Once a particular project was chosen as one that could easily hide the extra payments, Mr Alexander then tended to use it each month as a vehicle to fraudulently invoice NMHS for the house renovation project management.

[317] PA Projects paid for Mr and Mrs J Fullerton's removal costs to move out of the private residence while construction was occurring and to move back in at Christmas 2015. In addition, Mr and Mrs Alexander offered the use of their Dawesville property as a residence for six months, rent free.

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<sup>73</sup> G R Alexander transcript, private examination, 19 October 2017, p 15.

<sup>74</sup> G R Alexander transcript, private examination, 19 October 2017, p 9.

- [318] Mr Alexander played a central role in securing the arrangement for payment of the house renovation on Mr Fullerton's behalf. Mr Alexander agreed to be the conduit for Mr Fullerton to ensure favoured contractors received their reward of work at NMHS in lieu of the personal benefits given to him.
- [319] The Commission does not suggest that Mrs N Fullerton was aware of the arrangement to invoice NMHS covertly for further renovation costs. There is no evidence of wrongdoing on her part.

### **Awarding contracts**

- [320] The 'fixing' of contracts at NMHS was for the purpose of ensuring Howzat, and later Fox, had the opportunity to invoice NMHS during the house renovations. Where it was for the benefit of Fox, the arrangements were made by Mr P Wood contacting the principals of Latitude, Swan and Aurora:

*How did you put the proposition to him, what was said?---I basically said are you interested in doing some work in at um- North Metro Health is the – there's a potential for some work and stuff like that, but I need to get a cover quote on a couple of projects for – that I'm doing for Grant Alexander.<sup>75</sup>*

- [321] Mr Fullerton kept close oversight of the activity on particular projects through weekly meetings with the project managers and campus managers. These meetings took place in his office and projects were routinely tracked using spreadsheets maintained by Mr Fullerton's personal assistant and by Mr Alexander. Mr Fullerton was aware of contractors allocated to do particular projects, or he had the means to inform himself.
- [322] The project managers directly engaged by Mr Fullerton provided him with a buffer so that the corrupt procurement decisions had the appearance of occurring 'at arms' length'.
- [323] There was a direct correlation between the work performed on Mr Fullerton's house renovation and the award of projects at NMHS. Contractors who performed work on Mr Fullerton's house renovation were rewarded with significant and lucrative work at NMHS.
- [324] A poor result onsite at the house renovation equally translated into a diminution of work at NMHS. Mr Howard was the initial building contractor onsite at Mr Fullerton's private residence. Mr Alexander had weekly meetings with Mr Howard in his role as project manager for the house renovation. Mr Alexander told the Commission that he had to take

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<sup>75</sup> P S Wood transcript, private examination, 30 January 2018, p 16.

Mr Howard to task over his performance on Mr Fullerton's house renovation site:

*The costs were escalating on the works that Liam [Howard] was undertaking, and there seemed to be not a great deal of progress at that time, so the questions were around why it was being delayed. I would say that, you know, John's gone out of his way to help you with projects, and yet you're not completing what we have asked you to do here.*<sup>76</sup>

[325] In August 2015, Mr Howard was replaced by Fox for the renovation. Mr Howard saw an immediate drop in the work he received from NMHS. Mr Alexander stated he had a conversation with Mr Howard during which he said, "You've got no chance of getting future work on the sites. At this stage I'll put your name up but, you know, you've got no chance. You need to look elsewhere".<sup>77</sup> Mr Howard had failed to deliver the house renovation targets in a timely manner. Mr Fullerton influenced the work he achieved at NMHS sites to Mr Howard's benefit and detriment.

[326] The contractors Howzat and Fox told the Commission that while they did not directly discuss the arrangement with Mr Fullerton, they were aware that the practice of falsely invoicing NMHS was for the end benefit of Mr Fullerton:

*And did you understand that that was not a legal basis for you to be paid?--- Absolutely, yes.*

*That North Metro had nothing to do with Mr Fullerton's house?---Yes.*

...

*[I was] Being put in a position where I'm being asked by somebody who holds the – the – the purse strings, for want of a better description, of North Metro Health and - - -*

...

*Grant Alexander was one of the people who was, as far as I was concerned, John Fullerton's representative.*<sup>78</sup>

[327] Mr Fullerton approved the award of a NMHS procurement project to a particular building contractor, held the financial delegation to authorise payment and had oversight of the NMHS building facilities management program as a whole. It was Mr Fullerton who financially benefited from invoicing NMHS for the discount on his house renovation.

[328] Mr Fullerton often awarded multiple small procurement projects under the \$25,000 threshold. QED, Westside and IT Communications gave

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<sup>76</sup> G R Alexander transcript, private examination, 18 October 2017, p 8.

<sup>77</sup> G R Alexander transcript, private examination, 20 October 2017, p 18.

<sup>78</sup> P S Wood transcript, private examination, 30 January 2018, p 20.

evidence that Mr Fullerton directly engaged their services. The projects above that financial threshold were awarded through a process controlled by contracted project managers, PA Projects (Mr Alexander) and Gowdie (Ms Bell).

[329] In effect, the allocation of work at NMHS was tightly controlled by Mr Fullerton and two others. Mr Alexander stated that in a particular project, Mr Fullerton made it known who he wanted to be the head contractor "John would say that he wanted this person to do the air conditioning and this person to do the fire ...".<sup>79</sup>

[330] Mr Ensor gave evidence that Mr Fullerton made it known that the Project Managers, such as Mr Alexander and Ms Bell were to be used to assist in the allocation of project work:

*What role did Mr John Fullerton have in ensuring that particular contractors were given projects by you, if any role?---His role in - - -*

*Yes?---Um - - -*

*Did he take any interest in who you appointed as a direct source?---Ah, the bigger projects or the smaller projects?*

*Any projects?---Ah, yes, certainly the – the – what we call capital projects, yes.*

*And how would he express his interest, or how would he engage with you about that?---Ah, he would let me know that he has got certain sub-consultants or specialty consultants on board to get this underway.<sup>80</sup>*

[331] When Mr Ensor was asked directly what involvement Mr Fullerton had in awarding particular contracts for fit-out work to particular contractors, he stated "he would approve the process",<sup>81</sup> however, he did not direct Mr Ensor to use any particular contractor. Rather, a project would be handed over to Mr Ensor as a project sponsor after a decision had been made by Mr Fullerton as to the allocation of the work to a particular contractor.

*Now, if Mr Fullerton had told the Commission that the campus project managers, meaning yourself and Mr de Sousa, were responsible for dealing with Howzat or dealing with Fox on site at North Metro, for contracting them in particular, what would you say to that allegation?---Um, we had responsibilities for making sure that they were signed on, ah, the – the appropriate work permits, the – the detail with contractors coming on and off site. Um - - -*

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<sup>79</sup> G R Alexander transcript, private examination, 19 October 2017, pp 20-21.

<sup>80</sup> S R Ensor transcript, private examination, 30 May 2018, p 10.

<sup>81</sup> S R Ensor transcript, private examination, 30 May 2018, p 11.

*But in terms of actually being the decision maker to get them on site, did you have a role in that?---No, not always. Ah, quite often that was - particularly in the first 18 months I was there, that was often already done when it was handed to either Douglas or myself.<sup>82</sup>*

[332] Tenders of the value awarded were usually evaluated and ranked solely on price with the lowest price applicant tenderer being awarded the contract. The 'fix' was arranged in one of two ways; either other contractors provided a 'dummy quote' on the basis that they would get a 'winning' turn in a similar fix in the future; or other contractors were informed of the cost of the 'winner's' quoted price so they could ensure their quote was slightly higher.

[333] It was also essential to the corrupt arrangement that the invoices presented for payment by the contractors were paid without question. Mr Fullerton either directed his campus managers to authorise payment or he directly authorised the payment:

*Did Mr Fullerton ever instruct you to pay certain invoices or did he get involved in that approval process for your - - - ?---He would – he would certainly - - -*

*- - - projects?--- - - - um, he would – I got taken to task a number of times because some invoices were outstanding for a long period of time.<sup>83</sup>*

[334] Mr Fullerton kept close scrutiny of payment of contractor invoices. Mr Ensor stated that Mr Fullerton would become aware of outstanding payments due to contractors in several ways: invoicing was discussed during weekly meetings with Mr Fullerton, Mr Alexander and campus managers; the invoices were directed straight to Mr Fullerton for authorisation; Mr Ensor verbally sought reassurance from Mr Fullerton that particular invoices should be paid.

[335] By way of example, in an email from Mr Fullerton to Mr Ensor and Mr Simon Marsh, sent 7 December 2016, Mr Fullerton stated 'Boys I gave you both the outstanding accounts statement from Gowrie [sic] at least three weeks ago and look they are still on the attached statement why is this taking so long???'.<sup>84</sup>

[336] The usual practice was for invoices presented by contractors for payment approval, to be approved by the person who had engaged the contractor. Mr Ensor stated "If I engaged him, I would've approved those [invoices]".<sup>85</sup>

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<sup>82</sup> S R Ensor transcript, private examination, 30 May 2018, pp 57-58.

<sup>83</sup> S R Ensor transcript, private examination, 30 May 2018, p 17.

<sup>84</sup> Email from J B Fullerton to S Marsh and S R Ensor, 7 December 2016, 'FW: NMHS Statement' attaching GMG NMRH statement 061216.

<sup>85</sup> S R Ensor transcript, private examination, 30 May 2018, p 19.

### Cash payments

- [337] Mr Alexander paid Mr Fullerton \$1,300 on five occasions between May and September 2016. In addition, the Commission was told that Mr Alexander paid Mr Fullerton a cash sum of \$200 on two occasions. Once was on a trip to Melbourne in 2014, the other was in Perth in mid-2015. Mr Fullerton denied the receipt of cash.
- [338] Mr Fullerton did not reimburse Mr Alexander. The arrangement was that Mr Fullerton's personal expenses in any form were to be recouped by PA Projects invoicing NMHS.

### Travel

- [339] Mr Fullerton was given significant gifts of travel including accommodation, flights and meals over a considerable period of time, 2007 to 2016. The earliest travel was in 2007 when Westside paid for Mr and Mrs J Fullerton to travel to the US.
- [340] Mr Fullerton was provided with gifts of travel by Mr T Wood of IT Communications, Mr Delavale from One Fire, Mr Tremain from QED, Mr Williams of Westside and Mr Alexander of PA Projects.
- [341] Mr Alexander commenced paying for travel for Mr Fullerton in March 2013 when he told Mr Fullerton he was going to Melbourne for a business trip and Mr Fullerton said "I'm coming along"<sup>86</sup> at the last minute. Mr Alexander subsequently paid for flights, accommodation and meals for Mr Fullerton during interstate travel on seven occasions between March 2013 and February 2016.
- [342] Mr Fullerton maintained that some trips paid for by Mr Alexander were business trips that "I should've put it through the hospital".<sup>87</sup> This was despite the fact that Mr Fullerton had taken annual leave to travel. For other trips paid for by Mr Alexander, Mr Fullerton admitted the reason for travel was "Just went away - we just got away for a couple of days".<sup>88</sup>
- [343] Mr Fullerton was asked why a contractor would pay for numerous trips on his behalf. He replied "Because obviously he thought he'd get more work out of it".<sup>89</sup>
- [344] Mr Alexander stated he inflated his NMHS invoices to accommodate the travel costs for Mr Mulligan and Mr Fullerton but not for any other public

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<sup>86</sup> G R Alexander transcript, private examination, 19 October 2017, p 23.

<sup>87</sup> J B Fullerton transcript, private examination, 3 April 2018, p 39.

<sup>88</sup> J B Fullerton transcript, private examination, 3 April 2018, p 41.

<sup>89</sup> J B Fullerton transcript, private examination, 3 April 2018, p 44.

officer because he "wasn't asked to".<sup>90</sup> After the initial trip in 2013, Mr Alexander asked Mr Fullerton how he was to get reimbursed for the cost of the travel. Mr Fullerton replied "Add it to these invoices".<sup>91</sup> Mr Fullerton then assisted him to allocate the cost to particular current NMHS projects. Usually, it was allocated over several projects and under Mr Fullerton's direction, and never appeared as an itemised line on an invoice to NMHS. Mr Fullerton agreed he told Mr Alexander to invoice NMHS for the travel because "it was easier".<sup>92</sup> He also agreed the invoice on its face would not show an allocation of costs for travel.

- [345] Mr Fullerton conceded he went through the invoices presented by Mr Alexander and 'checked the hours'. He used the project spreadsheet and discussed each project with Mr Alexander. Asked if the WA Health system ever queried any invoices he approved for payment, he stated "Not as far as I'm aware".<sup>93</sup>
- [346] Over time, Mr Alexander started using the same method to invoice NMHS for his own travel costs in addition to Mr Fullerton and Mr Mulligan's trips. He acknowledged the interstate trips were not related to work he was performing at NMHS.
- [347] Similarly to Mr Delavale and Mr Tremain's evidence, Mr Alexander stated that usually he was going interstate for work and Mr Fullerton decided to tag along.
- [348] Mr T Wood paid for travel for Mr Fullerton and his wife on two occasions, once in 2009 and once in 2010.
- [349] Mr Delavale paid for travel to Melbourne once a year for five years. QED paid for flights to Melbourne in 2012 and for meals in Melbourne.
- [350] QED and Westside both paid for international trips. Mr Fullerton admitted this travel. Westside paid for a trip to Melbourne once a year from 2012 to 2016. Mr Fullerton admitted this was usually to attend the football and on occasion, they travelled business class and Mrs J Fullerton attended.
- [351] In response to being asked why Mr Williams paid for Mrs J Fullerton to travel, Mr Fullerton stated "No idea. He was just generous".<sup>94</sup> When asked why Mr Tremain would pay for business class tickets to the UK for

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<sup>90</sup> G R Alexander transcript, private examination, 18 October 2017, p 11.

<sup>91</sup> G R Alexander transcript, private examination, 19 October 2017, p 26.

<sup>92</sup> J B Fullerton transcript, private examination, 3 April 2018, pp 58-59

<sup>93</sup> J B Fullerton transcript, private examination, 4 April 2018, p 4.

<sup>94</sup> J B Fullerton transcript, private examination, 3 April 2018, p 9.

Mr Fullerton and his wife, Mr Fullerton stated "He probably wanted to get more work".<sup>95</sup>

[352] Mr Fullerton conceded during examination that on numerous occasions since 2005, Westside paid for flights and accommodation for himself, and on occasion his wife, for both international and domestic travel. However, Mr Fullerton was unable to recall the number of trips.

[353] The Commission estimates that in the period 2012 to 2016 inclusive, Mr Fullerton was being flown to Melbourne by a NMHS contractor on average approximately once every two months.

### **The motivation to accede to Mr Fullerton's corrupt requests**

[354] Mr Fullerton's requests were agreed to and acted upon by contractors because it ensured they received constant work from NMHS. Mr Fullerton was courted by the contractors because he had the ability to award the WA Health work at NMHS.

[355] Mr P Wood:

*Now why did you feel loyalty to Mr Fullerton?---The building industry, we develop very close relationships with some clients.*

...

*Um, it's – it's very difficult to get into that sort of situation, um, and very easy to be kicked out of that situation, so.*

*What was it about Mr Fullerton's position at North Metro that meant that it was important for you to maintain that relationship with him?---He was the man who made things happen at North Metro.<sup>96</sup>*

[356] Mr Alexander conceded that he also acted from greed:

*Why did you agree to it?---Looking back on it, just being greedy and wanting to continue on working.*

*So what did you see you were going to get in return for giving him this?---Just the extra work; just the continuation of work, continuity of work.<sup>97</sup>*

[357] Mr Howard of Howzat told the Commission he was not surprised when he was asked to invoice NMHS for Mr Fullerton's house renovation:

*Why weren't you surprised?---Probably because of what I'd heard around the traps of how things got done and stuff around the hospital.*

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<sup>95</sup> J B Fullerton transcript, private examination, 3 April 2018, p 33.

<sup>96</sup> P S Wood transcript, private examination, 30 January 2018, pp 9-10.

<sup>97</sup> G R Alexander transcript, private examination, 20 October 2017, p 22.

*What had you heard?---Well, that just to get the jobs and to get that you had to come and, you know, get on board with what they were wanting to do, so.*

*What specific things were you told you would have to do to get on board?---Well, it's just I think – I mean, John would certainly get taken out for a lot of lunches and dinners and, you know, certainly get looked after by trades throughout, so I wasn't surprised that this was part of, I don't know, getting on to – get an opportunity to work there, that you had to, you know, play by those sort of rules.<sup>98</sup>*

[358] And later, Mr Howard explained why he felt obligated to 'get on board':

*So why is it that you felt like you had to go along with that arrangement to pay him?---Well, I suppose it's – I moved over from Victoria. Um, I didn't have a big network of – and it wasn't really like there was a whole lot of work around, so this was an opportunity for me and it was a great opportunity to keep sustained – a sustained amount of work and a big work flow going. I had a small team but it was – yeah, it was a really good opportunity for me to do some work.<sup>99</sup>*

[359] Mr Delavale of One Fire conceded the gifts were to ensure Mr Fullerton gave work to his company:

*Well, if you saw that there was work to be given out - - - ?---Mm'hm.*

*- - - and you were performing, why did you feel that you had to give him a gift of travel?---Never felt like I had to give him a gift, I always just felt, um, as I said, thought it would strengthen the relationships when – if - you know, if there was a – if there was a opportunity there.*

*So another way of describing it, Mr Delavale, is as a bribe, would you agree with that?---No, I never tried to bribe John – John Fullerton.*

*Well, you were paying thousands of dollars, in effect, for his travel, correct, since 2009 and they're the ones that we've looked at so far. Is that correct, thousands of dollars of travel?---Correct.*

*...*

*You say you did that without any expectation of getting repaid?---Yes.*

*You only got repaid on one occasion? You're nodding again?---I did, yes.*

*And you did it so that you would get more work at North Metro Health, because you knew there was work to be given out, correct?---Correct.*

*And Mr Fullerton was the one who made the decision who would get the work at North Metro, wasn't he?---On most occasions.*

*I suggest to you, Mr Delavale, that it was a bribe?---No.<sup>100</sup>*

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<sup>98</sup> L G Howard transcript, private examination, 31 January 2018, pp 12-13.

<sup>99</sup> L G Howard transcript, private examination, 31 January 2018, p 16.

<sup>100</sup> G N Delavale transcript, private examination, 29 May 2018, p 34.

## Recommendations

- [360] A statutory purpose of the Commission is to improve continuously, the integrity of and reduce the incidence of misconduct in the public sector.<sup>101</sup>
- [361] The Commission has power to form an opinion that serious misconduct has occurred.<sup>102</sup>
- [362] The Commission gathers information from many sources including examinations. A statement made by a witness to a question the Commission requires the witness to answer is not admissible in evidence against the person making the statement in any criminal proceedings.<sup>103</sup>
- [363] The Commission is not a prosecuting authority nor does it have a role in investigating crimes except insofar as they may be evidence of serious misconduct.
- [364] The Commission may assemble and furnish to a relevant authority, evidence which may be admissible in the prosecution of a person for a criminal offence.<sup>104</sup>
- [365] The Commission recommends that a relevant authority gives consideration to the prosecution of Mr Fullerton for corruption in public office<sup>105</sup> or any other offence that may be disclosed.
- [366] The Commission recommends that prosecution be considered for such offences as may be disclosed by admissible evidence after further investigation.
- [367] The contractors for whom prosecution might be considered include:
- Mr Philip Wood
  - Ms Natalie Bell
  - Mr Anthony Wood
  - Mr Anthony Williams
  - Mr Wayne Robinson
  - Mr Garth Delavale
  - Mr Ian Tremain

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<sup>101</sup> CCM Act s 7.

<sup>102</sup> CCM Act s 22.

<sup>103</sup> CCM Act s 145.

<sup>104</sup> CCM Act s 18(2)(h).

<sup>105</sup> *Criminal Code* s 83.

- Mr Liam Howard
- Mr Shane Cary
- Mr Blaise Paris

[368] A recommendation made by the Commission is not a finding, and is not to be taken as a finding, that a person has committed or is guilty of a criminal offence or has engaged in conduct that constitutes or provides grounds on which that person's tenure of office, contract of employment, or agreement for the provision of services, is, or may be, terminated.<sup>106</sup>

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<sup>106</sup> CCM Act s 43(6).

## CHAPTER NINE

### Mr Mulligan's conduct and others: Opinions and recommendations

#### Central allegations

[369] Towards the end of 2015, Mr Mulligan created projects at NMHS for which he had direct responsibility. Mr Mulligan started arranging for particular contractors to win tenders in order to cover the cash paid to him directly by Mr Alexander as well as the lunches and the travel paid by contractors for Mr Mulligan's benefit.

[370] Like Mr Fullerton, Mr Mulligan was the beneficiary of numerous long lunches paid for by contractors to NMHS. Under examination, Mr Mulligan was initially reticent to admit the scale of the hospitality extended to him over many years. When asked about gifts of hospitality offered to him in his official role, he volunteered bottles of wine, barbeque packs and coffee meetings paid for by contractors.

[371] Mr Mulligan contracted external project managers for flexibility with specific construction projects rather than employing staff project managers. One of these was Mr Alexander. Mr Mulligan stated:

*... he had ... a good working knowledge of the site from his time at Aurora, was about 50 per cent of the market rate and was already well-connected and able to generate outcomes a whole lot quicker than any kind of new consultant on site.<sup>107</sup>*

[372] Mr Mulligan initially employed Mr Alexander on a six month contract for a fixed sum of \$20,000 per calendar month. Mr Mulligan shared Mr Alexander's services with Mr Fullerton from the beginning of his tenure and as was the situation with Mr Fullerton, Mr Mulligan sat down regularly with Mr Alexander to go through his invoices. This extended to allocating PA Projects' fees to particular projects. Mr Mulligan told the Commission that he would "split up time and apportion it to other projects"<sup>108</sup> where necessary:

*Did you discuss with John Fullerton how Mr Alexander was progressing?---Yeah. Yeah, we often had a conversation about the pros and cons of Grant versus other project managers that we had.*

*To your knowledge, did Mr Alexander have weekly reporting meetings with Mr Fullerton?---Mm'hm.*

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<sup>107</sup> D L Mulligan transcript, private examination, 10 April 2018, p 20.

<sup>108</sup> D L Mulligan transcript, private examination, 10 April 2018, p 24.

*Was that a yes?---Yes. Yes, that is a definite yes.*

*How do you know that?---Because John was in the office next to me and Grant would be in there very frequently.<sup>109</sup>*

## **Travel**

- [373] Mr Mulligan admitted that Mr Alexander paid for his flights, accommodation and meals for the purposes of travel to Melbourne and Brisbane. Mr Mulligan said these were paid 'in a kind of convenient sense' for which Mr Mulligan initially told the Commission he repaid him in cash. Mr Mulligan soon recanted this evidence and stated that from 2012 or 2013, he and Mr Alexander came to a position where Mr Alexander would invoice WA Health for Mr Mulligan's travel costs.
- [374] Mr Alexander paid for Mr Mulligan's travel to Melbourne for three or four days each on eight occasions. The trips occurred in March, July and November 2013; August 2014; February, July, September and October 2015. In March 2014, Mr Mulligan was flown by Mr Alexander to Brisbane. Mr Fullerton accompanied Mr Alexander and Mr Mulligan on the majority of these trips.
- [375] On one trip, Mr Alexander paid for Mr Mulligan's partner to accompany them to Melbourne. This was invoiced to NMHS.
- [376] In 2015, Mr Alexander paid for Mr Mulligan to travel on an all-expenses paid trip to the UK with himself, Mr Tremain and Mr Howard. Mr Mulligan accepted he had all his flights, accommodation and some meals paid for and that Mr Alexander recouped this cost by invoicing NMHS. Mr Mulligan accepted it was likely that he and Mr Alexander, prior to the trip occurring, discussed the invoices that could be padded out to absorb the cost.
- [377] Mr Mulligan was very vague about the purposes of each trip. For example, when asked about the purpose for the November 2013 trip, Mr Mulligan replied "he could not recall".<sup>110</sup> Other trips he claimed were ostensibly for the purposes of business, but he never asked WA Health to pay the travel costs. Later, Mr Mulligan maintained that each trip had a similar purpose which was to seek external financiers and providers of hospital services. The Commission prefers the evidence of Mr Alexander that he had no NMHS business in Melbourne and that Mr Mulligan and Mr Fullerton "tagged along for the ride".<sup>111</sup> Should the trip have been for legitimate NMHS business reasons, then an application for NMHS to fund

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<sup>109</sup> D L Mulligan transcript, private examination, 10 April 2018, pp 24-25.

<sup>110</sup> D L Mulligan transcript, private examination, 10 April 2018, p 38.

<sup>111</sup> D L Mulligan transcript, private examination, 10 April 2018, p 57.

the trip should have been made. No such application was made by Mr Mulligan, Mr Fullerton or anyone on their behalf.

- [378] The trip to the UK in 2015 was inspired by Mr Mulligan's chairmanship of the Steering Committee of the Graylands redevelopment. A company in the UK specialised in mental health hospital design anti-ligature windows. However, Mr Mulligan never sought NMHS funding for the trip:

*And before you left for the trip did you seek approval from your chief executive for Health to pay for it?---No.*

*Why not?---I guess because it was going to get done this way.*

*Was it also because you knew it wasn't a legitimate work trip?---Well, it was a legitimate work trip, however, not a legitimately approved one, yes.<sup>112</sup>*

- [379] The Commission prefers the view that the trip to the UK was primarily for leisure, and that the visit to the anti-ligature manufacturer was a pretext. Meeting the manufacturer occurred over one day only. Mr Mulligan took annual leave to travel to the UK and he failed to make an application for NMHS funding in order to undertake travel.

- [380] Mr Mulligan accepted that he fraudulently used the invoicing process set up with PA Projects to invoice NMHS for the travel paid for by Mr Alexander "I would imagine that I would've been invoiced for those costs subsequently ... Through Grant's invoicing process".<sup>113</sup> Mr Mulligan explained that 'Grant's invoicing process' was the system by which Mr Alexander 'padded out' invoices to pay for travel. The travel was not itemised on the invoice and WA Health would have been unaware that travel was included in the approved total for payment.

- [381] Despite not seeking the NMHS Chief Executive's approval to travel, or putting in an application form for WA Health funding and taking annual leave at the relevant time, Mr Mulligan gave evidence that the trips were business trips and legitimately claimed back by PA Projects. The Commission rejects this evidence as to the purpose of the travel and prefers the view that the travel was for private purposes unrelated to NMHS/WA Health work. All legitimate international travel required the approval of the Minister.

- [382] The trips to Melbourne were funded primarily by Mr Alexander's payment of the flights and accommodation. This totalled over \$16,000. However, other NMHS contractors provided benefits in the form of entertainment and meals. During October 2015, Mr Howard provided

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<sup>112</sup> D L Mulligan transcript, private examination, 10 April 2018, pp 61-62.

<sup>113</sup> D L Mulligan transcript, private examination, 10 April 2018, p 42.

tickets to the AFL Grand Final and tickets to a Grand Final charity breakfast.

[383] Within three weeks of this trip, Mr Mulligan was funded by Mr Alexander to return to Melbourne to attend the Spring Racing Carnival.

[384] Mr Mulligan told the Commission that in addition to instructing Mr Alexander to recover the travel costs by adding to the hourly rate on his NMHS invoices, he was also aware that Mr Fullerton was recovering travel costs in a similar fashion through Mr Alexander's fraudulent invoicing.

### **Lunches**

[385] Mr Mulligan stated he attended lunches paid for by Mr Alexander at venues that included Galileo Buona Cucina, Coco's Restaurant and Matilda Bay Restaurant. Mr Fullerton was often present.

[386] Through Mr Robinson, Swan paid for entertainment and hospitality for Mr Mulligan together with another NMHS contractor. One such occasion included a visit to a karaoke bar in Northbridge with paid hostesses. Mr Robinson paid half of the \$1,400 bill, with the other contractor paying the other half. On occasions, Mr Mulligan attended a Swan Melbourne Cup event, a cricket match and the West Coast Eagles season launch.

[387] Soon after wining and dining Mr Mulligan, Swan was granted contracts to perform work at NMHS. Mr Mulligan provided recommendations to assist them to win this work.

### **Cash**

[388] Mr Mulligan admitted he was given cash by Mr Alexander, in a total sum of approximately \$10,000 during 2016, commencing in May of that year. It was explained to the Commission as an act of good will by Mr Alexander:

*... well, he knew what the state I was in and how I was mentally and emotionally at the time, knew that I was financially in strife, clearly I wasn't in a very good space but, yeah, and so, yeah, he suggested that he could provide - -*<sup>114</sup>

[389] Mr Mulligan did not repay Mr Alexander. These payments were bribes.

[390] Mr Alexander gave evidence that Mr Mulligan solicited corrupt cash payments of thousands of dollars between May and December 2016, which Mr Alexander calculated was a total sum of \$19,500.

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<sup>114</sup> D L Mulligan transcript, private examination, 11 April 2018, p 27.

[391] Mr Mulligan knew that the money was originating from NMHS by Mr Alexander invoicing enough to cover the payments. He said "I assume [he is] billing Health" and "Because that's what he said he was going to do".<sup>115</sup> Mr Mulligan approved invoices attached to certain projects, knowing that those invoices contained a component that was to reimburse Mr Alexander for the cash payments. As an example, Mr Mulligan directed Mr Alexander to inflate an NMHS invoice to cover the corrupt cash payments he received for the SCGH Telecommunications: PABX Cutover Technical Support project.

## Recommendations

- [392] The Commission recommends that a relevant authority gives consideration to the prosecution of Mr Mulligan for corruption in public office<sup>116</sup> or such other offence as may be disclosed.
- [393] The Commission recommends consideration be given to the prosecution of the contractors named in this report as providing financial benefits to Mr Mulligan in return for favourable treatment, with the exception of Mr Alexander, or any other offence disclosed by admissible evidence.
- [394] A recommendation made by the Commission is not a finding, and is not to be taken as a finding, that a person has committed or is guilty of a criminal offence or has engaged in conduct that constitutes or provides grounds on which that person's tenure of office, contract of employment, or agreement for the provision of services, is, or may be, terminated.<sup>117</sup>

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<sup>115</sup> D L Mulligan transcript, private examination, 11 April 2018, p 28.

<sup>116</sup> *Criminal Code* s 83.

<sup>117</sup> CCM Act s 43(6).

## CHAPTER TEN

### Mr Ensor's conduct and others: Opinions and recommendations

#### Central allegation

- [395] Mr Ensor accepted multiple invitations of hospitality from NMHS contractors, though primarily from Ms Bell at Gowdie. Invitations to lunch and other social events were accepted in circumstances where Mr Ensor was in a position to grant the contractors work onsite at NMHS campuses, and authorise their invoices for payment.
- [396] Mr Ensor agreed he had been taken to lunch by NMHS contractors on numerous occasions and that he had responsibility for awarding those contractors work at NMHS.
- [397] Mr Ensor conceded that in retrospect, the purpose of the gifts of hospitality was to 'groom' him into a position where he would potentially favour the contractor in relation to the allocation of work "Did you ever get a sense, Mr Ensor, that the meals and drinks paid for by contractors or participated in by contractors were a way of grooming you - - - ? --- Influence me? - - - as a public officer?---Um, I certainly do now".<sup>118</sup>
- [398] Mr Ensor's experience provided a clear example of the purpose behind the existence of the WA Health policy on gifts and declarations of conflicts of interest. The purpose is to avoid situations where a WA Health employee is willingly or unwillingly placed in a situation where they appear to favour one contractor over another on the basis of having received a personal benefit.
- [399] During the course of expensive lunches, it is likely that Mr Ensor discussed upcoming work and placed Gowdie competitively in an advantageous position to win work. Mr Ensor accepted this was likely the situation.
- [400] Accepting hospitality in the form of meals is contrary to the WA Health Code of Conduct. Acceptance of the gift placed Mr Ensor in a position of direct conflict of interest as a person involved in decision making regarding procurement, and specifically the retention and remuneration of Gowdie by NMHS.

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<sup>118</sup> S R Ensor transcript, private examination, 30 May 2018, p 48.

## Hospitality accepted from Gowdie Management Group Pty Ltd

[401] Ms Bell's initial invitation to take Mr Ensor to lunch on 20 March 2015 at the Sentinel Bar & Grill also included Mr Alexander. The final bill was \$589. Mr Ensor recalled:

*... I'd just started taking on projects, um, and that one would've been a relationship building lunch.*

*What do you mean by "relationship building"?---Well, ah, that's, um, so it was actually initiated by Grant, that – and that was to just talk, get used to dealing with people, um, basically it was to talk in a setting outside of the Health setting.<sup>119</sup>*

[402] Mr Ensor could not explain why it was necessary to meet outside 'the Health setting'.

[403] Over the next year, Ms Bell took Mr Ensor to lunch or drinks on two further occasions. However from mid-2016, Ms Bell started taking Mr Ensor to lunch or drinks two or three times a month. Thirteen of those occasions were lunches held at Il Lido Italian Canteen. Alcohol was consumed and these lunches lasted between two to four hours. Mr Ensor took the afternoon off work, but did not tell his personal assistant he was going out to lunch, preferring to say that he was 'gone for the day'.

[404] The hospitality extended to Mr Ensor by Ms Bell was bookmarked by decisions made by Mr Ensor regarding the engagement or payment of Gowdie for particular projects. For example:

- On 2 July 2015, Ms Bell took Mr Ensor for drinks at the Byrneleigh Hotel in Nedlands. Two days later, Mr Ensor asked Ms Bell to submit a fee proposal to manage a tender process for asbestos registers and management plans. Mr Ensor stated he did not consider asking any other person to project manage the tender process and he had discussed Ms Bell's appointment with Mr Fullerton. Mr Fullerton was aware of and approved of the request for a fee proposal from Gowdie. During this period, Ms Bell was also taking Mr Fullerton out to lunch.
- On 5 October 2016, Ms Bell and Mr Ensor had a morning meeting during which there was discussion about current projects, ongoing jobs and potential jobs for Gowdie at NMHS. Later that day, Ms Bell took Mr Ensor to Il Lido for lunch. The bill was \$316.
- On 7 December 2016, Ms Bell emailed Mr Ensor a fee proposal in relation to a proposed project known as 'the Butler Community Health Centre'. The proposal was for a fee to Gowdie of \$18,000 for

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<sup>119</sup> S R Ensor transcript, private examination, 30 May 2018, p 27-28.

the scope of works. Two weeks earlier, Ms Bell had taken Mr Ensor to Il Lido for lunch. One week after the email, Ms Bell had hosted another lunch at Il Lido.

- [405] These examples demonstrate the potential influence on procurement decisions made by Mr Ensor.

**Hospitality accepted from other North Metropolitan Health Service contractors**

- [406] Mr Ensor admitted he was taken out to lunch by NMHS contractors other than Gowdie. The Commission's inquiries are continuing in relation to Mr Ensor's evidence.

## **Recommendations**

- [407] The Commission would ordinarily recommend that NMHS investigate and consider disciplinary proceedings against Mr Ensor. Mr Ensor is no longer employed within WA Health.
- [408] The Commission recommends that a relevant authority give consideration to a prosecution of Mr Ensor and Ms Bell for corruption in public office<sup>120</sup> and bribery<sup>121</sup> or such other offences as may be disclosed.
- [409] A recommendation made by the Commission is not a finding, and is not to be taken as a finding, that a person has committed or is guilty of a criminal offence or has engaged in conduct that constitutes or provides grounds on which that person's tenure of office, contract of employment, or agreement for the provision of services, is, or may be, terminated.<sup>122</sup>

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<sup>120</sup> *Criminal Code* s 83.

<sup>121</sup> *Criminal Code* s 82.

<sup>122</sup> CCM Act s 43(6).

## CHAPTER ELEVEN

### Mr Alexander: No recommendation

- [410] Mr Alexander was a central figure in many of the corrupt acts uncovered by the Commission. He made or facilitated many corrupt payments and benefits to Mr Fullerton and Mr Mulligan.
- [411] Ordinarily, he would be the subject of a Commission recommendation that a prosecution authority consider action against him.
- [412] The reason why the Commission does not make any recommendation is on public interest grounds.
- [413] A course of corrupt conduct such as uncovered during this investigation is hard to unravel from the outside.
- [414] At a crucial stage in the investigation, Mr Alexander, under oath, exposed what had been occurring. He had kept detailed records which he supplied to the Commission.
- [415] An accomplice's evidence is rightly regarded with care and suspicion because of the obvious motive to lie by minimising their own role and shifting blame to others.
- [416] Mr Alexander was forthright in admitting his own behaviour.
- [417] More significantly, his testimony and the documentary evidence he provided was constantly corroborated by other witnesses and other evidence including in crucial aspects by Mr Fullerton and Mr Mulligan.
- [418] The Commission generally will investigate more complex cases, often beyond the capacity of an individual department.
- [419] Witnesses such as accomplices or those deep within a conspiracy are vital to uncovering the truth.
- [420] Evidence given on oath before the Commission must be truthful but is not (generally) admissible in a prosecution against the witness.
- [421] Mr Alexander's evidence was given on oath to provide him with that protection.
- [422] Mr Alexander may be seen on one view as being rewarded for his cooperation and indeed he is. But cooperation will not generally be a sufficient condition to avoiding a recommendation for consideration of a prosecution.

- [423] In future cases, there is a strong public interest in having a person in Mr Alexander's position voluntarily approach the Commission and offer assistance, despite their own possible involvement. A non-recommendation may be an incentive to do so.
- [424] However, it should be noted that the Commission will rarely require two such people. Being first may bring advantages.
- [425] That said, the Commission exercises no control over prosecutions. Only the Director of Public Prosecutions or Attorney General has power to grant an indemnity from prosecution.<sup>123</sup>

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<sup>123</sup> *Director of Public Prosecutions Act 1991* s 20 (c)(d).

## CONCLUSION

- [426] No matter what checks and balances are incorporated into policies and procedures, a manager, especially a senior manager, has to be trusted to a considerable extent to perform the role honestly.
- [427] The Commission has no particular recommendations to make to NMHS or to the public sector generally. The report speaks for itself.
- [428] WA Health has indicated to the Commission that a system-wide Integrity Working Group will report to the Director General on building capability in the area of integrity promotion and corruption prevention within all Health Service Providers.
- [429] Clearly, NMHS will have to improve its fraud prevention capability. The incoming Chief Executive of NMHS has informed the Commission that more robust authorisations and delegations have already been put in place at NMHS.
- [430] The Victorian Department of Human and Health Services may provide a model for using proactive detection procedures but there are other models.
- [431] This report details more than a decade of corrupt conduct reaching into senior levels within WA Health. It exposes a culture of contractors freely giving gifts and benefits to public officers with the expectation of thereby winning work and recovering the costs of the gifts through fraud.
- [432] Every dollar corruptly converted was a dollar less to be spent on healthcare.
- [433] The brazenness of the conduct, the number of contractors involved and the apparent indifference by all concerned as to the possible criminality of their actions, raises concerns whether this behavior is confined to NMHS.
- [434] It will be a matter for every Chief Executive Officer in the public sector to satisfy themselves as to the integrity of their processes in outsourcing maintenance and service provision.

## **ANNEXURE ONE**

## Retention spreadsheet

Hand written amounts						Fox United - Invoices			
Line	Correct Cost	Invoiced Cost	Value Added	50% to FOX	50% Other	Invoice Number	Invoice Date	Amount (exl GST)	Amount (incl GST)
1	3,000	10,062	7,062	3,531	3,531	00005575	21/10/2015	10,062.00	11,068.20
2	91,197	119,672	28,475	14,238	14,237				
3	16,442	18,106	1,664	832	832	00005625	25/11/2015	18,106.00	19,916.60
4	123,800	136,182	12,380	6,190	6,190				
5	49,555	54,511	4,956	2,478	2,478				
6	105,607	126,729	21,102	10,551	10,551				
7	7,920	8,710	790	395	395	00005808	31/05/2016	8,710.00	11,979.00
8									
9									
10	5,000	10,000	5,000	2,500	2,500	00005739	28/04/2016	10,000.00	11,000.00
11	5,000	15,000	10,000	5,000	5,000	00005782	31/05/2016	15,000.00	16,500.00
12									
13									
14									
15			6,742	3,371	3,371				
16									
17									
18									
19	13,275	15,275	2,000	1,000	1,000				
20	5,882	6,882	1,000	500	500	00006043	30/01/2017	6,882.00	7,570.20
21									
22									
23									