



## Serious misconduct in procurement of environmental services

**21 May 2019**



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# CHAPTER ONE

## Overview

- [1] Ms Sarah Jane Bellamy was a public servant who worked for the Department of Mines and Petroleum (the Department) between 2013 and 2017.<sup>1</sup>
- [2] Ms Bellamy was in charge of the Abandoned Mines Program (AMP). She was responsible for authorising payments to contractors on behalf of the Department for work connected with the AMP.
- [3] Mr Adam Pratt owned and operated Soil Water Resources Pty Ltd t/a Soil Water Group (Soil Water),<sup>2</sup> an environmental consultancy.
- [4] From December 2016, Ms Bellamy was in a romantic relationship with Mr Pratt. He moved in with Ms Bellamy in May 2017. From July 2017, Ms Bellamy was involved with Soil Water's business.
- [5] During the period December 2016 to October 2017, Soil Water provided services to the Department. Ms Bellamy authorised payments to be made to Soil Water for work that had not been carried out.
- [6] Ms Bellamy was required to disclose conflicts of interest and potential conflicts of interest to the Department. But Ms Bellamy did not disclose her relationship with Mr Pratt or her involvement in Soil Water.
- [7] When confronted with information about her involvement with Soil Water, she gave misleading information to the Department and concealed her personal relationship.
- [8] She took advantage of her position to benefit Soil Water by securing payment of its invoices. She also engaged in serious misconduct by disclosing confidential documents to Soil Water.
- [9] The Commission is of the opinion that Ms Bellamy engaged in serious misconduct under the *Corruption, Crime and Misconduct Act 2003* (CCM Act) s 4(b).

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<sup>1</sup> The Department of Mines and Petroleum (DMP) ceased when the Department of Mines, Industry Regulation and Safety (DMIRS) was formed on 1 July 2017. This occurred as a result of machinery of government changes when DMP and Department of Commerce amalgamated.

<sup>2</sup> Soil Water Resources Pty Ltd, ACN 096 843 659.

## CHAPTER TWO

### Background

#### **Ms Bellamy, the Mining Rehabilitation Fund and Abandoned Mines Program**

- [10] Ms Bellamy was a public officer, employed as the Manager Environmental Reform in the Business Development Branch, Environment Division of the Department.
- [11] She started work with the Department on 28 February 2013.
- [12] As part of her role, Ms Bellamy developed and implemented the Mining Rehabilitation Fund (MRF) for the Department.
- [13] The MRF is a fund sustained by annual levies paid by mining companies. It is used to fund the rehabilitation of abandoned mines across the State.
- [14] The MRF was established on 1 July 2013 under the *Mining Rehabilitation Fund Act 2012*.
- [15] The AMP utilises funds from the MRF to rehabilitate abandoned mines in WA.
- [16] The AMP commenced in January 2016.
- [17] Ms Bellamy's role was retitled as Manager AMP on 1 February 2017.
- [18] In this role, Ms Bellamy was responsible for the development and implementation of the AMP.
- [19] Ms Bellamy was committed to the MRF and AMP. She said:

*the MRF is the best thing I've ever done in my entire career. I loved it. And the [AMP] is - it's the first of its kind in the world; it is the best thing I've ever done, and I had to give it up.<sup>3</sup>*
- [20] One of the key responsibilities of Ms Bellamy's role included 'Develops project specifications/statement of works and engage contract support as required'.<sup>4</sup>
- [21] She oversaw several pilot projects which sought to rehabilitate specific mine sites using MRF funds on behalf of the Department.

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<sup>3</sup> S Bellamy transcript, private examination, 13 November 2018, p 39.

<sup>4</sup> Job Description Form, DMP - Manager Environmental Reform, 18 August 2015.

### **Soil Water and Mr Pratt**

- [22] Soil Water is an environmental consultancy based in Perth focusing on the mining sector. It provides geochemistry, unsaturated zone hydrology, landform design and landform evolution modelling.
- [23] Soil Water's services were relevant to the work of the AMP.
- [24] At all material times, Mr Pratt was the sole Director of Soil Water. He owned half the issued share capital. He is a soil scientist.
- [25] Soil Water suffered from the mining downturn. During 2016 and 2017, Mr Pratt also worked full-time for a mining company as its Environmental Health and Safety Manager.
- [26] During 2016 and 2017, Soil Water provided consultancy services to the Department and invoiced a total of \$162,738.80 (excluding GST).
- [27] Soil Water no longer carries out work for the Department.

### **The relationship between Ms Bellamy and Mr Pratt**

- [28] Ms Bellamy and Mr Pratt first met on 26 February 2016 at a meeting arranged by a Department Project Manager, Mr Paul West. Mr Pratt had provided consulting services in the past to a company that had employed Mr West.
- [29] The relationship between Ms Bellamy and Mr Pratt was initially professional.
- [30] The relationship deepened into friendship. In September to November 2016, they were in regular contact and met for coffee or drinks on several occasions. They exchanged text messages and used familiar terms with one another.
- [31] At the end of December 2016, their relationship became intimate. Ms Bellamy regarded 30 December 2016 as the "official" start of their relationship.
- [32] Mr Pratt moved in with Ms Bellamy in late May 2017. They were still living together when Ms Bellamy left the Department in October 2017.

### **The relationship between Ms Bellamy and Soil Water**

- [33] From about July 2017, an "unofficial arrangement"<sup>5</sup> developed whereby Ms Bellamy became actively involved in the management of Soil Water.

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<sup>5</sup> A Pratt transcript, private examination, 13 November 2018, pp 34-38.

- [34] Mr Pratt's full-time employment and personal affairs adversely affected his ability to manage the business affairs of Soil Water.
- [35] Mr Pratt and Ms Bellamy said that she performed "an assisting role"<sup>6</sup> in Soil Water as "a favour to him".<sup>7</sup> Ms Bellamy said that the team at Soil Water was "very difficult" and that the business was "losing a lot of money".<sup>8</sup>
- [36] In his evidence to the Commission, Mr Pratt said "the initial plan of her joining or helping me was just to help me get my staff in order".<sup>9</sup>
- [37] As early as 3 July 2017, Ms Bellamy helped Soil Water by providing Mr Pratt with several copies of the Department's Job Description Forms. She offered 'to help out with developing some [Job Description Forms] for [Soil Water]'.<sup>10</sup>
- [38] She also provided Soil Water with advice concerning HR policy and procedures. Ms Bellamy also helped Mr Pratt with Soil Water's website.
- [39] Mr Pratt appointed Ms Bellamy as Project Manager in late July 2017 with the intention that she would oversee the performance of his staff. He emailed her on 21 July 2017 saying 'on Tuesday morning (8am) can you come into Soil Water so I can tell the guys that you'll be Project Manager for the projects and will be checking on a weekly basis their performance'.<sup>11</sup>
- [40] Mr Pratt said he did so as "a scare tactic, a perception issue".<sup>12</sup> Mr Pratt told the Commission "having her title Business Manager sort of gave some formality to it, in order that, you know, if she was to say something to my staff to do something, they would have to do it".<sup>13</sup>
- [41] On 24 July 2017, Mr Pratt emailed all his staff requesting they use 'WorkFlowMax' for projects and timesheet reporting. He wrote 'Sarah will be overseeing this and project managing all projects'.<sup>14</sup>
- [42] At the time, Soil Water's projects and potential projects included work for the Department.

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<sup>6</sup> A Pratt transcript, private examination, 13 November 2018, p 38; S Bellamy transcript, private examination, 14 November 2018, p 26.

<sup>7</sup> A Pratt transcript, private examination, 13 November 2018, p 39.

<sup>8</sup> S Bellamy transcript, private examination, 14 November 2018, p 32.

<sup>9</sup> A Pratt transcript, private examination, 13 November 2018, p 36.

<sup>10</sup> Email from S Bellamy to A Pratt, 3 July 2017.

<sup>11</sup> Email from A Pratt to S Bellamy, 21 July 2017.

<sup>12</sup> A Pratt transcript, private examination, 13 November 2018, p 39.

<sup>13</sup> A Pratt transcript, private examination, 13 November 2018, p 37.

<sup>14</sup> Email from A Pratt to various recipients, 24 July 2017.

[43] Ms Bellamy was issued with a personal email account at Soil Water on 25 July 2017. Using this account, Ms Bellamy could log onto the Soil Water server and could send and receive emails to any person. Ms Bellamy used the title 'Business Manager' when sending emails to employees of Soil Water.<sup>15</sup>

[44] She told the Commission she was monitoring her emails to this account occasionally. On 3 August 2017, Mr Pratt told staff that Ms Bellamy was the 'first port of call' for 'sorting out project related stuff'.<sup>16</sup>

[45] Ms Bellamy terminated one of the casual employees at Soil Water.

[46] On 12 October 2017, she was implementing Soil Water's decision to change premises, terminating the subleases with its subtenants.

[47] Ms Bellamy received periodic updates of the project lists for Soil Water and reminded staff to do their timesheets.

[48] Ms Bellamy prepared project documents for other Soil Water projects.

[49] The extent of Ms Bellamy's commitment to Soil Water and Mr Pratt can be seen from the fact that, on one occasion, Ms Bellamy covered the cost for Mr Pratt and two Soil Water employees' flights and accommodation from her personal credit card account.

[50] Ms Bellamy was active in her role with Soil Water, although the role was informal and casual.

[51] Both Ms Bellamy and Mr Pratt maintained that she was not paid for the work she carried out for Soil Water prior to 27 October 2017.

[52] Payments were made to Ms Bellamy by Soil Water before she left the Department. However, these payments appear to have been the reimbursement of expenses incurred by Ms Bellamy personally for Soil Water expenses or surreptitious reimbursements of payments she made to their living expenses. Mr Pratt was going through a divorce during this period.

[53] There is no evidence that, while still employed by the Department, Ms Bellamy was remunerated for her "work" at Soil Water.

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<sup>15</sup> Email from S Bellamy to a Soil Water employee, 31 July 2017.

<sup>16</sup> Email from S Pratt to all Soil Water employees, 3 August 2017.

### **Ms Bellamy leaves the public sector**

- [54] Ms Bellamy gave 30 days' notice of termination of employment on 29 September 2017. Her employment with the Department came to an end on 27 October 2017. In theory, Ms Bellamy worked out her notice period. In reality, she took various forms of leave during the notice period.
- [55] Ms Bellamy now works for Soil Water.

### ***Corruption, Crime and Misconduct Act 2003, section 86***

- [56] The Commission provided an opportunity to Ms Bellamy and Mr Pratt to make representations about matters in the report adverse to them in accordance with the CCM Act s 86. Both provided responses and these have been taken into account in finalising the report.

# CHAPTER THREE

## A conflict of interest

### The Code of Conduct

[57] As an employee to whom the *Public Sector Management Act 1994* applied, Ms Bellamy was required to 'act with integrity in the performance of official duties' and 'to be scrupulous in the use of official information equipment and facilities'.<sup>17</sup> The Public Sector Code of Conduct required her to comply with the Department's Code of Conduct.

[58] Ms Bellamy's contract of employment also required her to comply with the Public Sector Code of Conduct and the Department's Code of Conduct.

[59] Ms Bellamy knew that she was obliged to comply with the Public Sector Code of Conduct and the departmental Code of Conduct. She had been made aware of the contents of those Codes.

[60] The Department's Code of Conduct deals with conflicts of interest. It states, addressing employees:

*It is your responsibility to identify, declare and manage conflicts of interest in the public interest.*

*For a public sector employee a conflict of interest arises where there is a conflict between the performance of public duty and private or personal interests.*<sup>18</sup>

[61] The Department's Code of Conduct provides guidance to employees about categories of conflicts of interest, namely:

- *Conflict of Interest*
  - A 'conflict of interest' involves a conflict between an employee's duty to serve the public interest, and the officer's private interests.
- *Actual conflict of interest*
  - An actual conflict of interest is where an employee is in a position to be influenced by their private interests when doing their job.

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<sup>17</sup> Section 9(b).

<sup>18</sup> Code of Conduct, DMP, 17 February 2014, p 29.

- *Potential conflict of interest*
  - *A potential conflict of interest arises where a public sector employee is in a position where they may be influenced in the future by their private interests when doing their job.*<sup>19</sup>

[62] The Department's Code of Conduct states:

*Conflicts may involve personal, financial or political interests and may be perceived, potential or actual. Conflict situations may result from the holding of shares, business interests, secondary employment, family relationships, private affiliations, sponsorship and the receipt of gifts and benefits.*

*Public sector employees have an obligation to exclude themselves from any activity that has the potential to generate an actual, perceived or potential conflict of interest that may influence the employee's ability to conduct their official duties.*<sup>20</sup>

[63] Section 6.4 of the Department's Code of Conduct states:

***6.4 Employee Responsibility to Recognise and Register any Potential Conflict of Interest.***

*The key message relating to Conflicts of Interest is that they are not necessarily wrong, but it is vitally important that they are properly and transparently identified, managed and monitored.*

*It is every employee's responsibility to recognise and promptly register using the departmental eForm, any conflict of interest.*<sup>21</sup>

[64] Section 6.7 deals with Employment Outside Normal Government Employment. It states:

*Public sector employees have an obligation to exclude themselves from any activity that has the potential to generate an actual, or perceived conflict of interest or perception of bias that may influence the employee's ability to conduct their official duties responsibly ...*

*An employee may only undertake external employment once they have received written permission to do so from the Director General or delegated officer.*<sup>22</sup>

[65] The process for obtaining approval for secondary employment is via a form on the Department's intranet.

[66] The Department provides facilities enabling electronic declaration of conflicts of interest to be made by employees.

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<sup>19</sup> Ibid 29-30.

<sup>20</sup> Ibid 30.

<sup>21</sup> Ibid 30-31.

<sup>22</sup> Ibid 32.

[67] If a conflict is declared, the declaration is usually provided to the line manager and then to the executive director. They both then decide if the conflict can be managed and how. A management plan is then put into effect.

### **There was a conflict of interest**

[68] There was a conflict between Ms Bellamy's personal interests and the proper performance of her duties as a public servant.

[69] From 31 December 2016, there was a conflict of interest due to Ms Bellamy's relationship with Mr Pratt and her employment with the Department. Her personal relationship with Mr Pratt induced her to favour Soil Water in its dealings with the Department.

[70] Ms Bellamy's conflict of interest became more acute when Mr Pratt started living with Ms Bellamy in May 2017.

[71] The conflict of interest was amplified further when Ms Bellamy took on an informal management role within Soil Water. She was given responsibility within Soil Water for project management, which included the provision of services by Soil Water to the Department.

[72] At the same time, Ms Bellamy was responsible, on behalf of the Department, for ensuring that service providers or contractors delivered the services for each project.

[73] Mr Pratt described Ms Bellamy's activities at Soil Water as "just helping her partner", but that was the problem.<sup>23</sup> She ought not to have been helping her partner or his business while employed by the Department.

[74] Both aspects of Ms Bellamy's conflict of interest were obvious and were apparent to both Ms Bellamy and Mr Pratt. Their appreciation of the conflict of interest is shown by her conduct in August 2017, involving Ecologia, and again in October 2017 when she thought that the truth would be discovered.

### **August 2017 - Ecologia**

[75] Soil Water had for some time sublet part of its premises to another business, Ecologia.

[76] In early August 2017, an employee of Ecologia, Mr Sean Grein, indicated to an associate that Ms Bellamy appeared to be involved with Soil Water. The associate was a Department employee.

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<sup>23</sup> A Pratt transcript, private examination, 13 November 2018, p 42.

- [77] When Ms Bellamy heard about this, she told Mr Pratt, who suggested he would email Mr Grein to tell him to 'pull he's [sic] head in and shut ... up'.<sup>24</sup>
- [78] Ms Bellamy sent the following text message to Mr Pratt 'I'll just have to be careful in the message the team have until I hopefully jump in. I'll have to be careful from here as well as there will be a perception of [a] conflict of interest'.<sup>25</sup>
- [79] Mr Pratt replied 'I'm telling him off still because he should know better – it puts you and Soilwater in a very compromising position ...'<sup>26</sup>
- [80] Mr Pratt emailed Mr Grein:

*I have just been informed by Sarah Bellamy that you had been discussing Sarah's involvement in Soilwater with DMP personnel... As you are aware she is still the Manager of the MRF and the Abandoned Mines Program, and that Soilwater has completed the last three MRF/ Abandoned Mines Pilot Project; hence it's raising a few eyebrows and putting Soilwater and Sarah in a very compromising and difficult position.*

*Please keep her involvement in Soilwater to yourself and don't let anyone else know - I want to use her as an Ace up my sleeve to win jobs (like the Cassini one).<sup>27</sup>*

- [81] Later, when Ms Bellamy resigned on 29 September 2017, Mr Pratt informed Mr Grein that Soil Water had lost an important contact in the Department and it would cost them as they had been lined up for more abandoned mines work.
- [82] Both Ms Bellamy and Mr Pratt admitted that there would have been a 'perception' of a conflict of interest at the time.<sup>28</sup> There was, of course, more than just a perception, as it was an actual conflict of interest.

#### **Ms Bellamy did not disclose her conflict of interest**

- [83] Ms Bellamy failed to identify or declare any conflict of interest to the Department and to register and manage it.<sup>29</sup>
- [84] Ms Bellamy's excuse for failing to declare the conflict of interest was that she felt she could not discuss it with her line manager and that she

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<sup>24</sup> Text messages from A Pratt to S Bellamy, 9 August 2017.

<sup>25</sup> Text messages from S Bellamy to A Pratt, 9 August 2017.

<sup>26</sup> Text messages from A Pratt to S Bellamy, 9 August 2017.

<sup>27</sup> Email from A Pratt to S Grein, 9 August 2017.

<sup>28</sup> S Bellamy transcript, private examination, 14 November 2018, p 30; A Pratt transcript, private examination, 13 November 2018, p 43.

<sup>29</sup> Department policy requires employees to register any conflict of interest via eform, Code of Conduct, DMP, 17 February 2014, pp 30-31.

thought the only way to declare a conflict of interest was through her line manager. Ms Bellamy said that she did not feel "safe" making a declaration.<sup>30</sup>

- [85] Ms Bellamy had an acrimonious relationship with her line manager.
- [86] Ms Bellamy gave evidence that the issue of a conflict of interest first presented itself to her "probably around May" 2017.<sup>31</sup>
- [87] She said she asked an internal departmental HR adviser about the procedure for declaring a conflict of interest at that time and in particular, she said she asked whether a conflict of interest could be declared in a way that would not involve her line manager.
- [88] Ms Bellamy did not assert that she told the HR adviser any details.
- [89] The Commission accepts that Ms Bellamy's failure to declare a conflict of interest may have been motivated in part by a concern that she would lose her role as Manager of the AMP.
- [90] That concern would have been well founded. In accordance with the Code of Conduct, Ms Bellamy would likely have been excluded from any activity that had the potential to generate an actual, perceived or potential conflict of interest.
- [91] That adverse consequence flows from the circumstances in which Ms Bellamy had placed herself, rather than from unreasonable management.
- [92] The primary purpose of the Code of Conduct is, of course, to protect the Department.
- [93] However, early compliance with the Code of Conduct by Ms Bellamy would have meant that the situation would not have moved from 'potential conflict', to 'real conflict' and on to 'serious misconduct'.

#### **October 2017: Department of Mines, Industry Regulation and Safety finds out**

- [94] On 12 October 2017, an envelope was anonymously left on a Department manager's chair. It contained a copy of an email sent from Ms Bellamy's Soil Water email account describing her as 'Business Manager' of Soil Water.<sup>32</sup>

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<sup>30</sup> S Bellamy transcript, private examination, 13 November 2018, pp 34, 37.

<sup>31</sup> S Bellamy transcript, private examination, 13 November 2018, p 33.

<sup>32</sup> File note prepared by S Bellamy's line manager, 13 October 2017.

[95] Ms Bellamy was called to a meeting with HR on 17 October 2017.

[96] After that meeting, Ms Bellamy sent an email to her line manager, which copied in HR, setting out her version of events:

*For the record:*

*I am not yet officially employed at Soil Water Group.*

*I have not signed any contract of employment with any organisation.*

*I have not received any payment for employment from Soil Water Group or any source other than the Department since I was engaged in Feb 2013.*

...

*I was asked to help out with a pressing matter for Soilwater Group as my potential future employer and I agreed to do so. The company created a temporary email signature to support this request.*

...

*I have had no interaction with any external organisations [sic] clients, projects, contracts or the business generally ...<sup>33</sup>*

[97] It appears that this email reflects what Ms Bellamy said at the meeting.

[98] This email misrepresents the situation:

- The email refers only to the conflict arising from her potential employment with Soil Water. It does not mention her personal relationship with Mr Pratt.
- The email presents her role with Soil Water as a limited one which arose out of a particular 'pressing matter'. In truth, her role at Soil Water was an ongoing one. Ms Bellamy had become active months previously, in July 2017.
- The email suggests that she was 'in discussions' with Soil Water, but she had already decided to start work at Soil Water.<sup>34</sup> Two minutes after she sent the email to her line manager, she sent a text to Mr Pratt saying she was going to 'spend the afternoon sending myself all the information I need to get out of here'.<sup>35</sup>

[99] After the meeting with HR, Ms Bellamy completed an electronic conflict of interest declaration form.

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<sup>33</sup> Email from S Bellamy to her line manager, 17 October 2017.

<sup>34</sup> Email from A Pratt to Soil Water staff, 29 September 2017; Email from A Pratt to S Grein, 29 September 2017.

<sup>35</sup> Text message from S Bellamy to A Pratt, 17 October 2017.

- [100] The declaration form enables the declaring officer to describe the type of conflict being declared. One of the options is 'Past or present personal/social relationship'. Ms Bellamy did not select that option.
- [101] The form provides for the declaring officer to articulate a management plan for the conflict. The plan proposed by Ms Bellamy was:

*It is very unlikely given I have resigned and finish at the end of October but if any procurement or any approval decisions or recommendations involving any of the companies that I am in discussion with come up during these final days of my employment at DMIRS (I finish on the 27<sup>th</sup> October), I will remove myself entirely from the process and notify my line manager.*<sup>36</sup>
- [102] The Department informed the Commission there were no actions taken to verify the description or the nature of the conflict declared by Ms Bellamy on the declaration.
- [103] On 18 October 2017, Ms Bellamy's line manager sent her an acknowledgement of her conflict of interest declaration. His comment stated 'I acknowledge the COI [Conflict of Interest] which has been registered by Sarah. The proposed management plan is considered acceptable for the time remaining in her current employment. Sarah is to remove herself from any dealings with the Soil Water Group'.<sup>37</sup>
- [104] This approach to the conflict was not unreasonable given that Ms Bellamy's employment would come to an end on 27 October 2017 and what she had proposed in the management plan.

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<sup>36</sup> S Bellamy, Conflict of Interest Declaration, 19 October 2017.

<sup>37</sup> Conflict of interest eform, 18 October 2017.

## CHAPTER FOUR

### Improper procurement practices

- [105] The Department has an online Procurement and Contract Management Guideline available to employees.
- [106] A feature of the procurement policy is that officers authorised to purchase goods and services could authorise expenditure of up to \$10,000 without obtaining competitive quotes.
- [107] If the purchase is more than \$10,000 but less than \$50,000, between two and five competitive verbal quotes are required.
- [108] If the value is more than \$50,000 but less than \$250,000, written quotations are to be obtained.
- [109] A tender is required for purchases worth more than \$250,000.
- [110] The Department has a system for processing requests to purchase. Purchases under \$10,000 could be made using a corporate credit card but could also be processed through the Department's Request to Purchase (RTP) system.
- [111] It appears that purchases of less than \$10,000 are processed through the RTP system as a matter of routine.
- [112] Where the purchase is more than \$10,000, the purchase is to go through the RTP system and a 'Verbal Quotation Form' is to be completed on the Department's RTP.
- [113] Ms Bellamy was the officer responsible for incurring costs relating to the AMP as she was the only permanent departmental employee on the team.
- [114] Ms Bellamy was able to incur costs and authorise payments for work up to a value of \$50,000 in accordance with the Department's procurement processes. This did not override the requirement to obtain quotes for amounts over \$10,000 including GST.
- [115] Ms Bellamy was aware of the need to obtain verbal quotations for purchases above \$10,000 and the practical impacts of that requirement.
- [116] In addition to Ms Bellamy, the Department engaged project officers, such as Mr West and Ms Karissa Wilson, to work on the AMP. Although they had carriage of particular projects, they reported to Ms Bellamy as

their Manager. They were not authorised to incur expenses on behalf of the Department.

[117] In evidence before the Commission, Ms Bellamy had some difficulty recalling the Department's Procurement and Contract Management Guideline although she admitted she "probably would have seen it at the time" she was employed.<sup>38</sup> She told the Commission that she assumed she was obliged to comply with the policy and procedural requirements in the guideline but she could not remember what the procurement thresholds were or the advice she was given about how to manage works within the thresholds. She explained that "It's just been a long time".<sup>39</sup>

[118] During her employment, Ms Bellamy oversaw pilot projects which sought to rehabilitate specific mine sites using MRF funds on behalf of the Department, including:

- Black Diamond Pit Lake (Black Diamond);
- Bulong Nickel Tailings Storage Facility (TSF) (Bulong); and
- Ellendale Diamond Mine (Ellendale).

#### **Black Diamond project: Initial stages - February 2016**

[119] Black Diamond is an abandoned coal mine near Collie. It was the first project initiated under the AMP.

[120] The focus of the project was to address the safety risks associated with the steep slope on the southern side of the abandoned mine pit. This involved an initial geotechnical investigation and Light Detection and Ranging (LiDAR) survey of the Black Diamond area.

[121] In early 2016, Mr West, the relevant Project Manager, contacted Mr Pratt and asked him for an indicative price for the work. Mr West had worked with Mr Pratt in the past.

[122] On 29 February 2016, Mr Pratt provided an indicative price of between \$12,000 and \$15,000.

[123] Mr West responded 'we have to keep it under \$9k (or \$10k with GST). If it is above \$9k, I will need to get more quotes'.<sup>40</sup>

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<sup>38</sup> S Bellamy transcript, private examination, 13 November 2018, p 11.

<sup>39</sup> S Bellamy transcript, private examination, 13 November 2018, p 11.

<sup>40</sup> Email from P West to A Pratt, 29 February 2016.

- [124] On 2 March 2016, Mr West requested Soil Water to quote to carry out the site assessment for Black Diamond. Mr Pratt provided a 'Proposal and Cost Estimate' with a total estimated cost of \$9,651.40 (including GST).<sup>41</sup>
- [125] The quote was accepted and the work completed.
- [126] On 30 March 2016, Soil Water submitted an invoice for \$10,215.37 (including GST) for the Site Assessment Report.
- [127] Mr West requested the invoice be amended to remove costs relating to aerial photograph(s) and laboratory costs.
- [128] Separate invoices for that work were submitted, approved and paid.
- [129] This was the first work Soil Water carried out for the Department in relation to the Black Diamond project.

#### **Black Diamond project: Stage 3 Request for Quotation – April 2016**

- [130] It was apparent from Soil Water's initial assessment of the Black Diamond site that the costs of rehabilitation would exceed \$50,000. A formal request for quotation (RFQ) process would need to be followed.
- [131] The Department did not have the internal expertise necessary to identify the rehabilitation work that had to be carried out.
- [132] In April 2016, Ms Wilson sought Mr Pratt's help to scope the costs of the works recommended in his investigation report for Black Diamond.
- [133] Mr Pratt stated:
 

*... both Sarah and Karissa were trying to develop their scope for the Black Diamond works; neither of them had actually done an RFQ before, for an engineering earthworks, so I was providing advice to them on a - what to include in the RFQ in order to go out for a competitive tender.*<sup>42</sup>
- [134] Mr Pratt provided the Department with information relevant to the preparation of the Stage 3 Black Diamond formal RFQ procurement process.
- [135] Mr Pratt told the Commission that he gave Mr West the figure of \$110,000 to do the job. This became the Department's budget for the quote.

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<sup>41</sup> Email from A Pratt to P West, 2 March 2016.

<sup>42</sup> A Pratt transcript, private examination, 13 November 2018, p 14.

- [136] The formal RFQ was distributed by Ms Tricia Ketting, the Department's Finance Officer, on 31 May 2016 to four companies, including Soil Water. This RFQ process closed on 10 June 2016 at 11.00 am.
- [137] Before the RFQ closed, Ms Bellamy contacted Mr Pratt, encouraging him to submit a quote.
- [138] Soil Water's quote for the work involved an earthmoving subcontractor. Soil Water's overall price depended on the price for the earthmoving component given by the subcontractor. Mr Pratt received a copy of the subcontractor's price on 9 June 2016, the night before the RFQ closed.
- [139] On 10 June 2016 at 6.15 am, Mr Pratt emailed the subcontractor complaining that the price was \$268,000 rather than \$110,000. He also said:

*I sen[t] you ... an email back last night on the quote provided and that it was way too much for DMP to accept. I provided a reduced cost based on some of our earlier correspondence, which will get us over the line. I got a call again from Sarah Bellamy (Manager of the Abandoned Mines Program) confirming that we've pretty much have the job as long as we are within their expectations. It would be good if we could work within the cost I specified (i.e. \$110K instead of \$286K) ...<sup>43</sup>*

- [140] Despite this email, the quote submitted by Soil Water was over \$323,000.
- [141] The Department received one other quote, which was also well over the budget.
- [142] On 10 June 2016 at 5.46 pm, Ms Bellamy texted Mr Pratt informing him 'At this stage the quotes for BD will be rejected sending me back to the drawing board'.<sup>44</sup> Mr Pratt texted Ms Bellamy about reducing the subcontractor's component of Soil Water's price on 12 June 2016.
- [143] Ms Bellamy was going to be on the committee evaluating the responses to the RFQ. She was required to sign a Declaration of interest and confidentiality. She did so on 14 June 2016. She agreed to 'keep all information relating to the Request planning development or evaluation process confidential' and agreed not to disclose that information without the prior written approval of the Department.<sup>45</sup>

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<sup>43</sup> Email from A Pratt to a subcontractor, 10 June 2016.

<sup>44</sup> Text message from S Bellamy to A Pratt, 10 June 2016.

<sup>45</sup> Email from S Bellamy to T Ketting, 14 June 2016; Declaration of interest and confidentiality, DMP, pp 13-14.

[144] Paragraph 7 of Ms Bellamy's Declaration concludes 'Unlawful disclosure of official information is a criminal offence punishable by up to 3 years imprisonment'.

[145] By 14 June 2016, Ms Bellamy had already disclosed the negative outcome of the RFQ.

[146] On 14 June 2016, Ms Ketting informed Ms Bellamy by email that the Department of Finance recommended that both offers be declined. Ms Bellamy informed Ms Ketting by email of her decision to decline all offers. She said 'We will recommence with a new/revised scope'.<sup>46</sup>

[147] On 14 June 2016 at 2.07 pm, Ms Bellamy asked Mr Pratt whether she could call him 'at 10.30 tomorrow to discuss the revised quote before I send it'.<sup>47</sup> In this context, 'revised quote' was a reference to the revised request to quote document that was to be released by the Department, rather than Soil Water's quote to the Department.

[148] On 15 June 2016 at 7.14 am, Ms Ketting emailed Mr Pratt and advised that all offers for the project had been declined as all responses were more than the Department's budget.

[149] At 7.45 am on 15 June 2016, Ms Ketting told Ms Bellamy and Ms Wilson they could speak with the potential providers once she had received 'read receipts' from both providers.<sup>48</sup>

[150] Mr Pratt texted 'Are you up for a call' at 10.36 am on 15 June 2016. Despite Ms Ketting's admonition, Ms Bellamy agreed. She texted 'just getting out of the building, I feel like a spy/secret agent'.<sup>49</sup>

[151] At 10.50 am Ms Ketting informed Ms Bellamy she could now speak with the suppliers.

[152] It appears that there was some sort of conversation between Ms Bellamy and Mr Pratt. At 10.53 am that day, Ms Bellamy texted Mr Pratt her private email address and that of Ms Wilson.

[153] Later, at 11.46 am, Ms Ketting also told Ms Bellamy to be careful in her discussions with suppliers and not to mention actual price.

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<sup>46</sup> Email chain between S Bellamy, T Ketting and K Wilson, 14 June 2016.

<sup>47</sup> Text message from S Bellamy to A Pratt, 14 June 2016.

<sup>48</sup> Email from T Ketting to S Bellamy and K Wilson, 15 June 2016.

<sup>49</sup> Text message from S Bellamy to A Pratt, 15 June 2016.

- [154] On 16 June 2016, a second RFQ was issued to a closed tender group, which included Soil Water. The Department had revised the scope of works for the project and limited its budget to \$110,000. The budget was disclosed in the RFQ.
- [155] Ms Bellamy and Mr Pratt met for coffee on 22 June 2016. However, it appears they did not discuss Soil Water's response to the second RFQ because, after the closure of this RFQ process, Ms Bellamy sent a text message on 26 June 2016 'Hi Adam, I thought about asking you yesterday before it all closed but decided against it ... I suspect yours is the only quote in the running but I didn't tell you that'.<sup>50</sup>
- [156] This RFQ process closed at 11.00 am on 28 June 2016.
- [157] Ms Bellamy signed a second Declaration of interest and confidentiality on 29 June 2016. She declared no conflict of interest. She again agreed to 'keep all information and documents relating to the Request planning, development or evaluation process confidential, and not to disclose or communicate the same to any person or persons except in the course of (her) duties without prior written approval ...'.<sup>51</sup>
- [158] The Department received three quotes for the Black Diamond project in response to the second RFQ: \$333,936, \$482,539.53 and \$110,000. The \$110,000 quote was from Soil Water.
- [159] Ms Bellamy was the Chairperson of the evaluation panel for the Department charged with assessing these quotes.
- [160] Of the four members of the panel, only two were voting members. Ms Bellamy was one of them.
- [161] After the panel completed the evaluation on 1 July 2016, Ms Bellamy sent Mr Pratt the following text message 'Secret agent update, everything is with the boss (Phil) for sign off/approval'.<sup>52</sup>
- [162] The draft report evaluating the tenders was submitted to Ms Ketting on 4 July 2016.
- [163] Ms Ketting asked why referee reports were not obtained for Soil Water's work. Ms Bellamy's response was 'the recommended company was referred to me as a very good operator with a good reputation and specific experience with like projects ...'.<sup>53</sup>

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<sup>50</sup> Text message from S Bellamy to A Pratt, 28 June 2016.

<sup>51</sup> Declaration of interest and confidentiality, DMP, 29 June 2016.

<sup>52</sup> Text message from S Bellamy to A Pratt, 1 July 2016.

<sup>53</sup> Email from S Bellamy to T Ketting, 4 July 2016.

[164] The final Evaluation Report was signed by the evaluation panel, including Ms Bellamy, on 5 July 2016. It endorsed Soil Water as the successful bidder.

[165] Mr Phil Gorey, Executive Director of the Department, had final sign off. The final Evaluation Report was referred to him.

[166] Ms Bellamy sent Mr Pratt a text message the next day, 5 July 2016. It said:

*... I was going to send you a text asking if it's possible for you to keep next Tuesday free for the first site visit. I hope Phil signs things off today then it's all go. Secret agent intel of course.<sup>54</sup>*

[167] Soil Water was formally announced as the successful contractor on Tender WA and by letter from the Department dated 7 July 2016.

[168] Ms Bellamy's conduct in relation to the Black Diamond project procurement process was unsatisfactory.

[169] Ms Bellamy's message of 1 July 2016 told Mr Pratt the stage at which the RFQ process had reached. Ms Bellamy's text of 5 July 2016 told Mr Pratt that Soil Water would be successful. The status of the RFQ was not public at the time.

[170] Her texts of 15 June, 1 July and 5 July 2016, set out above, use the expression 'secret agent'. These were flippant remarks, but they show Ms Bellamy's preparedness to disregard the Department's procurement and probity requirements. Moreover, it demonstrates her intention to breach confidence.

[171] Soil Water would have been advantaged in the tender process by its role in formulating the scope of work and the budget for the job.

[172] However, this advantage did not come about from Ms Bellamy's disclosure during the formal RFQ process. It came about during the formulation of the RFQ. The information which she disclosed about the progress of the RFQ was not material.

[173] Ms Bellamy did not disclose the extent of Soil Water's involvement in the RFQ process to the Procurement Officers in the Department.

[174] Although she was an enthusiastic, perhaps a partisan supporter of Soil Water, she appears to have genuinely believed that Soil Water was the best contractor for the job. At the time, Ms Bellamy was not in an

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<sup>54</sup> Text message from S Bellamy to A Pratt, 6 July 2016.

intimate relationship with Mr Pratt. She did not have a personal interest favouring Soil Water.

- [175] Ms Bellamy's failings in relation to the RFQ process are not serious misconduct within the scope of the Act. Her behaviour, at this stage, was not, in the Commission's opinion, corrupt.

#### **Bulong Nickel Tailings Storage Facility: March 2017**

- [176] Bulong is an abandoned nickel mine in the Goldfields.
- [177] On 7 March 2017, a project officer requested a quote from Soil Water to go to the Bulong site to undertake a site assessment and produce a report identifying the remediation works required at the site.
- [178] Ms Bellamy told the Commission that she had initiated the contact between the Project Officer and Soil Water and had not contacted any other service provider because "I was fairly sure that a one-day trip to Kalgoorlie would be well below my \$10,000 threshold".<sup>55</sup>
- [179] By this stage, Ms Bellamy's relationship with Mr Pratt was intimate, although they were not living together.
- [180] On 15 March 2017, Ms Bellamy made plans to travel with Mr Pratt to the Bulong site on 27 March 2017. She told the Commission that she had to do the field trip as there was nobody else available.
- [181] On 20 March 2017, Ms Bellamy emailed Mr Pratt and asked him to send a quote for the Bulong site visit to include time, travel costs and a site assessment report. She said 'I can then formally accept it and get it into our payment system. After the trip, send the same or updated info in the form of an invoice for payment'.<sup>56</sup>
- [182] Mr Pratt sent a costs estimate which included preparation of a 'memo-style' report to the value of \$6,014 (excluding GST).
- [183] Ms Bellamy and Mr Pratt travelled to site on 27 March 2017 to undertake the site assessment together. This was an opportunity for Ms Bellamy and Mr Pratt to spend time alone together.
- [184] Mr Pratt submitted an invoice by email to Ms Bellamy on 7 April 2017 with the following 'As discussed, attached is the full Bulong invoice, and I'll complete the short-report next week'.<sup>57</sup>

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<sup>55</sup> S Bellamy, transcript, private examination, 14 November 2018, p 98.

<sup>56</sup> Email from S Bellamy to A Pratt, 20 March 2017.

<sup>57</sup> Email from A Pratt to S Bellamy, 7 April 2017.

[185] On 7 April 2017, Ms Bellamy responded 'Hi there, I've sent the invoice through for payment. I'm not too worried about the report, don't stress about that'.<sup>58</sup>

[186] As an officer of the Department, Ms Bellamy should have been worried about the report. Even if Mr Pratt had conveyed the substance of his opinion to Ms Bellamy at site, the report was a deliverable that the Department was paying for.

[187] Ms Bellamy approved payment, although the report had not been received by the Department.

[188] She told the Commission that she felt that it was okay for her to remain involved in the procurement processes for the Bulong project as "it was low risk, and it was a way of getting a really good report done quickly, that gave the Department something to go with".<sup>59</sup>

[189] That justification proved unfounded.

[190] It was not until 17 August 2017 that Ms Bellamy received an incomplete draft report from Mr Pratt. The draft report was only received after Ms Bellamy prompted Mr Pratt for the report after staff at the Department had asked for it.

[191] The final report had still not been received by 1 September 2017 when Ms Bellamy sent an email to Mr Pratt saying 'Hi Love, is it ok if I cut and paste a few things out of the draft you sent me? I'll [sic] then just claim that I have temporarily misplaced the final report'.<sup>60</sup> She said that she was 'being chased about the Bulong report'.

[192] Ms Bellamy was unable to satisfactorily explain to the Commission why she had paid for a report in April 2017 that was not complete at that time.

[193] Ms Bellamy gave evidence that she "genuinely believed the Department has the report"<sup>61</sup> and that by her conduct, she was not trying to "imply that [she] had a final document".<sup>62</sup>

[194] Whatever her belief about the subsequent receipt of a final report, it is clear that Soil Water had not prepared a final report at the time she authorised payment.

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<sup>58</sup> Email from S Bellamy to A Pratt, 7 April 2017.

<sup>59</sup> S Bellamy transcript, private examination, 14 November 2018, p 98.

<sup>60</sup> Email from S Bellamy to A Pratt, 1 September 2017.

<sup>61</sup> S Bellamy transcript, private examination, 14 November 2018, p 106.

<sup>62</sup> S Bellamy transcript, private examination, 14 November 2018, p 105.

## **Black Diamond – LiDAR Survey and Rehabilitation monitoring and management plan**

- [195] Soil Water was engaged by the Department to carry out a LiDAR survey of the final rehabilitated surface, and a Rehabilitation monitoring and management plan for the Black Diamond project.
- [196] On 17 May 2017, Ms Bellamy texted Mr Pratt 'Just a reminder that the BD quote needs to be under \$10k including gst. If you can get it in I'm happy to pay it in advance of you completing the work'.<sup>63</sup>
- [197] On or about 8 June 2017, the Finance team at the Department received an email enclosing a Black Diamond Deposit Geotechnical Investigation - Invoice for \$10,978 (including GST) dated 31 May 2017.
- [198] The invoice was over the \$10,000 limit. The invoice came to Ms Ketting's attention. On 9 June 2017, Ms Ketting emailed Ms Bellamy telling her to submit an RTP and obtain a minimum of two quotes as the value of the invoice was greater than \$10,000. Ms Ketting also referred to the possibility of obtaining an exemption if the work had already been carried out.
- [199] On 11 June 2017, Mr Pratt emailed Ms Bellamy's departmental email account a copy of the same invoice.
- [200] Even though Ms Bellamy had a copy of the relevant invoice, on 12 June 2017 at 7.45am she asked Ms Ketting to 'please provide a bit more information to enable me to investigate this. Who is the invoice from, date of invoice and who commenced the procurement process'.<sup>64</sup>
- [201] On 12 June 2017 at 7.52 am, Mr Pratt sent Ms Bellamy a new version of the invoice dated 31 May 2017 for \$9,988 (including GST). The revised version reduced the labour component from 29 hours to 24 hours, which meant the invoice value was below the \$10,000 threshold.
- [202] Within three minutes of receiving this invoice, Ms Bellamy responded to Mr Pratt advising 'Hi Adam, thanks for sending the invoice through. I'll get into the payment system today and we can discuss dates for delivery of the report when we catch up this week'.<sup>65</sup>

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<sup>63</sup> Text messages between S Bellamy and A Pratt, 17 May 2017.

<sup>64</sup> Email from S Bellamy to T Ketting, 12 June 2017. In the s 86 response dated 30 April 2019, S Bellamy contended that confusion arose out of the title of the invoice 'Black Diamond Geotechnical Investigation'. However, the subsequent invoice did not alter this part of the invoice. The only change was to bring the price below \$10,000.

<sup>65</sup> Email from A Pratt to S Bellamy, 12 June 2017.

- [203] Ms Bellamy then directed her member of staff to process the revised Soil Water invoice. Ms Bellamy did not tell Finance that this revised invoice had been received nor did she provide Ms Ketting with a copy.
- [204] At 8.23 am, Ms Bellamy sent Mr Pratt the following text message 'I think [employee] had already sent the wrong invoice (over \$10k) directly to the procurement people... Grrrrr!'.<sup>66</sup>
- [205] At 8.47 am on 12 June 2017, Ms Bellamy emailed Procurement Officers, Ms Joanne Morup and Ms Ketting:

*Despite not having a lot of information to go from ... I've gotten to the bottom of it.*

*It's an error made by the Soil Water office staff. Their new admin staff sent something directly to you in error. We had been discussing some additional work with them and a couple of other providers. If it is likely to be over \$10k we will follow the process of getting multiple quotes.*

*I've been discussing a revised scope anyway and when I make a call on the services and budget for the work I require, I will follow the required procurement process.*

*Could you please cancel or reject the invoice you have been sent.*<sup>67</sup>

- [206] Ms Bellamy's explanation was misleading. There were no discussions with other providers and Ms Bellamy had already decided to get Soil Water to carry out the work.
- [207] At 9.42 am on 12 June 2017, Ms Bellamy approved an RTP for \$9,080 (excluding GST) to pay the revised invoice. She was the requesting officer and purchasing approver for this payment.
- [208] The RTP was approved on 14 June 2017 by the Finance Department.<sup>68</sup> Ms Bellamy later approved the processing form for the revised invoice, enabling Soil Water to be paid.
- [209] Although Ms Bellamy had approved payment, the work the subject of the revised invoice had not been fully completed: the report had not been provided at that time. The Department informed the Commission that as at 7 September 2018, they had been unable to confirm whether that report had ever been received from Soil Water.<sup>69</sup>

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<sup>66</sup> Email from S Bellamy to A Pratt, 12 June 2017.

<sup>67</sup> Email from S Bellamy to J Morup and T Ketting, 12 June 2017.

<sup>68</sup> Request to purchase form, DMP, 12 June 2017.

<sup>69</sup> Statement of Information from Director General, DMIRS, 7 September 2018: CCM Act s 94. S Bellamy contended that this report was received.

### **Ellendale Tailings Storage Facility: September 2017**

- [210] In early September 2017, Ms Bellamy contacted Soil Water to undertake an assessment of the structural integrity of the Ellendale TSF.
- [211] On 4 September 2017 at 12.25 pm, Mr West drafted an email request for quote addressed to Mr Pratt and sent it to Ms Bellamy for her approval. After the wording was approved, Mr West sent the request for quote to Mr Pratt.
- [212] On the same day, Ms Bellamy requested a separate quote from Soil Water for a LiDAR survey of the Ellendale site.
- [213] She justified requesting two quotes by stating that two different parts of the Department were funding the activities.
- [214] On 8 September 2017, Mr Pratt emailed the quote for structural integrity assessment of \$9,935 (including GST) and the separate quote for the LiDAR of \$9,997.90 (including GST) to Mr West.
- [215] In her evidence, Ms Bellamy explained to the Commission that it was not unusual practice at the Department to split invoices and she did not consider it unreasonable to do so.
- [216] When examined by the Commission she said:

*Ms Bellamy:* ... if we wanted to progress things quickly, or if we wanted to use a specific provider, we had to keep things below \$10,000, including GST.

*Counsel Assisting:* And why was that?

*Ms Bellamy:* Because otherwise you have to go and get three quotes, and you waste people's time if you decided you've already got the best person for the job.<sup>70</sup>

- [217] At the time, Ms Bellamy made no secret that other work also relating to Ellendale, but performed by a separate vendor (not Soil Water), was being split in two to get around the \$10,000 limit in the procurement guidelines. On 11 September 2017, she emailed colleagues in the Department saying 'We are splitting the work up to stay below our procurement limits (\$10k inc GST).'
- [218] The Ellendale TSF work could have been received by the Department as a single quote. The Department has the ability to pay a single invoice amount under different cost centre codes. The Department also advised that two quotes could be considered appropriate because each was a

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<sup>70</sup> S Bellamy transcript, private examination, 14 November 2018, pp 81-82.

different body of work, even though the work was to be carried out by the same consultant.

- [219] On 20 October 2017, after her conflict of interest became known to the Department, Ms Bellamy sent an internal message changing 'ownership' of the invoice rendered by Soil Water for \$9,089 saying 'the invoice needs immediate payment'.<sup>71</sup>
- [220] On 17 October 2017, Ms Bellamy proposed a management plan for the conflict that involved her removing herself entirely from the procurement process relating to Soil Water. Transferring ownership of the procurement was consistent with this plan. Pushing for payment of Soil Water's invoice was not consistent with that plan.
- [221] This final invoice had not been processed at the time Ms Bellamy left the Department.

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<sup>71</sup> DMIRS Invoice processing eform for Soil Water Consultants Invoice P1000877.

## CHAPTER FIVE

### Unauthorised disclosure

[222] Ms Bellamy was under a duty as a Department employee not to disclose confidential or official information other than in the course of her official duties.

[223] It was part of her obligation to comply with the Department's Code of Conduct, which provides:

*An employee is required to abide by the non-disclosure requirements of official information or documents acquired in the course of employment, except where required by law or where proper authorisation is given. Employees are not to misuse official information for personal gain or commercial gain, for themselves or others.*

...

*In the course of official duties, you may have access to confidential information. This information should only be used in the course of official duties or for other lawful purposes ...<sup>72</sup>*

[224] The Code of Conduct refers to *Criminal Code* s 81 and states simply:

*Section 81 of the Criminal Code makes it illegal for a public official to disclose confidential information, and prohibits employees of the public service from publishing or communicating any fact or document that came to their knowledge or possession by virtue of their office and which it is their duty to keep confidential.<sup>73</sup>*

[225] Ms Bellamy disclosed confidential departmental information to Mr Pratt on the following occasions:

- By email on 15 August 2017, Ms Bellamy sent Mr Pratt a copy of a Ministerial correspondence coversheet and a chain of emails between Minister B Johnston and a private individual dated 20 July and 26 July 2017.
- On 18 August 2017, Ms Bellamy sent an email to Mr Pratt attaching a copy of a Ministerial briefing note. In her email she stated 'Also, this is a BN ... that I thought you might find useful/interesting. Highly confidential of course'.<sup>74</sup>

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<sup>72</sup> Code of Conduct, DMP, 17 February 2014, pp 17, 27.

<sup>73</sup> Ibid 27.

<sup>74</sup> Email from S Bellamy to A Pratt, 18 August 2017.

- The briefing note is marked 'Release Classification - Within Government Only' and is signed and dated 14 August 2017. The briefing note concerned a decision by a mining company to mothball its mine.
- The mining company announced its decision prior to 14 August 2017. That public announcement did not of course disclose the contents of the Ministerial briefing note.
- On 8 September 2017, Ms Bellamy sent an email to Mr Pratt attaching two excel spreadsheets entitled 'CSM 50886 - Site Group Risk Extract v2.xlsx' and 'risk and closure data.xlsx'.<sup>75</sup> Ms Bellamy also emailed a copy of these attachments to her Soil Water account.
- The information in these spreadsheets is confidential official information. It is used by the Department to inform its inspection planning and monitoring responsibilities. It identifies risk ratings for every mine site over several financial years and provides each site's rehabilitation liability estimate, as calculated under the *Mining Rehabilitation Fund Act 2012*.

[226] These records are official information and contain confidential information. Ms Bellamy had authority to access these records but did not have authority or approval to disclose them to Mr Pratt. Ms Bellamy's lack of authority to disclose such information is also to be seen in the context of her giving Mr Pratt and Soil Water a business advantage.

[227] In addition, Ms Bellamy actively collected documents to take with her when she left the Department.

[228] Part of the collection process was electronic.

[229] On 8 September 2017, Ms Bellamy sent an email to her Soil Water account attaching a draft copy of an unsigned Ministerial briefing note relating to the proposed expression of interest process for tenement applications for the Ellendale Diamond Mine. The Briefing note was marked 'Release Classification - Within Government Only'.<sup>76</sup>

[230] These records are official information and contain confidential information and would likely be immune from disclosure on public interest grounds. Ms Bellamy had authority to access these records but

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<sup>75</sup> Email from S Bellamy to A Pratt, 8 September 2017.

<sup>76</sup> Email from S Bellamy to A Pratt, 8 September 2017.

did not have authority or approval to disclose them or to communicate them to a Soil Water email account.

- [231] Ms Bellamy also collected 'hard copy' documents to take with her.
- [232] The Commission executed a search warrant on the premises of Soil Water and seized relevant material contained in a folder labelled 'Abandoned Mines Program'. Many were documents printed on Department letterhead or marked with 'Release classification - Departmental use only'. One document appeared to be legal advice marked 'Privileged and Confidential'.
- [233] Ms Bellamy told the Commission she believed the folder contained literature and research she had undertaken at the Department and that she had grabbed the folder not knowing what was in it when she cleaned out her office.
- [234] Ms Bellamy's laptop was seized, examined and found to contain a number of documents which Ms Bellamy recognised as documents she had prepared while working at the Department for official purposes.
- [235] She explained to the Commission that she thought there would be no issue keeping copies of documents she had written whilst working at the Department.
- [236] Ms Bellamy's explanation is disingenuous. On 17 October 2017, Mr Pratt sent Ms Bellamy a message 'Hi Love, how's the afternoon going and the rape and pillage of the data for your own personal benefit? ☺' <sup>77</sup>
- [237] Ms Bellamy replied 'I am copying contacts as we speak'.<sup>78</sup>
- [238] The evidence obtained by the Commission has not revealed that Ms Bellamy disclosed other departmental records beyond those identified above.
- [239] While Ms Bellamy took other Department records she was not authorised to retain, the evidence available to the Commission does not reveal these documents were circulated, or even used by her.

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<sup>77</sup> Emoji in original.

<sup>78</sup> Text message from A Pratt to S Bellamy, 17 October 2017.

## CHAPTER SIX

### Conclusion

- [240] The Commission became aware of Ms Bellamy's conduct as a consequence of reports provided to it by notifying authorities, the Public Sector Commission and the Department of Mines, Industry Regulation and Safety. Both these authorities acted promptly, which assisted the Commission to commence inquiries without delay.
- [241] Failure to understand, identify, declare and manage conflicts of interest is a particular risk in procurement activities. It is important for disclosure to occur promptly.
- [242] The Commission's investigation exposed a serious failure by Ms Bellamy to disclose a conflict of interest.
- [243] Her reputation, and that of Soil Water is, and should be diminished as a result of her conduct and that of Mr Pratt. Had a proper conflict of interest declaration been made, these issues are unlikely to have arisen.
- [244] Ms Bellamy's conduct also reflects badly on the AMP, a project Ms Bellamy said she was committed to.
- [245] Ms Bellamy's corrupt conduct was the result of her choice not to declare a conflict of interest and her pursuit of the interest of Soil Water at the expense of the Department.
- [246] Her conduct was however facilitated by the limited oversight of transactions involving less than \$10,000 and the practice of getting contractors to split invoices to expedite transactions and avoid more formal procedures. The Commission accepts that a level of commercial expedition is necessary in government purchasing. This inquiry shows that it is important for repeated transactions with a single provider to be examined critically.

### Opinion

- [247] The Commission has formed the opinion that Ms Bellamy engaged in the following serious misconduct:
  - she corruptly used her position to procure the payment of Soil Water's invoice of 7 April 2017 for \$6,014 (excluding GST) in relation to the Bulong Nickel TSF;

- she corruptly used her position to procure the payment of Soil Water's invoice of 12 June 2017 for \$9,080 (excluding GST) in relation to the Black Diamond LiDAR survey and Rehabilitation monitoring and management plan;
- she corruptly used her position to attempt to obtain payment for Soil Water's invoice for \$9,089 (excluding GST) in connection with the Ellendale TSF; and
- on 15 and 18 August and 8 September 2017, she disclosed information to Mr Pratt and Soil Water that was confidential to the Department.

[248] An opinion that serious misconduct has occurred is not, and is not to be taken as a finding or opinion that a particular person is guilty of or has committed a criminal offence or a disciplinary offence.<sup>79</sup>

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<sup>79</sup> CCM Act s 217A.