



I.C.A.C

INDEPENDENT COMMISSION
AGAINST CORRUPTION



INVESTIGATION INTO CORRUPT CONDUCT ASSOCIATED WITH TENDERING FOR TRANSGRID WORK

ICAC REPORT
SEPTEMBER 2009

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Mr President
Mr Speaker

In accordance with section 74 of the *Independent Commission Against Corruption Act 1988* I am pleased to present the Commission's report on its investigation into corrupt conduct associated with tendering for TransGrid work.

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

The Commission's findings and recommendations are contained in the report.

I draw your attention to the recommendation that the report be made public forthwith pursuant to section 78(2) of the *Independent Commission Against Corruption Act 1988*.

Yours faithfully



The Hon Jerrold Cripps QC
Commissioner

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Executive summary

This report concerns an investigation by the Independent Commission Against Corruption (“the Commission”) into the provision of benefits by Domenic Murdocca, the Managing Director of the contracting firm Sage Engineering Pty Limited (“Sage”) to Goran Pevec, a civil engineer working for TransGrid, a State owned corporation. The benefits included cash payments in the order of \$40,000 and a ticket to the 2007 Melbourne Grand Prix valued at \$2,500. These benefits were provided and accepted in return for Mr Pevec providing, or agreeing to provide, improper assistance with respect to Sage’s tendering for TransGrid work.

In 2005, 2006 and 2007 Sage gained a series of contracting and subcontracting opportunities valued at \$7,079,527 related to the erection of palisade fences around TransGrid substations, as follows:

- April 2005 - Awarded subcontract to perform roadworks in the vicinity of fence construction at the Sydney West substation. The head contracting firm, responsible for the fence construction pursuant to TransGrid contract C1119, was Wheeler Contracting Pty Limited (“Wheeler Contracting”). Sage received \$153,300 from this contract.
- August 2006 - Awarded TransGrid contract C1167 to erect palisade fences around substations at Dapto, Ingleburn, Kemps Creek and Liverpool. Sage received \$3,496,910 from this contract.
- May 2007 – Awarded TransGrid contract C1193 to erect palisade fences around substations at Vineyard, Regentville, Avon and Kangaroo Valley. Sage received \$2,173,773 from this contract.
- September 2007 – Awarded TransGrid contract C1204 to erect fences around substations at Mount Piper and Wallerawang. Sage received \$1,255,544 from this contract.

Mr Pevec, in his capacity as an officer of TransGrid, was involved in the administration of the C1119 contract.

He was also involved in the administration of the tender processes for TransGrid contracts C1167, C1193 and C1204, and he was a member of the tender evaluation committee for each of these contracts.

The Commission’s findings

The Commission’s findings are set out in Chapter 9. In particular the Commission found that:

1. Mr Pevec and Mr Murdocca were well known to each other prior to 2005, however Mr Pevec, Mrs Pevec, and to a lesser extent, Mr Murdocca, sought to conceal from the Commission the existence and extent of the relationship that existed between Mr Pevec and Mr Murdocca.
2. Mr Pevec provided assistance to Mr Murdocca and Sage in relation to the preparation of Sage’s subcontract tender in relation to TransGrid’s C1119 contract, and he was involved in knowingly deceiving his supervisor, Mr Gray, and others, in relation to the circumstances of this proposed subcontract.
3. Mr Pevec provided assistance to Mr Murdocca and Sage with respect to the preparation of the Sage tender for TransGrid’s C1167 contract with the intention of ensuring that Sage succeeded in the tender process. This happened when Mr Pevec was the TransGrid contact person in relation to technical matters for that tender process and a member of the tender evaluation committee that would have responsibility for assessing all tenders received, including the Sage tender.
4. Mr Pevec received cash payments from Mr Murdocca in the order of \$40,000 and a ticket to the 2007 Melbourne Grand Prix valued at \$2,500 in return for improper assistance provided by Mr Pevec with respect to the affairs of TransGrid.

Findings are made that Mr Pevec and Mr Murdocca engaged in corrupt conduct.

Chapter 9 also contains statements made pursuant to section 74A(2) of the *Independent Commission Against Corruption Act* (“the ICAC Act”) that the Commission is of the opinion that consideration should be given to obtaining the advice of the Director of Public Prosecutions (“DPP”) with respect to the prosecution of Mr Pevec and Mr Murdocca for common law offences of misconduct in public office and offences of corruptly giving or receiving a benefit contrary to section 249B(1) and section 249B(2) of the *Crimes Act 1900* (NSW) (“the Crimes Act”), the prosecution of Mr Pevec for offences of wilfully making false statements to mislead the Commission contrary to section 80(c) of the ICAC Act, and the prosecution of Mr Pevec, Mrs Linda Pevec and Mr Murdocca for offences of giving false or misleading evidence at a compulsory examination or a public inquiry contrary to section 87(1) of the ICAC Act.

In Chapter 10 the Commission analyses the organisational context in which this conduct occurred and makes the following recommendations to TransGrid to help manage the identified corruption risks and help prevent the recurrence of corrupt conduct:

Recommendation 1

That TransGrid reviews its procedures relating to the circumstances in which contract variations occur to minimise the risk of contract variations being used to circumvent competitive tender processes. This review should include situations where the nature of the works falls outside of the scope of the contract.

Recommendation 2

That TransGrid undertakes periodic internal audits of its contract variations to ensure compliance with its policy and procedures relating to Recommendation 1.

Recommendation 3

That TransGrid adopts a policy on its staff providing referee reports and/or endorsements for contractors. Should TransGrid permit its staff to provide such reports, the policy should clearly set out the circumstances in which referee reports can be provided and any limitations on this practice. The policy should also be clearly communicated to all relevant staff.

Recommendation 4

That TransGrid’s procurement procedures make provision for minority reports and require that any minority reports be submitted along with majority reports to the appropriate approval authority.

Recommendation 5

That TransGrid considers ensuring that all personnel who act as members on a tender evaluation committee undergo a procurement training program, and that the procurement training program includes:

- an explanation of the roles and responsibilities of each tender evaluation committee member;
- an explanation of the roles and responsibilities of the tender evaluation committee convenor;
- an explanation of the Evaluation Matrix (or equivalent document) and how the tenders are scored
- the processes involved in signing the Evaluation Matrix (or equivalent document)
- the circumstances in which a tender evaluation committee member may decide to submit a minority report, who this report would be submitted to and the processes involved in submitting this report
- the processes involved in preparing the report recommending the preferred tender.

Recommendation 6

That TransGrid undertakes its proposed review of policies and procedures to address the corruption risks arising from the unauthorised release of confidential information.

As part of the performance of its statutory functions the Commission will monitor the implementation of the corruption prevention recommendations made as a result of this investigation.

The recommendations will be communicated to TransGrid with a request that an implementation plan for the recommendations be provided to the Commission within three months of the publication of this report. The Commission will also request progress reports on the implementation of recommendations at intervals of 12 and 24 months after the publication of this report.

These reports will be posted on the Commission’s website, www.icac.nsw.gov.au, for public viewing.

Chapter 1: Introduction

In 2007 and 2008 the Commission conducted an investigation into procurement practices within RailCorp. In the course of this investigation the Commission examined dealings between the contracting firm Sage Civil Engineering Pty Limited (“Sage”) and a RailCorp officer. During this investigation it came to the Commission’s attention that Sage also had a significant working relationship with TransGrid, a State owned corporation (“SOC”). In the light of the evidence that emerged in relation to Sage’s dealings with RailCorp, the Commission decided to look more closely at the nature of Sage’s dealings with TransGrid.

The Commission’s initial enquiries suggested that Domenic Murdocca, the managing and sole director of Sage, had had some previous dealings with the TransGrid officer Goran Pevec, that Mr Pevec had been on a series of tender evaluation panels in circumstances where Sage had been adjudged the successful tenderer, and that this had culminated in a series of lucrative contracts for Sage involving the construction of security fences for TransGrid. The value of these contracts to Sage was in the vicinity of \$7,000,000.

These circumstances raised concerns for the Commission as to whether Mr Pevec provided any improper assistance to Mr Murdocca and Sage in the course of Sage’s preparation and submission of tenders and TransGrid’s subsequent assessment of these tenders.

Why the Commission investigated

One of the Commission’s principal functions is to investigate any allegation or complaint that, or any circumstances which in the Commission’s opinion imply that the following may have occurred, may be occurring or may be about to occur:

- corrupt conduct, or
- conduct liable to allow, encourage or cause the occurrence of corrupt conduct, or
- conduct connected with corrupt conduct.

The Commission’s role is set out in more detail in Appendix 1. The definition of corrupt conduct under the *Independent Commission Against Corruption Act 1988* (“the ICAC Act”) is stated in Appendix 2.

In determining to conduct an investigation the Commission took into account:

- the seriousness of the concerns arising from its preliminary enquiries into the matter;
- the fact that corruption in the procurement of construction services affects many agencies in the NSW public sector;
- the fact that contracts relating to the construction of security fencing around electricity substations have significant safety and security implications;
- that if these contracting processes have been manipulated this would be a matter of grave concern for the community.

Conduct of the investigation

The Commission obtained and analysed relevant documentation from TransGrid relating to Mr Pevec’s employment and the conduct of relevant tender processes for the construction of palisade fences around TransGrid substations.

Further relevant documents and things were obtained through the execution of search warrants at the private residence of Mr Murdocca and the private residence of Mr Pevec.

Mr Pevec was interviewed by Commission officers on 30 September 2008. Mr Pevec also participated in a compulsory examination on 3 October 2008. On that day Mr Pevec’s wife, Linda Pevec, and Mr Murdocca also participated in compulsory examinations.

Mr Murdocca participated in a further compulsory examination on 20 February 2009. Mr Eduard Pevec, Goran Pevec’s stepfather, also participated in a compulsory examination on that day.

Robert Gorgievski, Stephen Cunningham and Luke Coutis, all persons involved in Sage's construction work for TransGrid, participated in compulsory examinations on 3 April 2009, 15 April 2009 and 16 April 2009 respectively.

The Commission obtained warrants to lawfully intercept two telecommunications services.

The public inquiry

The ICAC Act provides that for the purposes of an investigation the Commission may conduct a public inquiry if it considers it is in the public interest to do so.

Prior to making that determination, it was necessary to consider those matters set out in section 31(2) of the ICAC Act, which provides that:

Without limiting the factors that it might take into account in determining whether or not it is in the public interest to conduct a public inquiry, the Commission is to consider the following:

- (a) *the benefit of exposing to the public, and making it aware of, corrupt conduct,*
- (b) *the seriousness of the allegation or complaint being investigated,*
- (c) *any risk of undue prejudice to a person's reputation (including prejudice that might arise from not holding an inquiry),*
- (d) *whether the public interest in exposing the matter is outweighed by the public interest in preserving the privacy of the persons concerned.*

The Commission determined that it was in the public interest that a public inquiry be conducted into this matter. In reaching this determination the Commission took into account the following considerations:

- The allegations were serious.
- The issue of corruption in procurement processes has significance across a broad section of the NSW public sector and accordingly is an issue of substantial public interest.
- Extensive investigative activity had been undertaken prior to the public inquiry and Counsel Assisting was in a position to put a substantial body of evidence before the Commission in a manner that properly and fairly canvassed relevant issues. The risk of undue prejudice to any person's reputation in these circumstances was low.
- The public interest in examining these circumstances and assessing whether any relevant

person engaged in corrupt conduct was not outweighed by the public interest in preserving the privacy of the persons concerned.

The public inquiry commenced on Monday, 20 April 2009 and continued until Wednesday, 29 April 2009. The Hon. Jerrold Cripps QC, Commissioner, presided over the public inquiry. Stephen Rushton SC appeared as Counsel Assisting the Commission. Evidence was given by 11 witnesses.

Following the public inquiry Counsel Assisting prepared written submissions that were circulated to all affected parties. These affected parties were afforded the opportunity to submit written submissions in response. Some submissions were received and these were taken into account in the preparation of this report.

Investigation findings and section 74A(2) statements

Chapter 9 details the relevant factual determinations that the Commission has made, findings as to whether any persons have engaged in corrupt conduct, and statements made pursuant to section 74(2) of the ICAC Act.

In particular, the Commission found that between October 2006 and September 2007 Mr Murdocca provided, and Mr Pevec received, cash payments in the order of \$40,000 and a ticket to the 2007 Melbourne Grand Prix valued at \$2,500 in return for Mr Pevec providing, or agreeing to provide, improper assistance to Mr Murdocca with respect to the tendering for TransGrid work by Mr Murdocca's company, Sage.

The improper assistance included:

- the provision of ongoing expert advice in relation to the preparation of tenders
- the drafting of site-specific and other technical provisions for inclusion in a Sage tender
- the provision of documents received by TransGrid from competing tenderers
- the provision of TransGrid tender drawings in CAD format; and
- the provision of assistance in sourcing materials for reference in a Sage tender.

The Commission has determined that both Mr Pevec and Mr Murdocca have engaged in corrupt conduct.

The Commission has made statements pursuant to section 74A(2) of the ICAC Act that it is of the opinion

that consideration should be given to obtaining the advice of the Director of Public Prosecutions (“DPP”) with respect to the prosecution of the following persons:

- Goran Pevec for offences of:
 - misconduct in public office
 - corruptly receiving benefits contrary to section 249B(1) of the *Crimes Act 1900* (NSW)
 - wilfully making false statements to mislead the Commission contrary to section 80(c) of the ICAC Act, and
 - giving false or misleading evidence at a compulsory examination or a public inquiry conducted by the Commission contrary to section 87(l) of the ICAC Act.
- Domenic Murdocca for offences of:
 - aiding and abetting misconduct in public office
 - corruptly giving benefits contrary to section 249B(2) of the *Crimes Act 1900* (NSW), and
 - giving false or misleading evidence at a compulsory examination or a public inquiry conducted by the Commission contrary to section 87(l) of the ICAC Act.
- Linda Pevec for offences of:
 - giving false or misleading evidence at a compulsory examination conducted by the Commission contrary to section 87(l) of the ICAC Act.

Corruption prevention

Chapter 10 contains corruption prevention analysis of the circumstances disclosed in the Commission’s public inquiry and six recommendations for the development of TransGrid’s procedures.

As part of the performance of its statutory functions the Commission will monitor the implementation of the corruption prevention recommendations made as a result of this investigation.

The recommendations will be communicated to TransGrid with a request that an implementation plan for the recommendations be provided to the Commission within three months of the publication of this report. The Commission will also request progress reports on the implementation of recommendations at intervals of 12 and 24 months after the publication of this report.

These reports will be posted on the Commission’s website, www.icac.nsw.gov.au, for public viewing.

Recommendation that this report be made public

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

Chapter 2: Background

TransGrid

The Electricity Commission of New South Wales (“ECNSW”) was established in May 1950. The ECNSW was responsible for electricity generation and bulk transmission of electricity in New South Wales and traded under the registered business name Pacific Power from 1992 to 1995.

In February 1995 the New South Wales Electricity Transmission Authority (“NSWETA”) was established. All assets, rights and liabilities that comprised or related to the ECNSW’s transmission system were transferred to the NSWETA.

Until March 1995 the NSWETA carried on business under its own name. After that it carried on business under the registered business name of TransGrid.

In December 1998 the NSWETA was dissolved and TransGrid was established as a State owned corporation (“SOC”). All assets, rights and liabilities of the NSWETA passed to the new SOC.

The principal functions of TransGrid are outlined in the *Energy Services Corporation Act 1995*, as follows:

- (a) To establish maintain and operate facilities for the transmission of electricity and other forms of energy, and
- (b) To provide services for the transmission of electricity and other forms of energy in accordance with the relevant regulatory regime.

TransGrid’s electricity network consists of approximately 12,500 kilometres of high voltage transmission line and underground cables, and 83 substations and switching stations.

TransGrid receives a five-year “regulatory determination” from the Australian Energy Regulator and therefore plans work within this framework. In the five years to June 2009, TransGrid’s capital expenditure program was \$1.4 billion. In the five-year period commencing in July 2009 the capital expenditure program was increased to \$2.4 billion.

TransGrid project to erect palisade fences around substations

As a result of heightened security concerns, arising out of increased concerns about terrorism, and concerns about the safety of individuals who gain unauthorised access to high-voltage substations, in October 2003 the TransGrid board approved a security strategy, the “Network Security Plan”. This required the replacement of existing fences around substations with high-security palisade fencing.

Palisade fencing is a generic term applied to a style of fencing made from appropriately treated steel members or “pales”. The pales are generally three metres in length. They are lined up vertically, a few centimetres apart, across three horizontal rails. The rails connect up to two vertical uprights which support each panel of vertical pales.

The upper part of each pale bends out to deter people who might try to climb the structure. The top of each pale is frayed into a series of sharp spikes as a further deterrent. For the fences that are relevant to this investigation, live electrical wiring is placed across various sections of the fence as a further deterrent. Finally, a trench of concrete, or a plinth, is placed in the ground underneath the fence to prevent any person from trying to burrow under the structure.

TransGrid has contracted out the work of building these high-security fences through a series of tender processes relating to individual substations and groups of substations. Details of the contracts of particular concern to the Commission are set out below. Mr Pevec was a member of the tender evaluation committee in relation to each of these contracts.

C1119 (security fencing at Sydney West and Sydney East substations)

The closing date for tenders for this contract was Tuesday, 5 October 2004. Greg Wheeler Contracting (“Wheeler Contracting”) was awarded the contract on 18 January 2005. The contract was completed on 16 December 2005.

In the course of work on the Sydney West substation at Wallgrove, deficiencies in related roadworks were identified which had the potential to undermine the fence structure. Wheeler Contracting was awarded an extension of its contract so it could address this problem. This work was subcontracted out to Sage in May 2005. Sage received \$153,300 from this contract. This was Sage's first involvement with work on a TransGrid site.

C1167 (security fencing at Dapto, Ingleburn, Kemps Creek and Liverpool substations)

The closing date for tenders for this contract was 6 June 2006. The contract was awarded to Sage on 16 August 2006. This was the first contract awarded by TransGrid directly to Sage. Sage received \$3,496,910 from this contract.

C1193 (security fencing at Vineyard, Regentville, Avon and Kangaroo Valley)

The closing date for tenders for this contract was 13 February 2007. The contract was awarded to Sage on 31 May 2007. This was the second contract awarded by TransGrid directly to Sage. Sage received \$2,173,773 from this contract.

C1204 (security fencing at Mount Piper and Wallerawang)

The closing date for tenders for this contract was 24 April 2007. The contract was awarded to Sage on 11 September 2007. This was the third and final contract awarded by TransGrid directly to Sage. Sage received \$1,255,544 from this contract.

Sage also unsuccessfully tendered for eight other contracts. Mr Pevec was a member of the tender evaluation committee for two of these contracts.

TransGrid procedures for tender processes

TransGrid officers are guided in their conduct of tender processes by the *TransGrid Quotation and Tender Guidelines*. These were issued on 4 August 2004 and updated on 25 May 2006 (none of the changes made with this update is relevant to this investigation). The guidelines provide as follows:

- For each tender process, relevant TransGrid officers should be nominated to answer technical enquiries and commercial enquiries.
- Where an enquiry requires no additional information or any correction to the tender, it is not necessary to advise all tenderers of the enquiry and the response provided. On all other occasions the enquiry and the response must be circulated to all tenderers.
- TransGrid officers are required to maintain a record of all verbal or written enquiries on the tender file.
- A tender evaluation committee is to be established for each tender process. This will have at least two members, including one from TransGrid's Supply Management Group (TransGrid's commercial limb) and one from the operational area responsible for the works.
- Any panel member who has a known potential conflict of interest must declare this and may need to withdraw from the evaluation process

The Commission is satisfied that Mr Pevec understood his obligations and responsibilities under these guidelines.

Goran Pevec

Mr Pevec commenced studies in engineering at the University of Wollongong in 1991. He was awarded a bachelor degree in engineering, majoring in civil engineering, in 2006.

He commenced employment with TransGrid in August 2001 as a cable inspector. In May 2004 he was transferred to TransGrid's Wallgrove Centre and was attached to the corporation's Network Services Business Unit, Central Region as a civil engineer. Here he became involved in the conduct of the project for the erection of palisade fences around substations within TransGrid's Central Region. Through this he developed a significant level of expertise in relation to the construction of palisade fences in a TransGrid context. He was a technical representative on the tender evaluation committee for each of the three fencing contracts awarded to Sage. As such, his responsibility was essentially to make assessments as to the technical merits of prospective tenders, and to provide technical advice to other committee members.

Mr Pevec was interviewed by Commission officers on 30 September 2008. He gave evidence at a compulsory examination on 3 October 2008. He gave evidence at the Commission's public inquiry, commencing his evidence on 21 April 2009.

It needs to be noted at this early stage of this report that throughout his various accounts, this Commission found Mr Pevec to be an unsatisfactory witness. On many occasions his evidence was clearly misleading. Specific incidents of this will be examined later in this report. On occasions when his evidence was exposed as misleading, which it often was, Mr Pevec sought to divert attention from this by trying to alter the import of the question he had been asked, or simply speaking continuously, often in a nonsensical manner. At no stage did his evidence redeem itself in any meaningful sense. Indeed, it tended to plunge to increasingly lower depths in terms of credibility. The Commission has accordingly treated his evidence with scepticism except where it amounts to an admission against his own interest or is corroborated by other reliable evidence.

Domenic Murdocca and Sage Civil Engineering Pty Limited

Domenic Murdocca commenced studies in engineering at the University of Wollongong in 1995. He has not studied at the university since 2000, and has not yet qualified for a degree at that institution.

He established Sage in 1999 and at the time of the Commission's public inquiry he was the managing and sole director of that company. Sage has been involved predominantly in civil engineering work.

In the first half of this decade Sage performed a great deal of work for RailCorp.

In 2005 Sage was engaged as a subcontractor to Wheeler Contracting, to perform roadworks as part of Wheeler Contracting's fencing contract C1119. In 2006 and 2007 Sage itself was awarded three fencing contracts with TransGrid. The total value of these four contracts was \$7,079,527.

Mr Murdocca gave evidence at compulsory examinations on 3 October 2008 and 20 February 2009, and at the Commission's public inquiry, commencing his evidence on 20 April 2009.

The Commission also found Mr Murdocca to be an unsatisfactory witness.

Mr Murdocca gave misleading evidence on a number of occasions. Again, specific examples will be canvassed in detail later in this report. On other occasions he appeared to prevaricate and obfuscate with a view to obstructing the Commission's progress. It seemed to the Commission that the only time he was prepared to speak candidly was when he was satisfied that the Commission could establish what had happened in any event. The Commission has accordingly treated his evidence with scepticism except where it amounts to an admission against his own interest or is corroborated by other reliable evidence.

Matters for determination by the Commission

Ultimately the Commission is required to determine whether relevant parties engaged in corrupt conduct. However, in the circumstances of this investigation a number of core issues emerged that warranted consideration and determination by this Commission:

1. Did Mr Pevec provide improper assistance to Mr Murdocca and Sage to secure the subcontract with Wheeler Contracting in relation to TransGrid contract C1119?
2. Did Mr Pevec provide improper assistance to Mr Murdocca and Sage to secure the TransGrid contract C1167?
3. Did Mr Pevec generally provide improper assistance to Mr Murdocca and Sage to secure fencing contracts with TransGrid?
4. Did Mr Pevec receive gifts or benefits from Mr Murdocca or Sage, and if so, were these given and received in return for assistance given or to curry favour for future commercial opportunities?
5. Did Mr Pevec and/or Mr Murdocca attempt to conceal the true nature of their dealings from the Commission?

Chapter 3: The relationship between Mr Pevec and Mr Murdocca prior to 2005

The developments of most significance to this investigation began in 2005, around the time that Sage gained the subcontract with Wheeler Constructions in relation to contract C1119. However, the Commission examined the nature of the relationship that existed between the two men prior to that time, for the following reasons:

- It was relevant to understanding the nature of the relationship that existed between the two men as these commercial dealings progressed.
- Witnesses, particularly Mr Pevec and his wife, Linda Pevec, went to great lengths to play down the nature and extent of these prior dealings and the ongoing personal relationship between the two men.

Mr Pevec was first spoken to about his dealings with Mr Murdocca and Sage when he was interviewed by Commission officers on 30 September 2008. He told the officers:

- He did not know Mr Murdocca when he was studying at the University of Wollongong.
- The first time he met Mr Murdocca was in mid-2005 when Sage was doing subcontract work on the C1119 contract.
- He "had never socialised with the Murdoccas".

When he gave evidence at his compulsory examination, three days later, he continued to play down his relationship with Mr Murdocca:

- He gave more precise evidence in relation to their interaction at university, telling the Commission "I didn't know him myself, I knew of him". He did not think he was in any of Mr Murdocca's classes and they had no mutual friends.
- He confirmed that he had only come to know Mr Murdocca from 2005 when Sage became the subcontractor on the C1119 contract.
- He said he had never been to Mr Murdocca's residence.

- When asked if he had met Mr Murdocca anywhere outside the workplace or at his residence, he responded "basically at the work sites where the various activities were occurring".
- He said he had no social relationship whatsoever with Mr Murdocca or his wife, Susan Murdocca, and there was no legitimate reason for him to meet up with either outside a work context.

Linda Pevec gave similar evidence, playing down the connections between the families. She said she had only met Mr Murdocca "maybe two, three times". She said she had met him only at building sites where her husband worked and had never met Susan Murdocca at all.

At his compulsory examination, Mr Murdocca also tried to play down the connections, but not to the same extent as Mr and Mrs Pevec:

- He acknowledged that he had met Mr Pevec while studying at the University of Wollongong. They were not friends but shared an acquaintance in the form of Andrew Fam, a fellow student, and later an employee of Sage.
- He told the Commission he had met Mr Pevec at a party in 2003 but did not see him again until he met him on site in the course of the C1119 subcontract.

However, other evidence indicated that a much closer relationship had existed between Mr Pevec and Mr Murdocca.

Records from the University of Wollongong indicated that Mr Murdocca and Mr Pevec were enrolled in the same course on nine occasions.

Andrew Fam told the Commission that he attended the University of Wollongong with both Mr Pevec and Mr Murdocca. On occasions he saw them in each other's company and they mixed with the same circle of friends. From time to time, he, Mr Murdocca and Mr Pevec would socialise and they attended some classes together. In Mr Fam's view, Mr Pevec and Mr Murdocca were friends

while they were at university. The Commission accepts Mr Fam's evidence on this.

Robert Gorgievski, who works as a concreter, met and became friends with Mr Pevec when they both studied at Wollongong TAFE. Their friendship continued as they proceeded on to study civil engineering at the University of Wollongong. Mr Gorgievski told the Commission that from time to time Mr Fam, Mr Murdocca and Mr Pevec were in the same classes. He had no recollection of Mr Pevec socialising with either Mr Fam or Mr Murdocca other than saying "hello" to each other in hotels or bars because "we knew each other".

There is evidence of further dealings between Mr Murdocca and Mr Pevec prior to Sage being engaged on the C1119 operation.

Mr Murdocca attended Mr Pevec's wedding, albeit as a guest of a friend of Mrs Pevec's family.

Telephone records show a call in April 2004 between Mr Murdocca's Telstra mobile telephone service and the TransGrid service issued to Mr Pevec. There was a further call in January 2005. Then there was extensive telephone interaction in March and April 2005, leading up to the awarding of the C1119 subcontract to Sage in May 2005. Other evidence emerged at the public inquiry which indicated that, far from the two men coming across each other only as Sage commenced work on the C1119 site, as each had initially suggested, they had in fact worked closely together before the award of the subcontract, preparing the way for Sage to secure this work. These circumstances will be discussed in more detail in the next chapter of this report.

Mr Murdocca told the Commission, at his compulsory examination on 3 October 2008, that he had no dealings with Mr Pevec between the conclusion of the C1119 subcontract in July 2005 and seeing him at the onsite inspection for prospective C1167 tenderers in May 2006. The evidence shows that there was constant telephone contact over that time. In fact between July 2005 and May 2006 there were 113 telephone calls made between

Mr Murdocca's Telstra mobile service and the TransGrid service issued to Mr Pevec with calls being made in each month of that period.

Mr Fam and Zlatko Aleksovski, another former employee of Sage, both gave evidence of an incident shortly after Christmas in 2005. Mr Fam said it was around February or March 2006. At this time Mr Fam and Mr Aleksovski, as Sage employees, were in attendance at Mr Murdocca's home when Mr Pevec turned up. Both described how Mr Pevec was in possession of paperwork. Mr Pevec met with Mr Murdocca for a period of time and then left. At the public inquiry both Mr Murdocca and Mr Pevec acknowledged this meeting. By this time both had abandoned their earlier stated positions, and acknowledged that by early 2006 they were communicating in relation to prospective TransGrid operations. Mr Murdocca in particular acknowledged that he had extensive dealings with Mr Pevec in relation to the C1167 contract in the days, weeks and months before the site visit for prospective tenderers, in May 2006.

There was a wealth of evidence demonstrating that the earlier accounts of Mr and Mrs Pevec, asserting limited contact between themselves and Mr Murdocca, and a complete absence of social interaction, were patently untrue. Mr Murdocca told the Commission that the Pevec family had attended his residence for a barbecue with his family. Mr Aleksovski spoke of attending the christening of Mr Murdocca's son in December 2006 and finding himself seated with Mr and Mrs Pevec to whom he spoke over the course of the function. Mr Aleksovski also described how he saw Mr Pevec at the Sage Christmas party in December 2006 at the Pure Platinum "gentleman's club". All of this interaction was ultimately acknowledged by Mr Pevec and, where relevant, Mrs Pevec, during the course of the Commission's public inquiry.

The Commission is satisfied that Mr Pevec and Mr Murdocca were well known to each other prior to 2005, having attended the same university and having socialised from time to time. As set out in the following chapters, they also had significant dealings in the lead-up to Sage's

involvement in the C1119 subcontract and the C1167 contract.

After 2005 Mr Pevec and Mr Murdocca, and their families continued to engage socially from time to time.

The Commission is satisfied that Mr and Mrs Pevec, and to a lesser extent Mr Murdocca, attempted to conceal from the Commission the extent of the relationship that existed between Mr Pevec and Mr Murdocca prior to the C1119 subcontract in 2005, as well as the nature and extent of the ongoing relationship between the men and their families after that time.

Chapter 4: The C1119 subcontract

TransGrid contract C1119 required the replacement of palisade fencing at Sydney East and Sydney West (Wallgrove) substations. The tender was awarded on 18 January 2005 to Wheeler Contracting. In February 2005, Mr Wheeler highlighted to Mr Pevec a potential extension of time claim, namely, that there was a sunken concrete curb and gutter on the western and southern side of the Sydney West substation and there was an unstable brick gutter on the eastern side. These roadway deficiencies had the potential to destabilise the fence he was building. On 31 May 2005 the subcontract to perform this “variation” work was awarded to Sage. The value of this subcontract to Sage was \$153,300.

In contrast to Mr Pevec’s compulsory examination evidence, where he claimed that he met Mr Murdocca only once the subcontract work commenced on this site, the evidence shows that Mr Pevec was instrumental in Sage securing this work, and he had extensive dealings with Mr Murdocca for this purpose.

It is important to note that the variation to contract C1119 was performed by way of a “subcontract” between Wheeler Contracting and Sage. There was no contractual relationship between TransGrid and Sage.

Exactly how Sage was initially approached in relation to this work is unclear. As mentioned in the previous chapter, there was telephone contact between Mr Pevec and Mr Murdocca on 3 January 2005. However, the initial discussion between Mr Wheeler and Mr Pevec, about the need for a contract variation, is documented in correspondence from Wheeler Contracting as taking place on 1 February 2005. The next known telephone contact between Mr Pevec and Mr Murdocca did not take place until 2 March 2005.

If Mr Pevec did not approach Mr Murdocca himself, it is clear that he at least put forward Sage as a prospective subcontractor. This is the evidence that Mr Wheeler gave to the Commission, and it was acknowledged by Mr Pevec. It is clear that Mr Pevec quickly became very involved in the subcontracting process.

Between 2 March 2005 and 12 April 2005, call charge records demonstrate that there was regular telephone contact between Mr Murdocca’s service and Mr Pevec’s service. Excluding telephone calls of 30 seconds or less, there were nine calls, as follows:

Date	Time	Duration of call
2 March 2005	7.05 am	1 minute 30 seconds
2 March 2005	6.49pm	18 minutes 30 seconds
8 March 2005	8.34 am	8 minutes 30 seconds
8 March 2005	5.58 pm	12 minutes 30 seconds
10 March 2005	10.24 am	1 minute
16 March 2005	1.53 pm	7 minutes
29 March 2005	11.24 am	3 minutes 30 seconds
11 April 2005	4.12 pm	3 minutes 30 seconds
12 April 2005	3.24 pm	3 minutes 30 seconds

Although there is usually no contractual arrangement between TransGrid and a subcontractor, TransGrid must approve any request for a variation. In this respect it must be satisfied that the cost of the variation and the circumstances of any subcontractor are acceptable.

On 11 April 2005 at 2:58pm, Mr Pevec sent an email to Mr Murdocca in the following terms:

Dom,

Please find attached for your info. This must be presented in a spreadsheet to Greg Wheeler.

Regards

Goran Pevec

The Commission has been unable to access the attachment to this email.

On 12 April 2005 at 7.31 am, Mr Murdocca responded by way of email in the following terms:

Goran,

Please find revised attached for your info.

Domenic Murdocca.

The Commission was able to access the attachment on this occasion. This was a spreadsheet containing items of work and costings, including a base costing of \$69,706 for roadworks. Mr Murdocca presents this as a revision of the information provided by Mr Pevec on the previous day. This suggests that the attachment to Mr Pevec's email also canvassed items of work and associated costings. Mr Pevec confirmed this and told the Commission "It was only my view of roughly what the costs would be".

The level of telephone contact between 2 March 2005 and 12 April 2005, together with the exchange of emails referred to above, indicates that Mr Pevec was significantly involved in assisting Mr Murdocca and Sage to prepare a subcontract bid that would be in an acceptable form and in assisting them to set the amount of their contract bid. From a TransGrid perspective, this conduct was inappropriate. At the time of the C1119 subcontract Tony Gray was the project manager for TransGrid's Central Region. He was also Mr Pevec's supervisor. In his evidence to the Commission, Mr Gray said that he had known nothing about the assistance Mr Pevec was providing to Sage. He told the Commission that Mr Pevec's actions were not consistent with the role of a TransGrid officer in these circumstances. He told the Commission:

you've got yourself involved with a contract so you've lost your distance – our job's to manage the contract and the contractor, not to get involved in getting the actual prices for them.

Ultimately TransGrid's agreement to the variation had to be signed off by senior people within the organisation including the Acting Chief Executive of TransGrid. However it is apparent that the person who primarily had to be satisfied of the appropriateness of the variation proposal was Mr Pevec's supervisor, Tony Gray. It is clear that Mr Gray took this responsibility very seriously and set stringent requirements to ensure probity. Mr Pevec, on the other hand, sought to manipulate the process, deceive Mr Gray, and circumvent Mr Gray's efforts to appropriately protect TransGrid's interests.

Following the email correspondence between Mr Pevec and Mr Murdocca on 11 and 12 April 2005, as canvassed above, Sage submitted a tender for the subcontract work

to Wheeler Contracting on 15 April 2005. This quoted an overall price of \$153,300 which included the base figure of \$69,706 for the supply and installation of the road, kerbs and gutters. Wheeler Contracting referred this on to Mr Pevec on 17 April 2005. Mr Pevec in turn advised Mr Gray of the proposed subcontract price, and advised him that it seemed "on the mark".

Mr Gray wanted to get a comparison price, to determine whether the Sage bid was commercially competitive. On 18 April 2005 he sent an email to his colleague Col Sharpe, who was involved in a similar project in Yass. On 19 April 2005 Mr Sharpe wrote back advising of the price that had been given for the conduct of similar work in the Yass project. The quote received by TransGrid in Yass was \$282,924.75 for the supply and installation of approximately 1,325 metres of bitumen roadway. This amounted to a cost of approximately \$213 per metre of roadway. The Sage tender, which came in at \$193 per metre, compared well to this as Mr Pevec commented to Mr Gray in email correspondence on 20 April 2005.

However, Mr Gray was more circumspect and indicated that he wanted to see evidence that Wheeler Contracting had adequately tested the market for this work, and he asked for further quotes to be obtained by the head contractor.

Mr Pevec took it upon himself to arrange for this. It is apparent that Mr Wheeler in his discussions with Mr Pevec, had made some reference to Mark Mathews, a contractor in Dubbo, and the proprietor of Mathews Civil and Asphalt Pty Limited ("Mathews Civil"). Consultation took place with Mr Mathews in relation to the C1119 work. The nature of this consultation is not wholly clear to the Commission as Mr Mathews was not available to give evidence at the time of the public inquiry. However, on 3 May 2005, Mr Pevec sent an email to Mr Mathews enclosing a copy of the quote that had previously been provided by Sage to Wheeler Contracting on 15 April 2005. On 5 May 2005 Mathews Civil submitted a tender for the work. This was passed on to Mr Pevec on 6 May 2005. This was for \$187,000, considerably more than the tender bid previously made by Sage which was for \$153,300.

When Mr Pevec sent Mr Mathews a copy of the Sage tender on 3 May 2005, he completely undermined Mr Gray's efforts to ensure that the market was being appropriately tested. If Mr Mathews wanted to do the work, all he had to do was to submit a bid that was slightly under the Sage bid. Mr Pevec's assertion that he had only intended to assist Mr Mathews with the formatting of his bid, and that he did not realise that the pricing was actually included in the attachment to his email, is in the Commission's opinion disingenuous and the Commission rejects it.

Due to Mr Mathew's unavailability the Commission was not able to ascertain his reasons for submitting a bid that was higher than the Sage quote. Irrespective of Mr Mathew's purposes, the submission of the Mathews Civil bid allowed Mr Pevec to present to Mr Gray, in an email dated 9 May 2005, that a second tender bid had been received and thereby indicate, erroneously, that Wheeler Contracting had taken steps to test the market and secure a commercially competitive price. The Commission is satisfied that Mr Pevec knowingly facilitated this deception.

Significantly, after Mr Murdocca submitted his quotation on 15 April 2005 and prior to confirmation that he would have the subcontract on 31 May 2005, there was further significant telephone contact between Mr Pevec's service and Mr Murdocca's service. Excluding telephone calls of 30 seconds or less, there were five calls, as follows:

Date	Time	Duration of call
4 May 2005	7.20 pm	3 minutes 30 seconds
6 May 2005	12.42 pm	3 minutes
19 May 2005	8.57 am	4 minutes
24 May 2005	12.45 pm	9 minutes 30 seconds
30 May 2005	11.21 am	7 minutes 30 seconds

At the end of May 2005 Mr Gray prepared a minute for the Manager, TransGrid Central Region, the General Manager, TransGrid Network, and the TransGrid Chief Executive Officer. In it he referred to the fact that two different contractors had provided prices to the head contractor for the cost of the proposed contract variation, and a favourable cost comparison had taken place with respect to work done at Yass. The minute recommended approval for the variation based on the tender submitted by Sage. The respective managers signed off on this minute, thereby signifying their approval, on 30 May 2005 and 31 May 2005. Sage commenced the work in June 2005. On 26 July 2005 Mr Murdocca advised Mr Pevec by email that the work had been completed.

Chapter 5: The C1167 contract

On 19 April 2006, almost nine months after the completion of Sage's C1119 subcontract, TransGrid called for tenders on C1167, a contract to construct palisade fences around substations at Dapto, Ingleburn, Kemps Creek and Liverpool. Sage had been involved primarily in earthmoving work prior to that. At various stages during his evidence, Mr Murdocca tried to suggest that his firm had some prior experience in the construction of palisade security fences, but ultimately he conceded that his only experience in high-security fencing was watching Wheeler Contracting constructing palisade fences while he was involved in roadworks performed by Sage for the C1119 contract.

Despite the firm's lack of experience in this area, Sage submitted a tender quoting its price for the work as \$3,496,910. Tenders closed on 6 June 2006. The contract was ultimately awarded to Sage on 16 August 2006.

How did Sage win this contract?

The evaluation committee set up to assess the C1167 tenders consisted of Leo O'Connor, Mr Pevec, and John Hempstead. Mr O'Connor was from TransGrid's Supply Management Group. His responsibility on the panel was to assess and advise the rest of the panel on commercial issues associated with the tenders. Apart from the overall price set by each tender, commercial issues were not determinant factors in this tender process. Mr O'Connor, as part of the three-man evaluation panel, participated in the overall assessment, but in relation to the technical engineering aspects of each bid, he relied on Mr Pevec and Mr Hempstead who had expertise in this area.

Mr Pevec was the region representative on the panel. He is a civil engineer who had already had significant involvement in the construction of palisade fencing. Indeed Mr Pevec told the Commission that he would have been TransGrid's foremost expert in the construction of palisade fences. It is clear that the panel relied heavily on him in relation to technical issues associated with palisade fence construction.

Mr Hempstead is an engineer and was senior to Mr Pevec in terms of engineering experience and his position within TransGrid. However, he had never been involved in a tender assessment process and had no direct prior experience in the construction of palisade fences. He told the Commission that he tended to defer to Mr Pevec "on the technical side" in the course of this assessment.

Nine tenders were received. Two were not in compliance with the C1167 tender specifications. The tenders that did comply were as follows:

• Wheeler Contracting	\$3,253,762.89
• BFD Sydcom	\$3,412,117.50
• Sage	\$3,496,910
• Blue Dog	\$3,572,902.20
• Northern Group	\$3,970,00
• Colemans Fencing	\$4,226,300
• Thomas and Coffey	\$5,231,604.04

Ultimately the panel recommended Sage as, although its price was higher than some other tenders, its bid was adjudged to be a technically superior bid.

How was Sage's bid technically superior?

Mr Pevec was asked why Sage's bid was judged to be technically superior when he was interviewed by Commission officers on 30 September 2008. He said, "on technical merits he [Mr Murdocca] was far superior than anybody else in terms of the product itself". In this respect, he pointed to two features of the Sage bid.

- The first feature he mentioned was "the huck and rivet" system of fastening the pales to the fence frame. Mr Pevec's reference to this in the context of the Sage tender was erroneous as the huck and rivet system was not referred to in that bid. The Sage tender referred to a T-bolt fastening system,

as other bids did. The huck and rivet fastening approach only emerged after the contract had been awarded to Sage.

- The second feature Mr Pevec referred to was a modified W pale proposed by Sage. He told Commission officers that this pale shape allowed for a better fastening of the pale to the frame, a feature that had been a problem with palisade fences previously constructed for TransGrid.

Mr Hempstead commented on the technical strengths of the Sage bid, telling the Commission:

From a technical point of view, Sage's bid looked quite good. Their works program was detailed. They fulfilled the criteria. Their bid indicated they knew what they were doing.

As mentioned above, Mr O'Connor was guided by the others with respect to technical features.

The internal minute put up to the TransGrid Executive for sign-off on the awarding of the contract recorded, with respect to the Sage tender:

The level of site specific technical information and the work method statements meet the specified requirements and exceeds all other submissions.

The Sage tender for C1167

The Sage tender is heavily structured, in accordance with TransGrid's tender specifications that were developed by Mr Pevec. Much of the tender involves responding to the template requirements of the specifications. One place where a bidder has the opportunity to differentiate their bid is "Schedule 1F: TECHNICAL COMMENTS". Mr Murdocca described how it was through the contents of this schedule that he wanted his bid to be different from the other contractors, to "make my tender stand out and be better".

Schedule 1F of the Sage tender commences "The tender design shall be in accordance with the TransGrid design contract specification". The schedule then details additional proposed design features for the Sage bid, in addition to TransGrid's specifications. The schedule refers to a series of site-specific design features, including:

- specific earthing arrangements for the fence to be built at Dapto
- particular design arrangements for a swing gate that was proposed for the fence to be built at Liverpool; and
- how Sage can replicate the arrangements that existed at the Ingleburn site, where a second "chain wire" fence had previously been installed adjacent to and in addition to the existing security fence.

The schedule then refers to a general design feature:

- Sage's development of an "appropriate method" for installing the high voltage electrical wires that are run along the top of the fence to enhance the fence's security capacity.

Finally the document refers to its new pale design. This is the "W pale" that was referred to by Mr Pevec in his interview with Commission officers on 30 September 2008. The schedule records:

Sage Civil Engineering has devised a new W pale to suit the needs of Transgrid [sic]. This system has a flatter centre whereby the bolts sit flush on the pale when tightened. This increases security with the ultimate result of making it tamper proof.

This part of the schedule refers the reader to Appendix 7 of the bid. Appendix 7 contains side-on photographs of Sage's modified W pale.

What assistance did Mr Pevec give Sage in preparing its bid?

Mr Pevec was part of the evaluation committee established within TransGrid to assess the C1167 bids and also a contact person in relation to technical aspects of the bid. The TransGrid Tender and Quotation Guidelines regulate how TransGrid officers should deal with prospective tenderers. This includes a requirement that a record be kept on the tender file of all verbal or written enquiries. As far as the Commission is aware, no record was ever placed on the tender file in relation to enquiries made of Mr Pevec by Mr Murdocca or Sage.

In his compulsory examination on 3 October 2008, Mr Murdocca told the Commission that after he completed the C1119 subcontract the next contact that he had with Mr Pevec was when he saw him at the site visit for prospective C1167 tenderers that took place in May 2006.

Later in that compulsory examination there was more focused questioning in relation to contact Mr Murdocca had with Mr Pevec over this period. When asked whether he contacted Mr Pevec in relation to the C1167 contract prior to the invitation to tender he responded, "No, only when I was on site with the road under Wheeler Contracting". He was then asked how often he had spoken with Mr Pevec before submitting his bid in June 2006. He replied, "I do not recall, because I had Luke Coutis [a Sage employee who had previously worked for Wheeler Contracting], he was actually communicating with TransGrid, because he was the one who wanted to know and wanted to run everything".

Mr Pevec was asked about how much contact he would have, on average, with a prospective tenderer in his capacity as the contact person for technical issues. He told the Commission, "On average, I'd say two or three times".

Telephone records indicate that there was constant contact between the two men's services over the period from July 2005, when the C1119 subcontract was completed, to June 2006, when the request for C1167 tenders closed. This contact increased in the lead-up to the advertising of the C1167 tender and continued at an increased rate through to the close of tenders. More particularly:

- between 1 August 2005 and 31 August 2005 there were seven telephone calls;
- between 1 September 2005 and 30 September 2005 there were five telephone calls;
- between 1 October 2005 and 31 October 2005 there was one telephone call;
- between 1 November 2005 and 30 November 2005 there were four telephone calls;
- between 1 December 2005 and 31 December 2005

there were 13 telephone calls;

- between 1 January 2006 and 31 January 2006 there were two telephone calls;
- between 1 February 2006 and 28 February 2006 there were eight telephone calls;
- between 1 March 2006 and 31 March 2006 there were 17 telephone calls; and
- between 1 April 2006 and 30 April 2006 there were 56 telephone calls.

In the course of the evidence given by Mr Murdocca and Mr Pevec there was a great deal of equivocation about the content of all these calls. Mr Pevec acknowledged that by November 2005 he was involved in preparations for the C1167 tender process. The Commission is satisfied that the telephone calls between Mr Murdocca and Mr Pevec after the completion of the C1119 subcontract were predominantly about upcoming contract opportunities, and after November 2005, about the upcoming C1167 tender in particular.

An indication of the focus of discussions between these two men is the way the number of telephone calls increased at critical stages of the C1167 tender process.

- Over the three days leading up to and including the day the invitation to tender was published there were eight telephone calls between the relevant telephone services.
- During May 2006, the month prior to the close of the tender, the number of telephone calls jumped to 79.
- There were seven telephone calls in the two days leading up to and including the closing day for tenders.
- During June 2006, the month when tenders were closed, and during which the tenders were being assessed, there were 80 telephone calls.

In February 2006, shortly before the call for C1167 tenders was advertised in April 2006, Sage employees Andrew Fam and Zlatko Aleksovski were at Mr Murdocca's premises when Mr Pevec arrived. Mr Fam described Mr Pevec as being in possession of "some plans or large pieces of paper". Mr Aleksovski said Mr Pevec arrived with "paperwork and stuff like that".

Mr Fam said that Mr Murdocca and Mr Pevec spoke for "a good 20 minutes". This accorded with Mr Murdocca's evidence that Mr Pevec "was only there for about 25, 30 minutes max". Mr Murdocca could not recall Mr Pevec arriving with paperwork. He said he had asked Mr Pevec to attend as he "wanted to discuss with him future works to see if there was any – any progress with any tenders that are coming out".

Mr Pevec had in his earlier accounts denied ever attending at Mr Murdocca's residence. At the public inquiry he agreed that he had attended there in February 2006, as asserted by the other witnesses. He had arrived with paper work, but it was no more than "a couple of sheets of A4 paper", which related to past works carried out by Sage in June and July of the previous year (the C1119 sub-contract). He referred to these as "punch lists", being lists about standing matters that needed to be attended to under the C1119 contract. Mr Murdocca, who had given evidence about this meeting earlier, made no mention of "punch lists". Mr Pevec was unable to adequately explain why he was providing this material to Mr Murdocca or Sage rather than to the head contractor, Greg Wheeler of Wheeler Contracting. Mr Pevec did acknowledge that he discussed "future works" with Mr Murdocca while he was there, indeed he said he would have discussed the fact that a palisade fencing contract was coming up.

No records were kept of any of these dealings as required by the TransGrid Quotation and Tender Guidelines. It became apparent during the public inquiry that other TransGrid officers were also failing to comply with this requirement. However the extent of telephone contact between Mr Murdocca, as a prospective tenderer, and Mr Pevec, as TransGrid's representative on the C1167 contract, was staggering having regard to the sensitivity of Mr Pevec's position. It was completely inconsistent with an arm's length impartial approach to managing the tender process.

In the Commission's view, the manner in which both Mr Pevec and Mr Murdocca sought to conceal the extent of their interaction over this period highlighted a consciousness that the dealings that they did have were inappropriate in the circumstances.

The Commission does not know what was said between Mr Murdocca and Mr Pevec in the numerous telephone calls between them that took place in the lead-up to the award of the C1167 contract to Sage. Neither Mr Murdocca or Mr Pevec gave reliable evidence of the reasons for such a substantial level of contact. However, there is written correspondence that the Commission has been able to gain access to which provides more specific insight into their dealings.

Schedule 1F

"Additional Technical Advice"

One document that was found amongst Mr Murdocca's computer records is a single-page typed document addressed to "Dom" entitled "Additional Technical Advice". Clearly Mr Murdocca was the intended recipient.

This is a very important document in the context of Sage's C1167 bid. It deals with a series of site-specific issues and is

clearly the source of much of the content of Schedule 1F of the Sage bid.

As mentioned earlier in this chapter, it was through Schedule 1F that Mr Murdocca wanted his bid "to be different" and to "stand out and be better".

The document contains four provisions dealing with:

1. earthing arrangements at Dapto
2. the swing gate to be installed at Liverpool
3. the extra fence, in addition to the palisade fence, at Ingleburn; and
4. the installation system for the high voltage wiring that was to run across the top of the palisade fences.

All four provisions have been copied word for word into Schedule 1F and comprise the majority of that document. The only additional technical features referred to in Schedule 1F that are not detailed in the "Additional Technical Features" document are:

- a reference to the fact that structural certification will be carried out by the engineer David Cooper; and
- a reference to Sage's modified W pale.

All the site-specific technical details in Schedule 1F came from the "Additional Technical Advice" document. The minute that was forwarded to TransGrid senior management for its approval, to facilitate the awarding of the contract to Sage, made specific reference to "the level of site specific technical information" that "exceeds all other submissions".

As it turns out, the author of the "Additional Technical Advice" document is Mr Pevec.

Mr Murdocca attempted to explain how Mr Pevec, the TransGrid contact officer on technical issues, who was supposed to be impartially facilitating the C1167 tender process, came to be drafting this critical part of the Sage tender. He said, "I requested information over the phone ... outlining those issues ... and he wrote it out for me to put it in". Although he was suggesting that he was responsible for the issues canvassed, he acknowledged that Mr Pevec was responsible for the words used in the document.

Mr Pevec agreed that Schedule 1F to the contract was "all my words", or alternatively that most of Schedule 1F was composed by him.

The evidence that Mr Pevec advanced concerning why he had drafted this important technical section of Sage's tender was unsatisfactory. He said:

I didn't believe it was anything to do with the tender process initially when I was actually drafting it up. I believed that there was some phone conversations, some clarification. Had I done what the Code of Ethics says, fail that, I would have been covered, I guess, because it would have been more transparent. Now that you are alleging that I gave him that information and yes it was used in the tender, I mean, yes, it could have been advantageous it would seem, you know, someone that I did that for, a contractor. I've done many things for other contractors not necessarily prior to tender but yeah certainly over the phone if they needed a hand in terms of additional information, it was freely given in turn

To suggest “I didn’t believe it was anything to do with the tender process initially when I was actually drafting it up” beggars belief in the context of the document itself. The Commission is satisfied the “Additional Technical Advice” document was prepared for the purposes of the Sage C1167 bid.

In relation to the additional fence at Ingleburn, the document records:

With this in mind and meeting the current preventative measures, Sage Civil have look [sic] at such option. We have a suitable design that would cater for Transgrid's [sic] requirement of such integrity shall it be deemed necessary.

In relation to the high-voltage wiring to be placed over the top of the palisade fence, the document records:

Sage Civil has engineered a system and appropriate method of HV wire installation for the topping at all internal corners.

Whether or not Mr Murdocca was responsible for raising the specific issues canvassed in this document (in the context of Mr Pevec’s experience, Mr Murdocca’s lack of experience and Mr Murdocca’s general lack of credibility, this seems unlikely), Mr Pevec’s conduct in drafting a critical part of the Sage tender, which as a member of the evaluation committee he would need to evaluate, is a significant departure from the impartial management of the tender process for which he was responsible. The Commission is satisfied that Mr Pevec did this in order to assist Sage to win the tender.

W pales

The remaining significant technical feature in Schedule 1F is the reference to Sage’s modified “W pale”. The schedule refers the reader to Appendix 7 of the bid. This includes a series of three side-on photographs of the “palisade being offered by Sage Civil Engineering”, the Sage W pale.

Sage’s W pale was a feature that Mr Pevec pointed to when, on 30 September 2008, he told Commission officers that “on technical merits he (Mr Murdocca) was far superior than anybody else in terms of the product itself”.

Mr Murdocca told the Commission that the idea for Sage’s W pale emerged from observations he made when performing his subcontracting duties on the C1119 site at Wallgrove. Then, he told the Commission, after nine months of “R & D” he was able to present a modified W pale as part of his tender bid.

Luke Coutis is a construction project manager who worked for Wheeler Contracting on a number of palisade construction contracts. In particular he worked for Wheeler Contracting on the C1119 contract at Wallgrove where he came to know Mr Murdocca. Mr Coutis left Wheeler Contracting in December 2005. Mr Murdocca engaged his services at the beginning of 2006. The Sage bid referred to Mr Coutis as being the bid’s “project supervisor”. The bid relies on its reference to Mr Coutis, and his experience in the area, to augment the overall palisade construction experience presented by the bid.

Mr Coutis believed that he was engaged to assist in the preparation of palisade fence tenders. He told the Commission that when he commenced with Sage it was obvious to him that Mr Murdocca had no knowledge of fencing, “no idea at all”, and as far as he was aware, no access to fencing expertise, except through Mr Coutis himself. Mr Coutis was not aware of the dealings that were taking place between Mr Murdocca and Mr Pevec.

Mr Coutis told the Commission of an occasion when he was working for Sage at Bankstown, when Mr Murdocca directed him to Mr Murdocca’s ute. Mr Murdocca showed him three palisade pales. According to Mr Coutis, Mr Murdocca said, “We’ve got to fix these up so they look like mine”. Mr Coutis responded, “What do yours look like?” Mr Murdocca replied “These”. Mr Coutis said, “They look a lot like Wheeler’s”. Mr Murdocca responded, “Well maybe ... I’ve got to provide a sample to TransGrid”. Mr Coutis had considerable experience in relation to the pales used by Wheeler Contracting, having worked there for some time. He told the Commission that the pales presented to him by Mr Murdocca were clearly taken from a Wheeler Contracting site. He described how, at Mr Murdocca’s direction, he modified the pales. This involved reshaping the pale by flattening out the middle section of the W, where the T-bolt would attach the pale to the fence frame. He said he did this at RailCorp’s Ingleburn site and used RailCorp’s “vice, their hammers and their pipes, and their tools, basically to manipulate the pale to make the T-bolt sit in flat at the bottom”. When he was shown the photographs of modified W pales in Appendix 7 of the Sage C1167 tender, he told the Commission that these

were the pales that he had modified. He pointed to the middle photograph and to the left hand curve of the W pale depicted, “it’s got a flat spot on it, and the right hand side doesn’t. It’s just – it might be you know, half a mil to a millimetre difference. It’s not a natural curve ... that’s where I’ve manipulated it to flatten it out on the bottom, and push it to the side, and then reroll it again”. It was this slight flattening of the curve, according to Mr Coutis, that demonstrated that the pale was not machine-made. He told the Commission that after he had completed the modifications, Mr Murdocca went to Brisbane with a modified pale to see if the manufacturers could produce pales in that format.

Mr Murdocca denied that the modified pales were “stolen from another site”. He claimed that they were produced by a machine up in Brisbane. He said that what he arranged for Mr Coutis to do was to file down the edge of the triple spike at the head of the pale, so no-one would cut themselves on it.

Mr Pevec was asked about the flattened pale during his evidence at the public inquiry. He thought that he had suggested this modification to Mr Wheeler. Counsel Assisting suggested to him that he also “suggested it to Mr Murdocca”. Mr Pevec replied “I might have suggested it to all of them in the light of the problems we were experiencing at a number of substations of ours”.

There are two versions for how the modified W pale referred to in Schedule 1F was created. Mr Coutis was adamant that he created the pale pictured in Appendix 7. Mr Coutis had been dismissed by Mr Murdocca in contentious circumstances after Sage had been awarded the C1167 contract, and he may have harboured some resentment toward Mr Murdocca on account of this. If this was the case, and it influenced Mr Coutis’s evidence, there were no overt indications of this. His version was corroborated to some extent by the photograph in Appendix 7 which does depict a flattening of the left hand curve on the pale, which is consistent with it being modified by hand rather than being machine produced. For reasons discussed earlier in this report, Mr Murdocca was generally a witness of low credibility. Accordingly, in all the circumstances, the Commission is satisfied that the pale was created in the manner described by Mr Coutis.

Importantly, Mr Coutis told the Commission that the flattening of the centre of the pale was Mr Murdocca’s idea. However it appears that the idea was not new. It had been considered by Mr Pevec. In the context of Mr Pevec’s involvement in the development of the Sage bid, as highlighted by the extensive telephone interaction between Mr Pevec and Mr Murdocca, and the incorporation of the “Additional Technical Advice” document directly into Schedule 1F, it seems unlikely that consideration of the amended W pale concept by Mr

Pevec, and the emergence of this concept in Schedule 1F of the Sage bid, was purely coincidental.

Further assistance

The Commission located copies of a number of emails that were sent between Mr Pevec and Mr Murdocca in the course of Sage’s preparation of its C1167 bid. These could not be located on Mr Pevec’s TransGrid computer or the TransGrid network. This email correspondence again illustrates the ongoing professional assistance Mr Pevec was providing to Mr Murdocca and Sage.

The provision of CAD drawings

As part of the tender process for contract C1167, TransGrid issued to all prospective tenderers general design drawings in Portable Document Format (“PDF”). There were four pages of technical drawings and one page of structural notes to aid interpretation of the drawings. These documents were prepared for TransGrid by Woolacotts Consulting Engineers (“Woolacotts”) and detailed the manner in which TransGrid wanted the palisade fence structures to be built. PDF is a file format created by Adobe Systems in 1993. Generally, a PDF image of a document cannot be easily edited or manipulated.

In contrast, computer-aided design (“CAD”) involves the use of computer technology for the design of objects. Proprietary CAD software packages enable the user to design and draft design curves and figures in two dimensional space or curved surfaces or solids in three dimensional space. Significantly for the purpose of the current investigation, drawings in CAD or a compatible format can be easily edited and manipulated using proprietary CAD software.

On Saturday, 3 June 2006, three days before the closing date for the submission of tenders for the C1167 contract, Mr Pevec spoke to Mr Murdocca from 8.01 am for 34 minutes and 30 seconds. Mr Pevec was not working for TransGrid on that day. At the same time, at 8.01 am, Mr Pevec sent the Woolacotts drawings by email to Mr Murdocca in CAD format.

At the Commission’s public inquiry there was general agreement amongst the witnesses with expertise in these matters that CAD drawings are usually provided to the successful tenderer after the award of the tender. A successful tenderer is contractually required to produce Survey Elevation and Construction Details documents shortly before they commence work on a site. The CAD drawings might properly be used to assist in the preparation of these documents. Alternatively they may be accessed so the successful tenderer can show the work “as executed” if there have been changes made from the initial plan. But all these expert witnesses, including Mr Pevec, acknowledged that it was unusual for a prospective tenderer to be

provided with access to the CAD drawings prior to the award of a contract. Mr Hempstead told the Commission “it is hard to imagine circumstances where one would issue such drawings to one tenderer and not to all tenderers”. No other prospective tenderer was provided with access to the CAD drawings.

When Mr Pevec was initially asked about his provision of CAD drawings to Mr Murdocca, he said that if he had done this, it would have been done to assist in the preparation of “as built” drawings. But these CAD drawings were supplied three days before the close of tenders. They were supplied on Mr Pevec’s day off in the course of a 34 minute conversation. This was followed up two hours later at 10.30am with a further 14 minute 30 second telephone conversation. Mr Pevec told the Commission that, during these conversations, he was “not necessarily” giving Mr Murdocca advice in relation to Sage’s use of the documents for tender purposes. The Commission rejects this evidence.

The CAD drawings were used to prepare a document that was incorporated into Appendix 7 of the Sage bid. The document is entitled “Typical Fence Panel Elevations”. This was presented as an example of the site-specific plans that TransGrid would require the winning contractor to submit after the award of the contract. It demonstrated Sage’s professional capacity to meet this requirement.

The document is made up of a series of drawings that were clearly cut and pasted from the Woolacotts documents. It indicates that the document was prepared by “Sage Civil Engineering Pty Ltd”. There is nothing on the document to acknowledge the real source of the drawings. Ironically, at the foot of the document it warns:

This information has been provided by Sage Civil Engineering Pty Ltd (“the provider”) and will be used by the recipient for its permitted purposes only. Except as agreed, the recipient will not disclose or use this information for any purpose which may directly or indirectly be detrimental to the provider. The recipient has an obligation to ensure and prevent the disclosure of this confidential information.

The provision of a competitor’s tender documentation

TransGrid’s “General Responsibilities and Selection of Procurement Method” document specifies:

All information contained in tenders/contracts, quotations/purchase orders and miscellaneous offers (consultancy agreements, maintenance agreements, licence agreements and the like) shall be treated as confidential. This policy shall be maintained both before and after offers have been accepted by TransGrid.

Mr Pevec agreed he was aware of this document and had failed to comply with its requirements.

The TransGrid Code of Ethics and Conduct provided that employees were prohibited from releasing any confidential information obtained through their employment unless required to do so by law or following authorisation. Mr Pevec had attended training in the Code of Ethics and Conduct in March 2005. The Commission is satisfied that he was aware of its requirements.

Despite this, in the days leading up to the closing date for C1167 tenders, Mr Pevec provided Mr Murdocca with at least two documents that had previously been provided to TransGrid by Wheeler Contracting for the C1119 contract.

Mr Murdocca was asked about whether Mr Pevec had provided him with documentation “which belonged to other tenders before the contract was awarded”. Mr Murdocca said he had received an “old design drawing from Wheeler”, but he could not recall receiving anything else.

In fact, at 5.25 pm on 2 June 2006, four days before the closing date for the submission of tenders for the C1167 contract, Mr Pevec emailed to Mr Murdocca an Inspection and Test Plan prepared by Wheeler Contracting which that firm had used in its successful tender for the C1119 contract. An Inspection and Test Plan is a quality assurance document that guides a process of checking the adequacy of different stages of the construction operation by the employee, the contractor, and the contracting party.

At 5.26 pm on the same day Mr Pevec forwarded through to Mr Murdocca a Site Specific Safety Plan prepared by Wheeler Contracting which that firm had again used in relation to contract C1119.

Mr Pevec was aware at the time that Wheeler Contracting was tendering for the C1167 contract. He did not provide these documents to any other prospective tenderer.

It is important to note that at this time Sage had never engaged in the construction of palisade security fencing, and was competing with other contracting firms, such as Wheeler Contracting, who did have experience in this area.

Mr Murdocca was asked “Does it come down to this? That from time to time Mr Pevec would supply you with documents of other tenderers to assist you to put your tender in a form which was more acceptable to TransGrid?” Mr Murdocca replied, “I requested information and he supplied me the information”.

The precise use that Mr Murdocca would make of this material is unclear. The fact that the documents were provided only four days before the closing date for the submission of tenders indicates that they were provided to assist tender preparations. It is clear from the tender specifications that some documents were required to be presented to TransGrid by the tendering party but

only after the award of the contract. Schedule IK lists a series of such documents including "Health, Safety and Environmental Plans", "Site Safety Plans" and "Inspection and Test Procedures". The Sage tender incorporates examples of some of these documents to demonstrate the firm's capacity to produce them, but not all. It includes a sample "Survey, Elevations and Construction Details" document and a "Safe Work Plan". However, there is no example "Inspection and Test Plan" or a specific "Site Safety Plan".

The documents in the Schedule IK list that are provided are there to demonstrate that the agency has the capacity to meet the requirements of the contract. Their inclusion enhances the overall professionalism of the tender. Sage may have been considering preparing and including a sample Inspection and Test Plan and Site Specific Safety Plan, but ultimately elected not to do so.

In any event, the documents were likely to have value beyond their use as precedent documents, as Mr Hempstead said in relation to the Site Specific Safety Plan, " – it's not the best safety plan I've ever seen, but it does give the order of works which is pretty useful. And also there's a lot of – yeah – a lot of helpful stuff there".

Mr Pevec agreed that the Site Specific Safety Plan would have been very useful to a prospective tenderer.

Although the precise use that these documents would have been put to is unclear, the Commission is satisfied that they assisted Sage in its tender preparations and were provided by Mr Pevec for that purpose.

Sourcing materials

Mr Pevec denied that he had any role in sourcing materials for Mr Murdocca and Sage prior to the award of the C1167 contract. He told the Commission that he would not have regarded assisting Mr Murdocca or Sage in this way as "appropriate".

Part of the works contemplated by C1167 required Sage to acquire a supply of T-bolts and nuts. On 11 April 2006, Mr Pevec sent an email to an Indian supplier of these products, Kundan Industries. Mr Pevec, in his evidence, claimed that this email was sent for the purpose of verifying that Kundan Industries, the previous suppliers for Wheeler Contracting, met the technical requirements of the relevant British standard. It appears that Mr Pevec received no reply, or no sufficient reply, to this email as on 1 May 2006 he again forwarded the same email to Kundan Industries. This time on 3 May 2006 he received a responding email from Mukesh Gupta, of Kundan Industries, providing technical information in response to Mr Pevec's enquiry.

At 12.15 am on 12 May 2006, Mr Pevec received a further email from Mr Gupta. This was dated 11 May 2006 by Mr Gupta in the body of the email. This read as follows:

Dear Goran,

With reference to the telephonic discussion the undersigned had with your good self, we are enclosing the following samples in EnviroCoating which is AcidResistant and also supportive catalogues and certificate of approval for this coating from IIT – Mumbai for your study and reference:

The email went on to provide further technical details in relation to Kundan Industries' products.

On the same day, 17 hours later at 5.32 pm, Mr Murdocca also received an email from Ms Sophie Pillai of Kundan Industries. This read as follows:

Hi! Domenic,

Thanks for your email enquiry DTT.: 11.5.06. We understand about you thru Mr Goran of M/s TransGrid. We are pleased to quote our offer for the regular items which we are supplying to M/s. Greg Wheeler, as below along with the rest of the terms and conditions.

The email goes on to provide costings for relevant products and other supply details.

Telephone records for 11 May 2006, the day when Mr Gupta wrote about his telephone conversation with Mr Pevec, the day when Mr Murdocca made enquiries about Kundan Industries products, and the day before Ms Pillai wrote about Mr Pevec's referral to Sage in his correspondence with Kundan Industries, indicate that Mr Murdocca called Mr Pevec eight times, at 6.59 am, 8.51 am, 9.05 am, 10.38 am, 10.47 am, 4.18 pm, 4.26 pm and 6.16 pm. The longest conversations were at 9.05 am (15 minutes 30 seconds) and 6.16 pm (9 minutes).

Schedule H of the Sage bid is headed "MATERIALS" and lists the "Materials and Equipment the tenderer offers to supply". Here the bid lists "T Bolts" from Kundan Industries as a product that will be supplied to TransGrid.

Mr Pevec maintained his denial that he ever assisted Sage to source product:

I firmly believe that I – I didn't speak to Kundan about Domenic or Sage Civil Engineering.

He denied that he ever spoke to Kundan Industries over the telephone.

In the context of the evidence set out above, and the consistently unsatisfactory nature of Mr Pevec's evidence, the Commission rejects Mr Pevec's denial. The Commission is satisfied that Mr Pevec was instrumental in Sage gaining access to Kundan Industries as a product source.

Mr Pevec's partial approach to the C1167 tender

Throughout his evidence Mr Pevec acknowledged that he had operated outside the tender guidelines. He tried to suggest that he was merely attempting to be generally helpful to prospective tenderers, assisting them to offer TransGrid a better product. However, the evidence indicates that Mr Pevec's largesse was not general, but quite specific. When, on 15 May 2006, Brett Franklin of Wheeler Contracting sent an email to Mr Pevec enclosing drawings prepared for the tender and seeking Mr Pevec's comment, Mr Pevec responded by email, "TransGrid are not in a position to comment at present as tenders have not closed". This response is in stark contrast to the approach taken by Mr Pevec in relation to Sage's preparation of its "TECHNICAL COMMENTS" for Schedule IF of the Sage bid.

Mr Pevec's attempt in his evidence to resolve this inconsistency at times bordered on farce. He told the Commission that in fact "I did provide comments over the phone" to Wheeler Contracting. When it was suggested that this evidence contradicted his email, Mr Pevec told the Commission "I responded to the email. I got that out of the way. Then I subsequently spoke to him over the phone". Then, perhaps recognising the irrational nature of what he was saying, Mr Pevec changed his position again, "No, I spoke to Greg before he actually developed these drawings".

The Commission is satisfied that through his constant telephone contact with Mr Murdocca, particularly at critical stages of the tender process, his drafting of a core part of the Sage tender, his provision of support materials including documents from another prospective tenderer and TransGrid's plans in CAD format, and his role in sourcing products for the Sage tender, Mr Pevec went beyond merely bending the rules so that everyone could be better off. The Commission is satisfied that Mr Pevec was acting with the intention of ensuring that Sage won the C1167 tender.

Mr Pevec and the tender assessment process

Mr Pevec's involvement in the C1167 tender process did not end with the close of tenders on 6 June 2006. Mr Pevec was then part of the three-person tender evaluation committee ("the committee") responsible for assessing the submitted tenders. During his compulsory examination he sought to minimise his role. He was asked, "Do you have involvement in relation to awarding TransGrid contracts to outside contractors?" He replied, "I do have a minimal involvement which is during the 10-day evaluation process from a technical point of view as the engineer assessing basically the submissions on their merits from a technical point of view".

However it is apparent that his involvement within the C1167 committee was anything but "minimal". As mentioned earlier in this chapter, he was the region representative on the panel. He was TransGrid's foremost expert in relation to the construction of palisade fences. He was the person the other Committee members deferred to in relation to technical matters associated with the construction of palisade fences. When Mr Pevec assessed the tenders and advised the other Committee members on technical aspects of the bid, he was assessing the Sage bid, which he had been involved in developing, and critical parts of which he had drafted himself.

TransGrid's Quotation and Tender Guidelines stipulate "any person assessing the tender documents with a known potential conflict of interest should declare their interest".

Mr Pevec made no such declaration.

Chapter 6: Mr Pevec's ongoing assistance to Sage

After its success in securing the C1167 contract, Sage tendered for further contracts with TransGrid for the construction of palisade fences. On 31 May 2007 it was awarded the C1193 contract for the construction of fences around substations at Vineyard, Regentville, Avon and Kangaroo Valley. On 11 September 2007 it was awarded the C1204 contract for the erection of fences around substations at Mt Piper and Wallerawang. Mr Pevec was on the tender evaluation committee for both contracts.

The Commission has not scrutinised Mr Pevec's role in assisting Mr Murdocca and Sage in their efforts to secure these contracts, and there is no evidence of specific assistance in relation to either contract. However, there is evidence of substantial assistance for Sage's efforts to secure palisade fencing contracts with TransGrid generally.

Chapter 5 of this report examined how Mr Pevec provided Mr Murdocca with two confidential documents generated by Wheeler Contracting, four days before the close of tenders for the C1167 contract. This was not the only occasion Mr Murdocca and Sage gained access to confidential documents. When the Commission searched Mr Murdocca's computer records, it found many documents prepared by competing contracting firms. The Commission found:

- 37 documents from Wheeler Contracting.
- 29 documents from Colemans Fencing Australia Pty Ltd.
- 4 documents from Northern Group Australia Pty Ltd.

All these documents had been submitted to TransGrid in the course of tender and contracting processes and were passed to Mr Murdocca and Sage. These documents gave Sage a commercial advantage as they competed with other firms for contractor opportunities. Not only did Sage have a plethora of precedents to assist it in preparing its own documents, but this material also alerted Sage to sensitive information about the commercial operations of its competitors, so that it was well placed to out-manoeuvre these firms in competitive processes.

A TransGrid tender evaluation matrix had also been passed to Sage. This alerted Sage to the way in which TransGrid conducts its tender assessment processes, information that is not available to other tenderers. The provision of this information to Sage seriously compromised TransGrid's ability to test the market and secure best value.

During the course of the Commission's investigation it became apparent that all this material was provided by Mr Pevec.

Both Mr Pevec and Mr Murdocca told the Commission that these documents had been downloaded by Mr Murdocca from Mr Pevec's USB "flash drive", on which he retained sensitive TransGrid documentation. Mr Murdocca explained to the Commission that from time to time he would access Mr Pevec's USB flash drive, with Mr Pevec's consent, to access information that he needed for the purposes of his fence construction works for TransGrid, documents he claimed he was entitled to access. He claimed that the additional materials had been downloaded inadvertently during this legitimate access. The Commission did not locate documents of the type described by Mr Murdocca, that he might legitimately have needed to access, as it scrutinised his computer system. However, such is the nature of computer forensic examination, that the Commission is not able to establish that documents of this sort had not been downloaded.

Mr Pevec agreed with Mr Murdocca's version. He claimed that he had not intentionally provided Mr Murdocca with access to confidential TransGrid documentation.

The provision of competitors' documentation and the TransGrid tender evaluation matrix is consistent with the manner in which Mr Pevec supported Sage operations in the course of the C1167 tender process.

There were other ways that Mr Pevec could pass documentation to Mr Murdocca apart from handing him a flash drive containing confidential, commercially sensitive material. Mr Pevec had previously emailed documents to Mr Murdocca on a number of occasions.

If Mr Pevec had not intended Mr Murdocca to gain access to confidential material, his actions in handing his USB flash drive to Mr Murdocca would have involved an act of enormous naivety. However, the Commission is satisfied that the provision of this material was not inadvertent.

The Commission is satisfied that Mr Pevec intentionally provided Mr Murdocca with access to a body of confidential documentation that was contained on his USB flash drive.

In relation to Mr Murdocca's intentions, there was initially some suggestion that a ZIP file may have passed from the USB flash drive to Mr Murdocca's computer. A ZIP file is a data compression format that can facilitate a number of electronic documents or files being incorporated into a single file or computer entity. If this had been the case, documents could theoretically have passed into Mr Murdocca's computer in ZIP format, without Mr Murdocca being aware of the true nature of the transfer. However on closer questioning of Mr Murdocca it became apparent that this had not taken place. Accordingly, the documents were either transferred across individually or as part of a transfer of a computer folder containing a number of documents, or a parent folder to this computer folder. There were two critical folders that contained most of the relevant confidential documents within Mr Murdocca's computer system:

- Data/management/I167/UseThis ("the I167/UseThis folder").
- Data/management/I204/I204Offers ("the I204/I204Offers folder").

The Wheeler Contracting Inspection and Test Plan and Site Specific Safety Plan, which were sent to Mr Murdocca by Mr Pevec on 2 June 2006, were stored in the I167/UseThis folder.

This is consistent with Mr Murdocca placing these documents into the file during the C1167 tender and contracting process. The vast majority of the documents prepared by Sage's competitors were retained in the I204/I204Offers folder. This is consistent with Mr

Murdocca placing these documents into the file during the C1204 tender and contracting process.

The alternative explanation is that Mr Pevec had placed these documents into a I167/UseThis folder or a I204/I204Offers folder while he retained them on his USB flash drive. This is highly unlikely as documents in the I167/UseThis folder related to contracts other than the C1167 contracts, and many of the documents in the I204/I204Offers folder related to contracts other than the C1204 contracts. Mr Murdocca would have reason to retain these documents in a I167/UseThis folder or a I204/I204Offers folder as he would be using the documents to prepare his tender bids for the C1167 and C1204 contracts and his conduct of these contracts. There is no reason for Mr Pevec to have stored these documents in this way.

In addition, if the transfer of these documents occurred by way of a mass transfer, through the transfer of a I167/UseThis folder or a I204/I204Offers folder or a parent file of one of these, Mr Murdocca would not have been able to satisfy himself that the transferred folder would contain the material he needed just through perusing the folder names. Closer scrutiny of the contents of the folders would have been needed. Once such closer scrutiny took place, Mr Murdocca would have been alerted to the presence of additional documents that he should not have access to.

In all the circumstances, the Commission rejects Mr Murdocca's assertions that these documents were transferred to his computer by mistake. The Commission is satisfied that Mr Murdocca transferred documents from Mr Pevec's USB flash drive which he knew to be confidential TransGrid information, and which he intended to use to obtain a competitive advantage in his tendering for TransGrid work.

Chapter 7: Did Mr Pevec receive any benefit in return?

Mr Pevec provided improper assistance to Mr Murdocca and Sage with respect to the preparation of Sage's tender for the C1167 contract. The Commission is satisfied that he did this with the intention of ensuring that Sage won the tender process. Mr Pevec also provided confidential documentation to Mr Murdocca to assist him in his efforts to secure TransGrid work generally. In doing all this he operated in flagrant breach of TransGrid's requirements for the conduct of tender processes and other TransGrid policy and procedures.

Mr Pevec knew what the ramifications could be. When he spoke to Commission staff on 30 September 2008 he described the work relationship he had with Mr Murdocca:

I mean the whole building industry, looking back on those days, evolved about, you know, being mates and so forth. I made it quite clear that there's none of that. I'm a representative from the government, the State Government. My job's on the line here. I've got a family and so forth. So I made it quite clear that virtually it is – it's ah – there's no after sort of get togethers or anything. There's no informal meetings.

The Commission enquired into why Mr Pevec would risk his employment and his family's wellbeing to steer commercial opportunities towards Sage, whether he did this just to help an old university friend, or whether he expected to receive some benefit in return.

Cash payments into Mr and Mrs Pevec's bank accounts

The Commission conducted a close examination of the Pevec family finances to see if there was any wealth that could not be identified as coming from a legitimate source. The Commission identified a series of cash payments going into the accounts of Mr and Mrs Pevec over a period from 3 October 2006 to 21 September 2007. These were as follows:

Date	Main A/c	Home Loan	Visa
03 Oct 06	5,000		
10 Jan 07	1,000		
10 Jan 07			9,000
09 Feb 07		5,000	
20 Feb 07		5,000	
08 May 07		5,000	
25 Jun 07		5,800	
29 Aug 07	5,000		
21 Sep 07	3,000		
	14,000	20,800	9,000
			43,800

Prior to 3 October 2006, there had been no similar payments for at least the previous 18 months except for a payment of \$4,030 that was made the day after their first son Jacob's christening on 15 January 2006. This money was transferred to another account established for their son's benefit.

The payments from 3 October 2006 to 21 September 2007 coincide with developments in the commercial relationship between Sage and TransGrid. The first contract, C1167, was awarded to Sage on 16 August 2006. Sage was granted possession of the Ingleburn site, the first of the C1167 sites, so that it could commence work on 5 October 2006. Sage was awarded contract C1193 in May 2007. The third and last contract, C1204, was awarded to Sage on 11 September 2007.

In its investigation, including the compulsory examinations and public inquiry, the Commission tried to establish the source or sources of these funds.

Mr Pevec's account in relation to his finances, as given on 30 September 2008

When Mr Pevec was interviewed by Commission officers on 30 September 2008 he was initially asked about sources of income generally. He spoke of his TransGrid wage, the wage his wife had received before she stopped working, and the rent they received on their investment property. This property was purchased in 1998 or 1999 with a \$40,000 contribution from Mr Pevec's mother, "She had a windfall of – won a lot of money. She actually won Lotto back then".

Mr Pevec was asked "Does your mum or anyone else supply you with any money?", to which he responded, "No. I mean my brother-in-law's helped me out, but only if I'm sort of desperate. I mean it's only a loan". Mr Pevec gave as an example how his brother-in-law Craig Wheeler (no relation to Greg Wheeler of Wheeler Contracting) had lent him \$18,000 when Mr Pevec had been required to pay off the remaining amount owing on his car lease. This happened in June 2008. Mr Pevec subsequently refinanced his home loan to repay Mr Wheeler.

Mr Pevec was then asked, "Has anyone else given you, in the last couple of years, given you any money?". He responded, "No apart from gifts and benefits at christenings and all that".

Mr Pevec claimed he and his wife had come away from their wedding in 2001 with about \$45,000 in cash gifts. He was asked how much of this was left. He said, "Probably about 20 [\$20,000] or so". When asked whether this was at home he said, "Oh, sort of given it to mum indirectly because she's actually built a new home". He then confirmed the money had gone to his mother because, "She's the one that initially lent me the \$40,000 for the purchase of the rental unit". He said the \$20,000 had gone to his mother "three years ago or so". She had not given him any money back, "she's given me the 40 so I'm paying her back".

Mr Pevec then detailed the circumstances of cash benefits they had received at christenings and similar occasions. He said they received \$6,000 to \$7,000 at the christening of their son, James, in June 2007, and this may have been as much as \$10,000 if the money received from his wife's family was included. His stepfather, Eduard Pevec, had given them \$10,000 recently, \$4,000 for his son Jacob's birthday, "probably" \$2,500 for James' birthday, and "I think" \$4,000 for James' christening. He said, apart from these sources, no one else had given him any cash.

Towards the end of the interview Mr Pevec was shown a list of cash deposits that had gone into Pevec family bank accounts. His explanations for these deposits were erratic and sometimes clearly inaccurate.

- \$5,000 on 3 October 2006 - "I'd say that would have been a bit of a slush fund we had around the place. Dad, mum's, our wedding [unintelligible]".
- \$1,000 on 10 January 2007 - "Oh look I don't know. It's quite specific. I would have had spare cash sitting around. I would have asked the wife to put it on the, they would have probably have been events from Christmas I guess".
- \$9,000 on 10 January 2007 - "We had our income tax done that, late that year, I think. We got our baby bonuses".

The baby bonus funds were not paid in cash and were received on 19 August 2005 and 9 February 2007.

- \$5,000 on 9 February 2007 and \$5,000 on 20 February 2007 - "I transferred it from that account to that account. So basically I took the money from me St George savings account and did the electronic funds transfer to my home loan, as a redraw facility".
- The money on both occasions was deposited in cash.
- \$5,000 on 8 May 2007 – mentioned in passing but not explained.
- \$5,000 on 29 August 2007 – "That would have been after his first birthday". James's first birthday was on 26 January 2008. Jacob turned two on 28 July 2007.
- \$3,000 on 21 September 2007 – "Just after my wife's birthday, yeah. She's on 6th September".

Mr Pevec's account in relation to his finances, as given on 3 October 2008

Mr Pevec gave evidence at a compulsory examination on 3 October 2008. His wife, Linda Pevec, also gave evidence that day. By this time Mr Pevec was aware that his finances were under investigation.

Mr Pevec's evidence on 3 October 2008 differed substantially from his 30 September 2008 account. What he provided to the Commission was not a clarification, made having had time to review records and reflect. This was a new version.

He confirmed that his mother had lent him \$40,000 so he could purchase a rental property in 1999. However, whereas on 30 September 2008 he told Commission officers that the \$20,000 left over from his wedding had gone to his mother as repayment, "three years ago or so", on 3 October 2008, he told the Commission he had not paid any of this money back to his mother.

On 30 September 2008 he had claimed that his mother had not given him any money since his transfer of \$20,000 to her three years ago, saying “she’s given me the 40 so I’m paying her back”. On 3 October 2008 he told the Commission that she had been giving him money over this period. He told the Commission that after mid-2006 he received money from his mother, his stepfather and his sisters. When it was suggested that none of this money was significant he responded “Mum, mum’s was significant”. Later he told the Commission his mother gave him \$10,000 “at the end of 05, beginning 06”. She then made another contribution of \$5,000, “that would have been mid-07. We just needed a top-up on the credit cards”.

According to Mr Pevec’s evidence on 3 October 2008 the money left over from his wedding had not been passed to his mother. It had been retained and built on with money received at children’s birthdays and christenings and other contributions from his family, so that by mid-2006 they had “maybe” \$25,000, “or thereabouts, probably more”. This was retained as cash at their home. Then in “the middle of 06” his accountant suggested, “look, if you’ve got any spare assets, sell them off and consolidate them or, – or any money you’ve received, consolidate it and start paying off the mortgage”.

According to Mr Pevec, after receiving this advice he deposited about \$40,000 into the bank, “we put probably some of it on credit - on our credit cards, some of it in the savings account, some of it on the home loan, so we’ve done various aspects to sort of minimise that as interest rates were going up and my wife wasn’t working”. He said that ultimately, “probably only \$20,000 of the \$40,000 went to paying off the mortgage”.

When asked if money was paid into the bank “within a short period, within a month?”, Mr Pevec said, “No, look it was probably eight months, a year. I don’t know. I can’t recall”. Asked why he paid the money at intervals instead of in a lump sum he responded, “Well, I’m not going to have my wife walking down the street with a whole load of money, deposit at the local bank”. Later he said, “We were worried about, you know, someone asking where the money come from”.

Mr Pevec was then asked specifically about whether his brother-in-law Craig Wheeler had loaned him money. In his 30 September 2008 account he said Mr Wheeler had “helped me out” and he had given the “example” of Mr Wheeler lending him \$18,000 in June 2008 to pay out his car lease. He referred to this again in his evidence on 3 October 2008, “The most recent one would have been this year, the middle of the year”. He was then asked, “The one before that was when?”, and he responded, “They got married in October, what was that, 07, it was just before they got married in October 07”. He said Mr Wheeler lent him “only \$7,000 or \$8,000, I can’t remember exactly”. When he was asked what they did with that money he said, “\$7,000 for – was for incidentals, so my wife and I, we

had to – we went to – we went on a holiday and all that, and it was just disposable cash that we sort of asked for”.

Mr Pevec was not asked questions about each of the cash transactions occurring over the 12 months after 3 October 2006. However, he presented the Commission with a scheme to account for all this money. He described how he and his wife had built up a “safety net” of cash from various sources. In mid 2006 their accountant had told them to put everything in the bank to reduce their interest levels. They had done this at intervals over eight months to a year, depositing about \$40,000 cash into their bank accounts, approximately the amount that the Commission officers had asked him about on 30 September 2008. Importantly, he claimed he had received \$7,000 to \$8,000 from Craig Wheeler shortly before Mr Wheeler married Mr Pevec’s sister in October 2007. This money was not saved but spent on incidentals, including a holiday.

Mrs Pevec also gave evidence in a compulsory examination on 3 October 2008. She gave a similar account. She said she and Mr Pevec received money at their wedding, and by 2006 they had about \$10,000 to \$15,000 of this money left, which they kept as cash at their home. This cash, or “safety net” as Mr Pevec had called it, was built up with contributions from family members at birthdays and christenings so that by the beginning of 2007 they had “maybe 40, \$35,000 in cash” at their home.

She also claimed their accountant, whose name she could not recall, had advised them to put money into their home loan, to reduce the amount of interest accruing. Again, the money was not deposited into their bank accounts all at once, but at intervals over time. When asked how much was deposited on each occasion she responded, “Sometimes \$4,000 sometimes more I think. I’m not quite sure”. She made the deposits “a couple of times, and Goran did”. Through this they reduced their mortgage by “maybe 30 to \$35,000”. Importantly, when asked, “They are the only occasions, birthdays, christenings and your wedding, are the only times you got money from your family members. Is that right?”. She replied, “Yes, yeah and apart – apart from Goran’s mother who won the money. She gave us money occasionally”.

Mrs Pevec made no mention of receiving payments from Craig Wheeler.

Mr Pevec’s account in relation to his finances, as given at the Commission’s public inquiry

Mr Murdocca also gave evidence on 3 October 2008. He was asked whether Mr Pevec “received any reward from Sage”. He told the Commission he had lent Mr Pevec “Around five grand”, “his christening, his son’s christening. He needed money and I – any – he asked me, you know, if

I can give some money. I said, "Well yeah"". When asked when this happened he said, "I think it was last year some time [2007]". Mr Pevec's son James was christened on 24 June 2007.

Mr Murdocca said this was the only "loan" he provided to Mr Pevec "As far as I recall".

Mr Murdocca gave evidence again on 20 February 2009. On this occasion he told the Commission that Mr Pevec had now repaid the \$5,000 together with an additional amount for interest. Mr Murdocca subsequently provided the Commission with a note that he had told the Commission had accompanied Mr Pevec's payment. This note records as follows:

Domenic

Please find attached a St George Bank Limited bank cheque NO. 292755 dated 25/11/2008.

*The above being the sum of \$5,000 plus 10% pa.
Interest calculated to this day from September 2007.*

\$5000 principle amount

\$600 interest – 14 months (10% pa.)

The note was signed by Mr Pevec.

Mr Pevec's stepfather, Eduard Pevec, also gave evidence on 20 February 2009. He told the Commission that the only money he gave his son, since Goran Pevec's wedding, was \$500 or \$600 at Jacob's christening (15 January 2006) and \$300 or \$400 at James's christening (24 June 2007). This is a far cry from the \$10,000 contribution made up of payments of approximately \$4,000 for Jacob's birthday, \$2,500 for James's birthday and \$4,000 for James's christening, as had been suggested by Mr Pevec at his interview on 30 September 2008.

When Mr Pevec gave evidence at the public inquiry in April 2009, he acknowledged that he had received \$5,000 from Mr Murdocca as a "loan" in 2007. This was contrary to previous assertions that he had never received any gifts or benefits from Sage. However, he continued to claim that none of the other cash payments came from Mr Murdocca or Sage. On this occasion, he gave an explanation for where each cash payment came from. This account was distinctly different again from his previous accounts. The "safety net" arrangement that he spoke of on 3 October 2008, whereby \$40,000 of the cash kept at his home was deposited at intervals over an eight to 12-month period, was abandoned.

Mr Pevec's evidence at the public inquiry in relation to specific payments was as follows:

- \$5,000 on 3 October 2006 – "We had a lot of birthdays and things with kids and christenings and all that and I believe it would have been tied up with one of the birthdays" (Jacob was born on 28 July 2005. James was born on 26 January 2007).
- \$10,000 on 10 January 2007 – Mr Pevec said this money was given to him by his brother-in-law Craig Wheeler, "I mean, there was a time where I approached him late – it was around Christmas time – Christmas time 06 – late – late – 06 ... I think that I approached him to help me out".
- \$5,000 on 9 February 2007 – Mr Pevec said this came from Craig Wheeler.
- \$5,000 on 20 February 2007 – Mr Pevec said this also came from Craig Wheeler.
- \$5,000 on 8 May 2007 – "Yeah it would have been money from around the house that Linda and I decided to possibly put on the loan", "we always kept a safety net at home, you know. At times it was up to \$10,000".
- \$5,800 on 25 June 2007 – Mr Pevec claimed this was comprised of cash gifts from his son James's christening on 24 June 2007, "that christening was from parents and close – as I said before, family and friends, so it would have been my aunties, my grandmother, geez, my cousins, sister, my inlaws, their siblings".
- \$5,000 on 29 August 2007 – "that was one of the birthday parties. That would have been Jacob's birthday party (Jacob was born on 28 July 2005) and I think we might have – I think we got \$3,000 or so or whatever for his second birthday party and a couple of thousand on top so we could have – quite possibly could have put it in as a \$5,000 deposit".
- \$3,000 on 21 September 2007 – Mr Pevec said he borrowed \$5,000 from Mr Murdocca. He gave \$2,000 to his sister when she married Mr Craig Wheeler "either late September or October".

Craig Wheeler gave evidence at the public inquiry and said that he had made two payments, each of \$10,000, in January 2007. Both were made, he believed, before James Pevec was born on 26 January 2007. Consistent with his account, for some reason, Mr Pevec banked the initial \$10,000 immediately, and delayed banking the second \$10,000 until February, when he banked the money in two separate deposits of \$5,000. The source of this money cannot be traced as, according to Mr Wheeler, it all came from gambling winnings.

Mr Wheeler said that he also provided \$18,000 to Mr Pevec in 2008 to pay off his car lease. Mr Wheeler was adamant that these were the only payments he had made to Mr Pevec. There was no reference to a fourth loan, being the \$7,000 to \$8,000 that Mr Pevec had claimed in his compulsory examination had been provided by Mr Wheeler just before Mr Wheeler and Mr Pevec's sister were married in October 2007.

In the course of Mr Pevec's evidence at the public inquiry, only the payment of \$5,000 on 8 May 2007 was attributed to a "safety net" of cash that was sitting at his home.

Mr Pevec's evidence about the contributions that had contributed to the "safety net" was also different at the public inquiry from that outlined in his previous accounts. His stepfather had not given him \$10,000 for two children's birthdays and a christening. He had given him a more modest "\$1,000, a thousand and a half". He had not given him \$4,000 for James' christening, "he gave me \$500, \$400, I can't recall".

At his compulsory examination on 3 October 2008 Mr Pevec moved away from his assertion to Commission officers on 30 September 2008 that he was paying money to his mother, to claim that she was in fact making significant payments to him. On 3 October 2008 he said that she had given him "about \$10,000" for work he had done on her house "at the end of 05, beginning of 06". He said she gave him another \$5,000 in 2007 when they needed to top up their credit card. At the public inquiry, his evidence on this issue was different again. He said he could not recall how much his mother gave him after 2006, "she may have helped out during the period I was struggling. I can't recall".

At the public inquiry, the "safety net" explanation was replaced by an explanation built around the generosity of Mr Wheeler. He had contributed \$20,000 of the \$43,000 deposited as cash into the Pevec family accounts over the year from October 2006. In the course of Mr Pevec's compulsory examination evidence on 3 October 2008 there had been mention of a \$7,000 or \$8,000 loan from Mr Wheeler. However, this did not contribute to the money that passed into the family's bank accounts. This was "for incidentals", including a holiday, "just disposable cash".

The critical issues in respect of this final explanation given by Mr Pevec are:

- why Mr Pevec, in his earlier accounts, elected not to mention the substantial contribution made by Mr Wheeler, and
- why Mr and Mrs Pevec instead put forward the false "safety net" explanation to otherwise explain this cash.

During the public inquiry Mr Pevec acknowledged that he had previously given different evidence in relation to his finances. Counsel Assisting put to him "You were endeavouring, weren't you, to explain away the significant amounts of cash that you had had during that period by nominating people who really didn't assist you to the extent that you were saying" Mr Pevec responded, "Well, I knew I had assistance but I didn't want to mention names in terms of other family and friends and so forth so I mentioned obviously one individual which helps me out and that's your parents, I mean, my dad and mum". However, Mr Wheeler was not "other family and friends and so forth" that he did not want to mention, because he did mention him. Indeed, he said he received \$7,000 to \$8,000 from Mr Wheeler shortly before Mr Wheeler married his sister in October 2007, an account that now appears to be specious.

When Mr Pevec was asked at the public inquiry about his prior compulsory examination evidence in relation to the \$7,000 or \$8,000 payment from Mr Wheeler, he tried to suggest that the payment discussed in his compulsory examination was the same as that which Mr Wheeler and he spoke about at the public inquiry. This is rejected. At the compulsory examination he spoke about receiving one payment from Mr Wheeler in 2007, not two. He said the amount of this payment was \$7,000 or \$8,000. He qualified this evidence, saying "I can't remember exactly". However, \$7,000 or \$8,000 is a long way from two payments of \$10,000. At the compulsory examination he said the money was "just disposable cash" and was used for a holiday, amongst other things, rather than being placed into a bank. At the public inquiry every cent of the money received from Mr Wheeler was placed in the bank. The \$7,000 to \$8,000 payment Mr Pevec spoke about at his compulsory examination took place just before the October 2007 wedding. The two payments spoken about at the public inquiry were made in January 2007. They were not connected with Mr Wheeler's wedding, but apparently with concerns over Mrs Pevec's pregnancy and the birth of their son James.

The \$7,000 to \$8,000 mentioned by Mr Pevec at his compulsory examination was not the same as the Craig Wheeler contributions mentioned by Mr Wheeler and Mr Pevec at the public inquiry. It was a wholly separate cash payment, and by the time of the public inquiry this payment was no longer being claimed.

Two payments of \$10,000 within a short period of time is not something that Mr Pevec could reasonably have overlooked or misconstrued in the context of his financial

circumstances. Mr Pevec had been made aware three days prior to his compulsory examination that the Commission was asking questions about the \$40,000 cash going into his and Mrs Pevec's accounts. He was not taken by surprise.

There is no adequate reason why Mr Pevec did not disclose Mr Wheeler as the primary source of the \$43,800 cash payments during his interview on 30 September 2008 or his compulsory examination on 3 October 2008 if Mr Wheeler really had been the source of this payment. There is no adequate reason for Mr Pevec and his wife putting forward a false "safety net" explanation for the relevant cash deposits at the compulsory examination. In all the circumstances the Commission is satisfied that it has not been told the truth by Mr Pevec and those who supported his accounts as to the source of the relevant cash payments.

Mr Murdocca's \$5,000 "loan" to Mr Pevec

As mentioned earlier in this chapter, both Mr Murdocca and Mr Pevec ultimately conceded that Mr Murdocca had made one \$5,000 payment to Mr Pevec. Both alleged that this money was paid as a loan. For reasons given below, the Commission rejects this evidence.

Mr Pevec initially concealed this payment, denying that he had ever received any benefits from Mr Murdocca.

Mr Pevec clearly had access to other persons from whom he could more suitably borrow money other than a contractor whose tenders he was assessing. Indeed he was able to borrow \$18,000 from Craig Wheeler in June 2008.

The alleged loan transaction was never documented. There appears to have been no effort on Mr Pevec's part to pay any of it back, or on Mr Murdocca's part to secure repayment, until the funds became an issue during the Commission's investigation.

In all the circumstances the Commission is satisfied that Mr Murdocca provided the \$5,000 to Mr Pevec as a gift and not as a loan and that it was accepted as a gift by Mr Pevec. The Commission is also satisfied that the payment was made some time in 2007 and was made either in return for improper assistance Mr Pevec had provided Mr Murdocca in relation to obtaining TransGrid work, or was made in contemplation of such assistance.

The next issue is whether the Commission is satisfied that the other payments, or some of the payments (in addition to the payment of \$5,000), were made or facilitated by Mr Murdocca or Sage.

Did Mr Murdocca make a series of payments to Mr Pevec over 12 months from October 2006?

The evidence in this respect is as follows:

- As mentioned in Chapter 5 the Commission is satisfied that Mr Pevec provided extensive assistance to Mr Murdocca and Sage in securing the C1167 contract with the intention of ensuring Sage's success. This was done at great risk to his career and ultimately the wellbeing of himself and his family.
- As mentioned in Chapter 6 the Commission is satisfied that Mr Pevec provided Mr Murdocca with a large number of confidential documents, including documents prepared by competing contractors and a TransGrid tender evaluation matrix to assist Mr Murdocca in his efforts to gain lucrative TransGrid contracts.
- Mr Pevec and his family received \$43,800 in a series of cash payments, into bank accounts over a 12-month period, in circumstances where no significant cash payments had previously been received over a significant period of time, apart from \$4,030 passed into a special account following his son Jacob's christening which Mr Pevec told the Commission was set aside for Jacob's benefit.
- The period of the payments coincided with a period over which Mr Murdocca and Sage secured substantial commercial benefits from TransGrid, through winning a series of contracts in tender processes that were facilitated by Mr Pevec.
- Mr Pevec was not able to give an adequate or believable explanation for the source of the cash payments received into his family's accounts. Indeed he gave a series of false accounts in a manner that indicated he was seeking to conceal the true source of these funds.
- There were cash withdrawals made from bank accounts associated with Mr Murdocca and Sage shortly before each relevant cash deposit into the bank accounts of Mr Pevec and his family, except for the \$5,000 deposit made on 3 October 2006 and the \$5,000 deposit made on 20 February 2007. These are detailed below:

Date	Cash withdrawal from Murdocca/Sage account	Deposit into Pevec account
3 Oct 06		5,000
9 Nov 06	10,000 (S Murdocca)	
6 Dec 06	5,000 (S Murdocca)	
10 Jan 07		1,000
10 Jan 07		9,000
08 Feb 07	5,757 (Sage)	
09 Feb 07		5,000
20 Feb 07		5,000
20 Apr 07	6,000 (S Murdocca)	
27 Apr 07	5,000 (S Murdocca)	
08 May 07		5,000
22 Jun 07	6,439 (Sage)	
25 Jun 07		5,800
28 Aug 07	8,500 (D&S Murdocca)	
29 Aug 07		5,000
14 Sep 07	8,000 (Sage)	
21 Sep 07		3,000

When the Commission executed a search warrant on the premises of Mr Murdocca on 30 September 2008, Commission officers located a safe. This contained two bundles of cash, one of approximately \$6,000 and the other of approximately \$3,000. These were accompanied by associated bank documentation that indicated that this money was withdrawn some months before the search. The Commission is satisfied that Mr Murdocca had the capacity to access and retain cash over an extended period and the absence of cash withdrawals corresponding to the deposits made on 3 October 2006 and 20 February 2007 does not preclude Mr Murdocca and Sage from being the source of these funds.

In all these circumstances the Commission is satisfied to the requisite degree that Mr Pevec received cash payments from Mr Murdocca or Sage in the order of \$40,000 in return for improper assistance provided by Mr Pevec.

The Grand Prix – a further benefit to Mr Pevec

On 17 and 18 March 2007 Mr Pevec and Mr Murdocca watched the Melbourne Grand Prix from the BMW corporate box. Mr Murdocca paid for Mr Pevec's admission at a cost of \$2,500.

Mr Murdocca, at his compulsory examination on 20 February 2009, claimed that he had not paid for Mr Pevec's admission to any sporting event. At the public inquiry on 20 April 2009 he told the Commission that he had not paid for Mr Pevec to go to the Grand Prix Formula 1 race in Melbourne in 2007.

Eventually he told the Commission that he had "met up" with Mr Pevec at the Grand Prix. He believed that this occurred on Saturday, 17 March 2007.

Mr Murdocca and Mr Pevec returned to Sydney in Mr Pevec's motor vehicle.

Mr Murdocca claimed that he had travelled with his wife and young son to Melbourne on Thursday, 15 March 2007, that he had purchased the additional two-day ticket for his wife on Thursday afternoon, 15 March 2007, but his wife returned to Sydney with their son on Friday afternoon, 16 March 2007, as their young son was restless overnight on 15 March 2007. This way he attempted to suggest that Mr Pevec was merely accessing a ticket that would have otherwise gone to waste, rather than it being a situation where he, as the managing director of Sage, paid out \$2,500 for the entertainment of Mr Pevec, a TransGrid employee who was about to be involved in determining whether TransGrid steered a major commercial opportunity to Sage.

This evidence was also untruthful. The tax invoice issued by BMW to Sage on 22 March 2007 shows that one four-day package was purchased on 25 January 2007 for \$3,900 but the two-day package, which was utilised by Mr Pevec, was not purchased until Saturday 17 March 2007, the invoice recording the sum of \$2,500 was "paid" on that day.

The BMW file also contains a note recording the transaction expressed as follows:

Goran Pevec – guest of Domenic Murdocca. Visa [....] 10/7 1 x Sat and Sun \$2,500.

Finally, Mr Murdocca's Westpac Visa Gold statement for the card referred to above also records that \$2,500 was paid on Saturday 17 March 2007.

The Commission is satisfied that the ticket utilised by Mr Pevec was purchased by Mr Murdocca on Saturday, 17 March 2007, after Mr Murdocca's wife had already returned to Sydney, and that the ticket was specifically purchased to facilitate Mr Pevec's admission.

Mr Pevec, when interviewed on 30 September 2008, told Commission officers that he had never received any gifts or benefits from Sage or Mr Murdocca. However, by the time he gave evidence at the public inquiry a substantial body of evidence had been led in relation to his attendance at the 2007 Melbourne Grand Prix and he conceded that he had attended this and Mr Murdocca had provided him with admission.

This came at a very sensitive time in the context of Sage's commercial relationship with TransGrid, and Mr Pevec's involvement in this. By 17 March 2007, TransGrid had advertised and closed tenders for contract C1193 which concerned the erection of palisade security fences at Vineyard, Regentville, Avon and Kangaroo Valley. Mr Pevec was a member of the tender evaluation committee. The Committee did not sign off on the recommendation for C1193 until 3 May 2007. The contract was awarded to Sage on 31 May 2007.

The Commission is satisfied that Mr Murdocca's conduct in hosting Mr Pevec in the BMW corporate box at the 2007 Melbourne Grand Prix formed part of an ongoing course of conduct by Mr Murdocca to win favour from Mr Pevec in relation to the affairs of Mr Pevec's employer, TransGrid. The Commission is also satisfied that Mr Pevec accepted the ticket on the same basis.

Sage sources copper through Leancrest Pty Ltd: A financial benefit for Eduard Pevec, Goran Pevec's stepfather

Evidence was given by a number of witnesses in the course of the Commission's public inquiry that Sage experienced difficulties in sourcing copper for Contract C1167. The Commission accepts this evidence.

There was evidence that ultimately copper was obtained from Leancrest Pty Limited ("Leancrest") trading as Creativity Design. That is a company owned by Mr Pevec's stepfather, Eduard Pevec. The company normally deals with glass balustrades, frameless glass and stainless steel but it did not deal with copper.

According to Eduard Pevec he received a telephone call from Mr Murdocca enquiring whether he could source the copper for him.

Eduard Pevec was able to source the copper from a business known as Primary Metals and Alloys Pty Ltd ("Primary Metals") in Queensland. Eduard Pevec arranged to obtain payment from Mr Murdocca upfront and a cheque dated 3 October 2006 was provided in the sum of \$25,738.38. The sum of \$19,804.40, being the purchase

price for the copper, was paid by Leancrest to Primary Metals in December 2006. Leancrest profited to the extent of the difference between the amount paid to Primary Metals and the amount received from Sage. Eduard Pevec agreed that it was the "easiest five grand" he had ever made but insisted that although he had thanked his stepson for sending the work his way, he did not give his stepson any money and none was requested.

Both Mr Murdocca and Goran Pevec gave evidence on this matter in the public inquiry which was broadly consistent. According to Mr Pevec, Mr Murdocca raised with him that there was a shortage of copper within Australia and there was a long lead time for delivery. He supplied Mr Murdocca with the telephone number of Leancrest as a possible supplier. This is contrary to the evidence initially given by Mr Pevec in his compulsory examination when he stated that he did not know how Mr Murdocca had obtained the telephone number for Leancrest.

Mr Pevec's referral of Mr Murdocca to Leancrest took place in the performance of his responsibilities for TransGrid involving the administration of the C1167 contract. Referring a TransGrid contractor to his stepfather's firm placed him in a position of conflict between his personal interest in promoting the commercial interests of his stepfather and his responsibility for the impartial performance of his duties for TransGrid. TransGrid's Code of Ethics and Conduct requires that any TransGrid officer should advise his or her Team Leader/Manager if they believe such a conflict has emerged or could emerge. Mr Pevec did not do this.

The referral of Sage to Leancrest could have been a mechanism by which Sage could have passed funds to Mr Pevec, or at least enriched Mr Pevec's family, in return for Mr Pevec showing Sage favour in the performance of his duties for TransGrid. The Commission is not satisfied to the requisite standard that this is what happened on this occasion. It is clear that Sage had an urgent need for copper so that it could fulfil its responsibilities under the C1167 contract. It is possible that Mr Pevec referred Sage to Leancrest for no reason other than to assist Sage in difficult circumstances, however Mr Pevec's motivation cannot be determined with any certainty.

Chapter 8: Mr Murdocca and Mr Pevec take action to conceal their dealings

From the beginning of 2008, after Mr Pevec had ceased to have any official involvement in the commercial relationship between Sage and TransGrid, and in the lead-up to this Commission's investigation and public inquiry, Mr Murdocca and Mr Pevec engaged in a number of strategies to conceal the true nature of the dealings that took place between them.

Pre-paid mobile telephone services

In April 2008 Mr Murdocca instructed his brother, Peter Murdocca, to obtain new mobile telephone services. In accordance with these instructions, Peter Murdocca purchased a collection of Vodafone pre-paid telephone services from Sir Tel Link Pty Ltd at Liverpool. These were registered in false names. The services were distributed to Sage employees and members of Mr Murdocca's family. One reason for this approach was clearly to rein in staff mobile telephone costs. Another reason was to prevent authorities intercepting Mr Murdocca's calls. The services were obtained shortly after Mr Murdocca had been involved in the Commission's public inquiry into bribery and fraud at RailCorp, during which a number of legally intercepted telecommunications involving Mr Murdocca had been played.

One of the services was handed to Mr Pevec. This is remarkable given that Mr Pevec was now working in Mudgee and had ceased to have any involvement in any of Sage's operations. Mr Murdocca told the Commission that Mr Pevec was given the phone "to test Vodafone reception up at Mudgee". This was a specious explanation and the Commission rejects it. Mr Pevec, rather than using the phone for some one-off series of tests in the Mudgee region, retained the phone on his person for a significant period of time, kept it charged up, and used it to speak to Mr Murdocca from time to time.

The Commission can only speculate on what conversations the pair had over these services. However, the Commission is satisfied, in all the circumstances, that use was made

of the pre-paid service in an attempt to conceal their discussions from the Commission.

Pre-paid mobile telephone services 0449 634 011 and 0449 634 002

While both Mr Murdocca and Mr Pevec were unable to recall the number of the pre-paid Vodafone services each had access to, the Commission is satisfied that Mr Murdocca was using the service 0449 634 011, registered in the name of James Brown ("the Brown service"). Mr Pevec was using the service 0449 634 002, which was registered in the name of Natesh Khan ("the Khan service").

These form part of a batch of services which were purchased from Sir Tel Link Pty Limited in April 2008.

Prepaid services 0449 634 001 and 0449 634 004 were activated on the same day as the Khan service (0449 634 002), 29 April 2008. Both services were located at Mr Murdocca's premises on 30 September 2008. The remaining telephone service in the sequence, 0449 634 003 was also registered in the name Natesh Khan and its call charge records indicate that it was used by a Sage employee.

While the Khan service received a large number of calls from the Brown service, only six calls were made by the Khan service, on five separate days. These calls were made between 5 May 2008 and 24 June 2008. The calls operated through cell sites at Cecil Park, Surry Hills, Botany, Picnic Point (twice) and Mudgee, where Mr Pevec was based. On each occasion, within 50 minutes, a call was made on the TransGrid service issued to Mr Pevec, routed through a cell site matching the cell site that carried the respective Khan service calls.

In all the circumstances the Commission is satisfied Mr Pevec was in possession of the Khan phone and this was the pre-paid service provided to him by Peter Murdocca.

The Brown service was activated on 22 April 2008, the same day as two other services that were located at Mr Murdocca's premises on 30 September 2008. One of these services, 0449 632 655 was registered in the name of Pasquale Malouf ("the Malouf service"). Stephen Cunningham, a former Sage employee, told the Commission that this was the prepaid service that he had possession of during his time at Sage. This was handed to him by Peter Murdocca at the same time as a number of services were handed out to other Sage employees. According to Mr Cunningham he used this phone "mainly" to contact Mr Murdocca or his brother, Peter Murdocca. Call charge records for this service indicate that the service he contacted most regularly was the Brown service.

The Brown service was used more extensively than the Khan service. Between 26 April 2008 and 23 September 2008 this service was used on 149 occasions on 65 different days. Over this period, Mr Murdocca also used his Telstra mobile service which was being intercepted by the Commission. The cell site through which each service was operating consistently coincided over this extended period, indicating that the services were colocated. Importantly, five of the six calls made on the Khan service were made to the Brown service, consistent with Mr Pevec contacting Mr Murdocca. In all these circumstances, the Commission is satisfied that the Brown service was, at relevant times, in the possession of Mr Murdocca.

The call charge records of these phones indicate that there was extensive contact between Mr Murdocca and Mr Pevec over 2008. Mr Pevec called Mr Murdocca five times, but Mr Murdocca contacted Mr Pevec 43 times on 25 separate days. At all times Mr Murdocca had his Telstra service and Mr Pevec had his TransGrid issue service, and they were both using these services for most other calls. However, they consistently switched to the prepaid services for any contact between themselves, consistent with efforts to conceal this contact.

Meetings

As well as conversing by telephone, Mr Pevec and Mr Murdocca continued to have direct meetings. On 14 July 2008 they arranged to meet at Austral. In an intercepted call at 11.32 am Mr Murdocca asked Mr Pevec if they could meet. At this time, Mr Pevec's TransGrid issue service was operating through a cell site at Horsley Park. Mr Murdocca's Telstra service was operating through a cell site at Kellyville. After a further call between the Khan service and the Brown service at 11.46 am, at 11.59 am Mr Murdocca called his wife and told her that he was going out west to Austral for a meeting. Further calls were made

between the Khan service and the Brown service at 12.17 pm and 12.25 pm. Shortly after 2.00 pm that day, both Mr Pevec and Mr Murdocca made calls (to other people) that were routed through an Austral cell site, suggesting that they were colocated, in accordance with the plans that they had made earlier.

On 28 August 2008 Mr Murdocca and Mr Pevec met again near Mr Pevec's home. Mr Pevec was on leave from work on this day. This meeting was witnessed by Commission officers.

Prior to the meeting there had been no relevant calls between the two men using Mr Murdocca's Telstra service or the TransGrid service issued to Mr Pevec. There were, however, calls between the Brown service and the Khan service at 9.39 am and 1.21 pm on the previous day, and at 10.39 am and 10.42 am on the day before they met.

Mr Murdocca was seen to attend at Mr Pevec's home at 11.33 am. After a few minutes each drove their own vehicle a short distance to the end of a nearby cul-de-sac. At this point, Mr Pevec alighted from his vehicle and entered Mr Murdocca's vehicle. They drove together, in Mr Murdocca's vehicle, for a period of about half an hour, before returning to the cul-de-sac. Here Mr Pevec returned to his own vehicle and each person went their own way.

It is likely that there were other meetings apart from these two.

Both sought to conceal their direct meetings. When Mr Pevec was interviewed by Commission staff on 30 September 2008 he claimed he had last seen Mr Murdocca "probably about a year or so ago". This was just over a month after Commission officers had observed their meeting on 28 August 2008. Three days later, on 3 October 2008, Mr Murdocca was asked, at a compulsory examination, when he had last spoken to Mr Pevec, apart from a telephone call he had disclosed as taking place a few days earlier on 29 September 2008. He responded, "I can't recall. He's been up in Mudgee for the last 8, 10 months, so he's – he's on another project, so –".

When these meetings were finally disclosed and acknowledged in the course of the public inquiry, Mr Murdocca and Mr Pevec tried to suggest that they took place for legitimate work reasons. The Commission rejects this. Mr Pevec had long since ceased to have any official involvement in works involving Sage.

Collusion between Mr Murdocca and Mr Pevec

After the commencement of the Commission's investigation, both Mr Murdocca and Mr Pevec gave false and misleading accounts to the Commission to conceal their true actions and the true nature of their relationship.

Not surprisingly, having regard to the amount of covert contact between the two men, there are indications that they colluded in an attempt to deflect the Commission's investigation.

Both Mr Murdocca and Mr Pevec, in their early accounts on 30 September 2008 (Mr Pevec), 3 October 2008 (Mr Pevec and Mr Murdocca) and 20 February 2009 (Mr Murdocca), sought to play down the extent of their relationship. In a matter where all the focus is on the relationship between two persons, it would only be possible to successfully mislead the Commission if both parties were privy to this approach. Mr Pevec took a more hardline approach falsely claiming that he had never been to Mr Murdocca's home, had only met him at worksites and had "never socialised with the Murdoccas". Linda Pevec, Mr Pevec's wife, supported this fiction claiming that she had never even met Susan Murdocca and had only ever seen Mr Murdocca at TransGrid worksites.

Mr Murdocca did not take such a rigid line, acknowledging that he had been to Mr Pevec's home and Mr Pevec had been to his home, and indeed their families had shared a barbecue at his residence.

Both persons tried to play down the extent of contact they had prior to the C1119 roadworks subcontract and the C1167 palisade fencing contract.

Mr Pevec told the Commission that he first met Mr Murdocca on the site of the C1119 roadworks subcontract. Mr Murdocca said that between university and meeting Mr Pevec on site at the C1119 roadworks subcontract, the only dealing he had with Mr Pevec was when they met briefly at a party in 2003.

Both denied contact between meeting at the C1119 site which concluded in July 2005 and meeting at the site visit for contractors considering a tender for the C1167 contract, in May 2006.

At the public inquiry, after they were confronted with call charge and email records that refuted their prior accounts, both agreed that there had been significant dealings between them in the lead-up to the C1119 subcontract and the C1167 contract.

As mentioned above both Mr Murdocca and Mr Pevec sought to conceal their dealings with each other in the

course of 2008 until developments at the Commission's public inquiry made this position untenable.

A primary example of collusion related to a payment made by Mr Murdocca to Mr Pevec in 2007. In his earlier accounts, Mr Pevec told the Commission that he had not received any gifts or benefits from Sage. He said that, apart from his brother in law, Craig Wheeler, and gifts and benefits provided by other persons at christenings, no one else had given him any money in the "last couple of years" (2007 and 2008). Mr Murdocca however, on 3 October 2008, told the Commission that he gave Mr Pevec \$5,000, on loan. He said "as far as I recall" this was the only loan or gift he had passed to Mr Pevec. He said the loan was provided in 2007.

After these divergent accounts were given to the Commission at the end of September 2008 and the beginning of October 2008, Mr Murdocca and Mr Pevec contacted each other and realigned their accounts. Shortly afterwards, Mr Pevec sent Mr Murdocca a cheque for \$5,600 (\$5,000 principal plus \$600 interest), with a note that suggested the payment was made in September 2007. This was significant because this allowed both to claim that the payment was made after Mr Pevec had concluded his role on the evaluation committees for the three contracts that were awarded to Sage. It was also inconsistent with each person's earlier accounts.

When Mr Murdocca was asked on 3 October 2008 "when did you lend him the \$5,000?" he gave an extremely vague answer, "what year is it now? I think it was last year sometime (2007)". Importantly, he told the Commission that the payment related to the christening of Mr Pevec's son, "His christening, his son's christening. He needed some money ... I said 'Well yeah'". James Pevec's christening took place on 24 June 2007 at the Croatian Club at Punchbowl. This evidence suggested the payment was made in June 2007, while the C1204 tender evaluation committee was still assessing tenders.

When Mr Murdocca gave evidence at the public inquiry his mind had become far more focused with respect to the timing of the payment. When asked about when Mr Pevec sought money from him he responded "that would have been in September 2007" and "I gave them – gave him the money. It was September 2007". He said he knew it was September because Mr Pevec requested the money before Mr Murdocca went to the Hunter Valley for the weekend and that took place in September 2007. This was a remarkable clarification given the vagueness of his evidence on 3 October 2008.

At the public inquiry Mr Pevec acknowledged that he had in fact received \$5,000 from Mr Murdocca. He said this took place at the end of September 2007, shortly before

his sister's wedding. He kept \$2,000 in cash to pass to his sister when she married Craig Wheeler. He put the remaining \$3,000 in the bank. Interestingly, he claimed that he then used this money to fund a holiday in Queensland. He had previously told the Commission at his compulsory examination that the \$7,000 to \$8,000 he received from Mr Wheeler "just before they got married in October 2007" was also used to fund a holiday.

In the circumstances of this suspicious realignment of two divergent accounts the Commission examined closely the contact that took place between Mr Murdocca and Mr Pevec after the compulsory examinations on 3 October 2008, which culminated in the money being paid back.

In Mr Murdocca's compulsory examination on 20 February 2009, after he told the Commission that he had received the money back from Mr Pevec, he was asked "had you spoken to Mr Pevec about the loan prior to receiving the cheque?" He responded, "No, I haven't". He then corrected himself and told the Commission, "I have spoken to him, yes". Asked whether during this conversation he reminded Mr Pevec of the loan, he said, "No, he reminded me, he said 'I need to owe you some money'".

By the first day of the public inquiry, 20 April 2009, five months after the alleged repayment, and two months after his compulsory examination, Mr Murdocca gave the following evidence about this same contact:

[Counsel Assisting] Q: Did you ring him up after you gave evidence and say "It's time to pay up"?

[Mr Murdocca] A: I can't recall.

Q: Not all that long ago?

A: As I said, I can't recall.

Q: Do you think you might have?

A: I can't recall.

[Commissioner] Q: You mean you really can't recall whether or not you spoke to him after you had given this evidence here? Are you telling — ?

A: I can't recall.

The following day Mr Murdocca was able to recall, but his version was different from his compulsory examination version. In this version it was Mr Murdocca, rather than Mr Pevec, who raised the issue of money. Mr Murdocca told the Commission "I asked him for the money that I loaned him the year before, 'It'd be a good time to – to pay the money. It doesn't have to be straight away', you know 'As long as you've got the money', you know 'Pay up.'"

Mr Pevec was present as Mr Murdocca gave his evidence. When Mr Pevec was asked about the contact that led to the repayment he was predictably vague:

Either he called me or I called him. I – I can't for the life of me remember which occurred first.

He tried to explain his vagueness. "I get a lot of phone calls. I can't, as you see from my, you know, the recollections – I can't remember each individual phone call that I make of every specific day in my position." This is nonsense. It was not just any call. This was a phone call about a \$5,000 payment that Mr Pevec had failed to disclose to this Commission following relevant questions, in evidence given on oath.

The Commission is satisfied that Mr Murdocca and Mr Pevec colluded over an extended period of time in an attempt to mislead the Commission.

Chapter 9: Findings and section 74A(2) statements

Based on the evidence set out in Chapters 3 to 8 of this report, the Commission is satisfied to the requisite degree that the following facts have been established:

1. Mr Pevec and Mr Murdocca were well known to each other prior to 2005, having attended the same university and having socialised there from time to time.
2. Mr and Mrs Pevec, and to a lesser extent Mr Murdocca, tried to conceal from the Commission the extent of the relationship that existed between Mr Pevec and Mr Murdocca prior to the C1119 subcontract in 2005, as well as the nature and extent of the ongoing relationship between the men and their families after that time. This was done as they understood that the relationship between Mr Pevec and Mr Murdocca might be viewed by the Commission and others as improper.
3. Mr Pevec provided assistance to Mr Murdocca and Sage in relation to the preparation of Sage's subcontract tender to Wheeler Contracting with respect to the C1119 contract. Mr Pevec assisted Mr Murdocca and Sage to prepare a tender that was in an appropriate form, and to settle the prices proposed in the tender.
4. Mr Pevec was involved in knowingly deceiving his supervisor, Tony Gray, by falsely representing to him that Wheeler Contracting had obtained two competitive quotes for the performance of the subcontract work required for the C1119 contract, where in fact he had provided the Sage quote to the other tendering business prior to it submitting its quote.
5. Mr Pevec provided improper assistance to Mr Murdocca and Sage with respect to the preparation of the Sage tender for the C1167 contract. This assistance, which was accepted by Mr Murdocca, was provided with the intention of ensuring that Sage succeeded in the C1167 tender process. The improper assistance provided by Mr Pevec, and accepted by Mr Murdocca, included:
 - (a) the provision of ongoing expert advice in relation to the preparation of the tender
 - (b) drafting site-specific and other technical provisions for inclusion in Schedule 1F of the Sage tender
 - (c) the provision of TransGrid's C1167 tender drawings in CAD format
 - (d) the provision of documents received by TransGrid from competing contractor Wheeler Contracting, which Mr Pevec knew to be confidential; and
 - (e) the provision of assistance to Sage in sourcing products from Kundan Industries for reference in the Sage tender.
6. Mr Pevec knowingly provided Mr Murdocca with access to a large number of confidential documents, including documents prepared by competing contractors and a TransGrid tender evaluation matrix, to assist Mr Murdocca in his efforts to secure lucrative TransGrid contracts.
7. Mr Murdocca accepted these documents knowing they were confidential TransGrid documents and intending to use them to obtain a competitive advantage in his tendering for TransGrid work.
8. Between October 2006 and September 2007 Mr Murdocca provided and Mr Pevec received cash payments in the order of \$40,000, and a ticket to the 2007 Melbourne Grand Prix valued at \$2,500, in return for Mr Pevec providing or agreeing to provide improper assistance to Mr Murdocca with respect to the tendering for TransGrid work by Mr Murdocca's company Sage.
9. Mr Pevec, in his capacity as a TransGrid officer, referred Mr Murdocca, the managing director of a contracting firm performing work for TransGrid, to his stepfather Eduard Pevec as a commercial source of copper. This copper was needed by Sage for the

performance of its contract with TransGrid. This generated a conflict between Mr Pevec's responsibility for the impartial performance of his duties for TransGrid and his personal interest in seeing his stepfather secure a lucrative commercial opportunity. Mr Pevec did not disclose these circumstances to TransGrid as he was required to by TransGrid's Code of Ethics and Conduct.

10. Mr Murdocca and Mr Pevec used prepaid mobile telecommunication services, registered in false names and obtained through Mr Murdocca, so they could speak by telephone without their calls being intercepted. This approach was taken as each person was conscious of the improper nature of their dealings.
11. Mr Pevec and Mr Murdocca, in the lead-up to the Commission's investigation, and in the course of that investigation, colluded to mislead the Commission and others in relation to the true nature and extent of the dealings that took place between them. They did this as each of them was conscious of the improper nature of their dealings.

Corrupt conduct

Goran Pevec

The Commission finds that Goran Pevec engaged in corrupt conduct on the basis that his conduct in:

- knowingly deceiving his supervisor, Mr Gray, that competitive quotes had been obtained for subcontracting work for the C1119 contract as detailed in finding of fact 4
- providing improper assistance to Mr Murdocca and Sage to ensure that Sage succeeded in the C1167 tender process as detailed in finding of fact 5
- knowingly providing Mr Murdocca with access to a large number of confidential documents to assist Sage to secure lucrative TransGrid contracts as detailed in finding of fact 6
- receiving in the order of \$40,000 and a ticket to the 2007 Melbourne Grand Prix valued at \$2,500 from Mr Murdocca or Sage as detailed in finding of fact 8

was conduct that:

- could adversely affect, either directly or indirectly, the honest or impartial exercise of his official functions as an officer of TransGrid and therefore comes within section 8(1)(a) of the ICAC Act
- constitutes or involves the dishonest or partial exercise by Mr Pevec of his official functions as a

TransGrid employee and therefore comes within section 8(1)(b) of the ICAC Act; and

- constitutes or involves a breach of public trust on the part of Mr Pevec and therefore comes within section 8(1)(c) of the ICAC Act.

The conduct set out in findings of fact 4, 5 and 6 could also for the purposes of section 9(1)(a) of the ICAC Act constitute or involve common law criminal offences of misconduct in public office.

The conduct set out in finding of fact 8 could also for the purposes of section 9(1)(a) of the ICAC Act constitute or involve criminal offences of corruptly receiving a benefit the receipt of which would tend to influence Mr Pevec to show favour to Mr Murdocca and Sage in relation to the affairs of TransGrid contrary to section 249B(1) of the *Crimes Act 1900* (NSW).

Each item of conduct set out in findings of fact 4, 5, 6, and 8 could for the purposes of section 9(1)(b) & (c) of the ICAC Act constitute or involve a disciplinary offence or reasonable grounds for dismissing, dispensing with the services of, or otherwise terminating the services of Mr Pevec as an officer of TransGrid.

Domenic Murdocca

The Commission finds that Domenic Murdocca engaged in corrupt conduct on the basis that his conduct in:

- receiving and accepting assistance from Mr Pevec to ensure that Sage succeeded in the C1167 tender process as detailed in finding of fact 5
- receiving a large number of confidential documents from Mr Pevec as detailed in finding of fact 7; and
- providing in the order of \$40,000 and a ticket to the 2007 Melbourne Grand Prix valued at \$2,500 to Mr Pevec as detailed in finding of fact 8

was conduct that could adversely affect, either directly or indirectly, the honest or impartial exercise of Mr Pevec's official functions as an officer of TransGrid and therefore comes within section 8(1)(a) of the ICAC Act.

The conduct set out in findings of fact 5 and 7 could also for the purposes of section 9(1)(a) of the ICAC Act constitute or involve a common law criminal offence of aiding and abetting misconduct in public office.

The conduct set out in finding of fact 8 could also for the purposes of section 9 (1) (a) of the ICAC Act constitute or involve criminal offences of corruptly giving a benefit the receipt of which would tend to influence Mr Pevec to show favour to Mr Murdocca and Sage in relation to the affairs of TransGrid contrary to section 249 B (2) of the *Crimes Act 1900* (NSW).

Section 74A(2) statements

In making a public report, the Commission is required by the provisions of section 74A(2) of the ICAC Act to include, in respect of each “affected” person, a statement as to whether or not in all the circumstances, the Commission is of the opinion that consideration should be given to the following:

- (a) obtaining the advice of the Director of Public Prosecutions (DPP) with respect to the prosecution of the person for a specified criminal offence
- (b) the taking of action against the person for a specified disciplinary offence
- (c) the taking of action against the person as a public official on specified grounds, with a view to dismissing, dispensing with the services of, or otherwise terminating the services of, the public official.

An “affected” person is a person against whom, in the Commission’s opinion, substantial allegations have been made in the course of, or in connection with, an investigation.

In the course of the Commission’s investigation into matters canvassed in this report, substantial allegations were made against Goran Pevec, Domenic Murdocca, Linda Pevec and Craig Wheeler. Accordingly, each of these persons comes within the definition of “affected” person for the purposes of section 74A(2) of the ICAC Act.

Goran Pevec

Mr Pevec made admissions in the course of his evidence in compulsory examination and before the public inquiry. These admissions were made following a declaration pursuant to section 38 of the ICAC Act and cannot be used against Mr Pevec in any subsequent criminal prosecution, except a prosecution for an offence in contravention of the ICAC Act. However, there is additional evidence generally available to the DPP including documentation obtained from TransGrid, documentation obtained through the execution of search warrants on Domenic Murdocca’s residence, documentation obtained from BMW (Australia) Ltd and various financial institutions and some lawfully intercepted telephone communications.

In all the circumstances the Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Pevec for the following offences:

- the common law offence of misconduct in public office in relation to his conduct in deceiving Mr

Gray by erroneously representing that Wheeler Contracting had obtained two competitive quotes for the performance of subcontract work required for the C1119 contract

- misconduct in public office in relation to his conduct in providing improper assistance to Mr Murdocca and Sage to ensure that Sage succeeded in the C1167 tender process
- corruptly receiving a benefit contrary to section 249B(1) of the *Crimes Act 1900* in relation to his conduct in accepting admission paid for by Mr Murdocca into the BMW Corporate Box at the 2007 Grand Prix in Melbourne
- wilfully making a false statement to mislead the Commission contrary to section 80(c) of the ICAC Act in relation to his conduct in telling Commission officers, when he was interviewed by these officers on 30 September 2008, that Eduard Pevec had given him \$10,000 recently including \$4,000 for his son Jacob’s birthday, “probably” \$2,500 for his son James’s birthday, and about \$4,000 for his son James’s christening
- wilfully making a false statement to mislead the Commission contrary to section 80(c) of the ICAC Act in relation to his conduct in telling Commission officers, when he was interviewed by these officers on 30 September 2008, that the first time he met Mr Murdocca would have been at the TransGrid site at Sydney West in 2005
- wilfully making a false statement to mislead the Commission contrary to section 80(c) of the ICAC Act in relation to his conduct in telling Commission officers, when he was interviewed by these officers on 30 September 2008, that he had never socialised with Mr Murdocca or Mrs Murdocca
- wilfully making a false statement to mislead the Commission contrary to section 80(c) of the ICAC Act in relation to his conduct in telling Commission officers, when he was interviewed by these officers on 30 September 2008, that the last time he had seen Mr Murdocca was “probably about a year or so” ago
- wilfully making a false statement to mislead the Commission contrary to section 80(c) of the ICAC Act in relation to his conduct in telling Commission officers, when he was interviewed by these officers on 30 September 2008, that he did not know Mr Murdocca when he was attending at the University of Wollongong
- wilfully making a false statement to mislead the Commission contrary to section 80(c) of the

ICAC Act in relation to his conduct in telling Commission officers, when he was interviewed by these officers on 30 September 2008, that he had not received any gifts or benefits from Sage or Mr Murdocca

- giving false or misleading evidence at a compulsory examination contrary to section 87(1) of the ICAC Act when he gave evidence to the Commission on 3 October 2008 that he did not have any dealings with Mr Murdocca until after Mr Murdocca became a subcontractor on a TransGrid operation in 2005
- giving false or misleading evidence at a compulsory examination contrary to section 87(1) of the ICAC Act when he gave evidence to the Commission on 3 October 2008 that he did not think that Mr Murdocca was in any of his classes at the University of Wollongong
- giving false or misleading evidence at a compulsory examination contrary to section 87(1) of the ICAC Act when he gave evidence to the Commission on 3 October 2008 that he had never visited Mr Murdocca's residence
- giving false or misleading evidence at a compulsory examination contrary to section 87(1) of the ICAC Act when he gave evidence to the Commission on 3 October 2008 that he had no social relationship with Mr Murdocca or his wife Susan Murdocca
- giving false or misleading evidence at a compulsory examination contrary to section 87(1) of the ICAC Act when he gave evidence to the Commission on 3 October 2008 that he had never had contact with Mr Murdocca in social settings, such as cafes or restaurants
- giving false or misleading evidence at a compulsory examination contrary to section 87(1) of the ICAC Act when he gave evidence to the Commission on 3 October 2008 that he had received about \$10,000 from his mother at the end of 2005 or in 2006 for work he had done on her house and another \$5,000 from his mother in mid 2007 when they needed to "top up their credit card"
- giving false or misleading evidence at a compulsory examination contrary to section 87(1) of the ICAC Act when he gave evidence to the Commission on 3 October 2008 that he was not sure how Mr Murdocca came to contact his stepfather Eduard Pevec at Leancrest Pty Ltd in relation to the purchase of copper
- wilfully giving false or misleading evidence at a public inquiry contrary to section 87(1) of the ICAC Act when he gave evidence to the

Commission on 22 April 2009, with respect to the document titled "Additional Technical Advice", that he did not believe it had anything to do with the tender process initially when he was actually drafting it up

- giving false or misleading evidence at a public inquiry contrary to section 87(1) of the ICAC Act when he gave evidence to the Commission on 22 April 2009 that he did not arrange for a quote from Mark Mathews in relation to roadworks to be performed on the C1119 site
- giving false or misleading evidence at a public inquiry contrary to section 87(1) of the ICAC Act when he gave evidence to the Commission on 23 April 2009 that he was not involved in sourcing materials for Sage prior to the award of the C1167 contract; and
- giving false or misleading evidence at a compulsory examination on 3 October 2008 and/or at a public inquiry on 21 April 2009 contrary to section 87(1) and section 87(2) when, on each occasion, he gave evidence in relation to the sources of \$43,800 that was paid in cash into bank accounts of Mr and Mrs Pevec from 3 October 1996 until 21 September 2007.

The Commission is not of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Pevec for corruptly receiving a benefit contrary to section 249B(1) of the *Crimes Act 1900*, in relation to his receipt of in the order of \$40,000 from Mr Murdocca in return for providing or agreeing to provide improper assistance to Mr Murdocca. The Commission is of the view that there is insufficient admissible evidence to justify seeking such an opinion, taking into account the criminal standard of proof.

Mr Pevec no longer works for TransGrid. It is therefore not necessary to make any statement in relation to matters referred to in section 74A(2)(b) or section 74A(2)(c) of the ICAC Act.

Domenic Murdocca

Mr Murdocca made admissions in the course of his evidence at two compulsory examinations and before the public inquiry. These admissions were made following a declaration pursuant to section 38 of the ICAC Act and cannot be used against Mr Murdocca in any subsequent criminal prosecution except a prosecution for an offence in contravention of the ICAC Act. However, there is additional evidence generally available to the DPP including documentation obtained from TransGrid, documentation obtained through the execution of search warrants on Mr

Murdockca and Sage, documentation obtained from BMW (Australia) Ltd and various financial institutions and some lawfully intercepted telephone communications.

In all the circumstances the Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Murdockca for the following offences:

- aiding and abetting misconduct in public office in relation to Mr Pevec's conduct in providing assistance to Mr Murdockca and Sage to ensure that Sage succeeded in the C1167 tender process
- corruptly giving a benefit contrary to section 249B(2) of the *Crimes Act 1900* in relation to this conduct in providing Mr Pevec with admission into the BMW corporate box at the 2007 Grand Prix in Melbourne
- giving false or misleading evidence at a compulsory examination contrary to section 87(1) of the ICAC Act when he gave evidence to the Commission on 3 October 2008 when he was asked whether he had any contact with Mr Pevec in relation to the C1167 contract prior to the publication of the invitation to tender and he told the Commission that he had not had such contact except when he was engaged in the subcontract work at the C1119 worksite
- giving false or misleading evidence at a compulsory examination contrary to section 87(1) of the ICAC Act when he gave evidence to the Commission on 20 February 2009 that he had not paid for Mr Pevec's admission to any sporting event
- giving false or misleading evidence at a compulsory examination contrary to section 87(1) of the ICAC Act when he gave evidence to the Commission on 20 February 2009 that he had not provided any other gifts, payments or any other financial benefits to Mr Pevec apart from the alleged \$5,000 loan
- giving false or misleading evidence at a public inquiry contrary to section 87(1) of the ICAC Act when he gave evidence to the Commission on 20 April 2009 that he had not given any pre-paid mobile telephones to anyone apart from members of his family or his employees
- giving false or misleading evidence at a public inquiry contrary to section 87(1) of the ICAC Act when he gave evidence to the Commission on 20 April 2009 about his telephone contact with Mr Pevec, in particular when he told his wife, Susan Murdockca, on 12 September 2008 that he had just been speaking to "G", he was referring to Griffin Fencing; and
- giving false or misleading evidence at a public inquiry contrary to section 87(1) of the ICAC Act when he gave evidence to the Commission on 20 April 2009 that he had not paid for Mr Pevec to go to the Grand Prix Formula 1 race in Melbourne in 2007.

The Commission is not of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Murdockca for corruptly giving a benefit contrary to section 249B (1) of the *Crimes Act 1900*, in relation to his provision of in the order of \$40,000 to Mr Pevec in return for Mr Pevec providing or agreeing to provide improper assistance to Mr Murdockca. The Commission is of the view that there is insufficient admissible evidence to justify seeking such an opinion, taking into account the criminal standard of proof.

Linda Pevec

Mrs Pevec made admissions in the course of her evidence at two compulsory examinations. These admissions were made following a declaration pursuant to section 38 of the ICAC Act and cannot be used against Mrs Pevec in any subsequent criminal prosecution except a prosecution for an offence in contravention of the ICAC Act.

In all the circumstances the Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mrs Pevec for the following offences:

- giving false or misleading evidence at a compulsory examination contrary to section 87 (1) of the ICAC Act when she gave evidence to the Commission on 3 October 2008 that she had never met Susan Murdockca
- giving false or misleading evidence at a compulsory examination contrary to section 87 (1) of the ICAC Act when she gave evidence to the Commission on 3 October 2008 that she had never met Mr Murdockca at any place other than at a TransGrid worksite
- giving false or misleading evidence at a compulsory examination contrary to section 87 (1) of the ICAC Act when she gave evidence to the Commission on 3 October 2008 that she had never been to Mr Murdockca's residence.

Craig Wheeler

In all the circumstances the Commission is not of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Wheeler for any offence. The Commission is of the view that there is insufficient admissible evidence to justify seeking such an opinion.

Chapter 10: Corruption prevention

The Commission's corruption prevention role is established under section 13(l) of the ICAC Act, as follows:

...

- (d) *to examine the laws governing, and the practices and procedures of, public authorities and public officials, in order to facilitate the discovery of corrupt conduct and to secure the revision of methods of work or procedures which, in the opinion of the Commission, may be conducive to corrupt conduct,*
 - (e) *to instruct, advise and assist any public authority, public official or other person (on the request of the authority, official or person) on ways in which corrupt conduct may be eliminated,*
 - (f) *to advise public authorities or public officials of changes in practices or procedures compatible with the effective exercise of their functions which the Commission thinks necessary to reduce the likelihood of the occurrence of corrupt conduct,*
- ...

Section 13 also establishes the corruption prevention functions that apply to investigations carried out by the Commission:

- 2. *The Commission is to conduct its investigations with a view to determining:*

...

 - (b) *whether any laws governing any public authority or public official need to be changed for the purpose of reducing the likelihood of the occurrence of corrupt conduct, and*
 - (c) *whether any methods of work, practices or procedures of any public authority or public official did or could allow, encourage or cause the occurrence of corrupt conduct,*

TransGrid's procurement thresholds

As a State owned corporation ("SOC"), TransGrid is exempt from the NSW Government Procurement Policy. SOCs are, however, encouraged to adopt aspects of the policy that are consistent with their corporate intent and TransGrid has elected to operate within the guidelines established by the Policy.

At the time of the contracts in question, TransGrid's procurement thresholds for goods, works and services (excluding consultancies) were as follows:

- for goods, works and services estimated to be valued up to \$10,000: One verbal quote supported by written confirmation (email, letter or fax). The quote can be called by an officer who has attended an approved training course.
- for goods, works and services estimated to be valued between \$10,000 and \$100,000: Three written quotes accompanied by supporting specification.
- for goods, works and services estimated to be valued at over \$100,000: Public advertisement with accompanying specification for quotations and tenders.¹

TransGrid's business rules also require that for tenders and quotations where the expected value of the works or services exceeds \$100,000, the tender or quotation should remain open for a minimum period of six weeks. The requirements for these procurement procedures "may be waived only in emergency or special circumstances".²

As the expected value of works under the palisade fence contracts in question exceeded \$100,000 they were submitted to public tender.

1. *General Responsibilities and Selection of Procurement Method*, TransGrid, issue date 25 May 2006, Section 4.1, p. 5.

2. *ibid*, Section 4.10, p.9.

The relevant contracts

Prior to discussing the corruption risks that were exposed in this matter it is useful to set out the contracts relevant to the investigation.

Contract 1119 (C1119) - the replacement of palisade fencing at Sydney East and Sydney West (Wallgrove) substations. The contract was awarded on 18 January 2005 to Greg Wheeler Contracting Pty Ltd (Wheeler Contracting). Sage Civil Engineering's (Sage) initial involvement with TransGrid was as a subcontractor for Wheeler Contracting on C1119.

Contract 1167 (C1167) - the erection of palisade fencing at the Dapto, Ingleburn, Kemps Creek and Liverpool substations. Tenders closed on 6 June 2006 and the contract was awarded to Sage on 16 August 2006.

Contract 1193 (C1193) – the erection of palisade fencing at the Vineyard, Regentville, Avon and Kangaroo Valley substations. Tenders closed on 13 February 2007 and the contract was awarded to Sage on 31 May 2007.

Contract 1204 (C1204) - for the erection of palisade fencing at the Mt Piper 132 and Wallerawang 132 and 330kV substations. Tenders closed on 24 April 2007 and the contract was awarded to Sage on 11 September 2007.

Mr Pevec was the region representative who provided advice on technical issues to the tender evaluation committee for all of the above contracts and was the civil inspector for C1119, C1167 and C1193.

It became apparent during the investigation that Sage's initial work as a subcontractor for Wheeler Contracting on C1119 gave Mr Murdocca valuable experience that he could cite in Sage's first tender for palisade fencing (C1167) and for the subsequent tenders that Sage won. It was only through Mr Pevec's assistance that Sage was engaged by Wheeler Contracting.

The variation order to Contract 1119

Wheeler Contracting was awarded a contract to replace palisade fencing at Sydney East and Sydney West substations. During the course of that contract it became necessary to seek a subcontractor to undertake certain roadworks.

Mr Wheeler was directed, as the contractor for the site, to organise the completion of the necessary roadworks. He told the Commission he felt concerned about this as he had no experience in performing roadworks and would have preferred that TransGrid organise this work to be done. TransGrid, however, determined that the work would be a variation to C1119.

Mr Wheeler asked Mr Pevec whether he knew anyone who could do the work. Mr Pevec later suggested Sage. As set out in Chapter 4, on 11 April 2005, Mr Pevec emailed Mr Murdocca a spreadsheet containing items of work and figures which Mr Murdocca subsequently used as the basis of Sage's quote to Wheeler Contracting on 15 April 2005. The quote was for \$153,300, which included a base figure of \$69,706 for the supply and installation of the road, kerbs and gutters. Mr Wheeler submitted Sage's quote to TransGrid.

Tony Gray, Mr Pevec's supervisor, sought comparative costs from a TransGrid project in Yass for the supply and installation of the road, kerbs and gutters. When these figures were obtained, Mr Gray forwarded them to Mr Pevec, who responded by email to Mr Gray as follows:

Tony, supply installation of bitumen sealed roads complete with kerbs and gutters only, Wallgrove, \$69,000 for 355 metres, that is \$194 per metre compared to Yass \$282,000 for 1325 metres, that is \$212.18. Seems on the mark considering extra work.

Obtaining comparative costs is one way an agency can measure and assess quotes for similar works and Mr Gray was conscientious in pursuing this course of action.

Mr Gray also requested that Wheeler Contracting obtain another quote for this work. However, it was Mr Pevec who followed this up. Mr Wheeler supplied Mr Pevec with the contact details of Mathews Civil, a firm known to Mr Wheeler. Mr Pevec sent a copy of Sage's itemised quote to Mathews Civil and requested that it submit a quote of its own. Mathews Civil submitted a quote for \$187,000 (inclusive of GST) which, in addition to being several thousand dollars more than Sage's quote contained little detail as to the breakdown in costs.

Mr Pevec's conduct in dealing directly with a potential subcontractor, and sending an existing quote, is clearly questionable. Mr Gray told the Commission during the public inquiry that TransGrid did not generally involve itself in a contractor's engagement of a subcontract and that he would have been concerned had he known the extent of Mr Pevec's involvement with Sage, including his forwarding of Sage's quote to Mathews Civil. Mr Gray also agreed that Mathews Civil should not have been sent a quote from another party when they were requested to bid for work.

The Commission recognises that Mr Gray's reason for directing Wheeler Contracting to obtain a second quote was to test the market and obtain the most competitive price for the roadworks. Clearly, Mr Gray had TransGrid's best interests in mind. However, quite apart from Mr Pevec's questionable intervention in approaching Mathews Civil for the second quote, there are corruption risks in such a situation.

Contractors who are directed by an agency to obtain quotes from subcontractors are in a position to corruptly manipulate this process, and the subsequent quotes, to their own (and the subcontractors') improper benefit. Consequent risks to the agency include financial losses and poor quality work. Furthermore, as discussed below, these risks can be exacerbated if an agency does not have sufficient knowledge and experience of the works in question.

The contract specifications for C1119 under section 40.1: variations to the work, included:

The Superintendent may direct the Contractor to do any one or more of the following:

- (a) *increase, decrease or omit any part of the work under the Contract;*
- (b) *change the character or quality or any quality of any material or work or of anything described in the Contract;*

- (c) *Change the levels, lines, positions or dimensions of a design or of anything described in the Contract, the Design Documents or any part of the work under the Contract;*

The Contractor is bound only to execute a variation which is within the general scope of the Contract.³

Although the need for the roadworks was discovered in the course of the construction of the palisade fences it is questionable whether such work was within the general scope of the contract and should have been classified as a variation. Furthermore, given that the costs of the roadworks exceeded the \$100,000 procurement threshold in TransGrid's policy, the works arguably should have gone to tender, and been advertised.

On 31 May 2005, the variation order was awarded to Sage for \$153,300. On 11 August 2005, Wheeler Contracting submitted an invoice of \$185,493 (inclusive of GST) to TransGrid for these roadworks. This invoice included a 10 per cent margin - \$15,330 – added by Wheeler Contracting to the order awarded to Sage, a substantial profit to Mr Wheeler and an amount that TransGrid would have saved had it put the works to tender.

TransGrid's procurement policies include a provision for waiving procurement procedures, specifically that "Procurement procedures may be waived only in emergency and special circumstances".⁴ The policy sets out, as appropriate, that requests for waivers must detail the business case for the waiver and be endorsed by delegated officers.

TransGrid advised the Commission that it processed the roadworks as a variation to contract C1119 under this provision in order to expedite the contract. TransGrid was concerned that making these works a separate contract might have significantly extended the timelines of the contract with the resulting risk that Wheeler Contracting would be unable to complete the job.⁵ TransGrid was also concerned that advertising the contract had the potential to delay the contract which may have resulted in a claim for damages against TransGrid by Wheeler Contracting.⁶

While there can be time imperatives in any contract, there are corruption risks if an agency uses variations in this way. Namely, that the variation process is used to circumvent competitive selection requirements. This is particularly problematic in cases where TransGrid both requests the

³ Specification & Contract No 1119, TransGrid, p.28.

⁴ Section 4.2.7 of General Responsibilities and Selection of Procurement Method, issue date 2 August 2000 (in place at the time the variation was approved). The updated version of this policy also contains this provision.

⁵ David Van Beek, Corporate Audit and Risk Manager, TransGrid, personal communication to the Commission, 26 May 2009.

⁶ TransGrid, written advice to the Commission, 28 July 2009, p.2.

variation and recommends a subcontractor to complete the work.

The corruption risk is further increased when the variation is not within the general scope of works of the original contract and experience of the contractor, is over the procurement thresholds, and necessitates a subcontractor being engaged. The risk can also be compounded if the variation comprises works that are not part of an agency's core business and/or falls outside the core competencies of the officers responsible for signing-off on the variation. Such limited experience may adversely affect the agency's ability to assess a quote in terms of value for money and the skill and experience of the contractor.

In such cases, at a minimum, some attempt should be made by TransGrid to engage in a system of price discovery. It should be noted that even allowing for the apparent time imperatives involved in contract C1119, two attempts were made to obtain comparative prices (at the instigation of Mr Gray). Consequently, in situations where established tender requirements are waived in the above circumstances, it is still an option to obtain a number of quotes from selected contractors.

TransGrid should also be mindful of the practice of staff endorsing particular subcontractors, especially when their prior work history with the agency is limited. This is an area that needs to be appropriately managed by TransGrid.

Recommendation 1

That TransGrid reviews its procedures relating to the circumstances in which contract variations occur to minimise the risk of contract variations being used to circumvent competitive tender processes. This review should include situations where the nature of the works falls outside of the scope of the contract.

Recommendation 2

That TransGrid undertakes periodic internal audits of its contract variations to ensure compliance with its policy and procedures relating to Recommendation 1.

Recommendation 3

That TransGrid adopts a policy in regards to its staff providing referee reports and/or endorsements for contractors. Should TransGrid permit its staff to provide such reports, the policy should clearly set out the circumstances in which referee reports can be provided and any limitations on this practice. The policy should also be clearly communicated to all relevant staff.

Conflicts of interest

A conflict of interest occurs when a public official is in a position to be influenced, or appear to be influenced, by their private interests when doing their job. The Commission identifies three different kinds of conflict of interest:

- actual conflict of interest: where a public official is in a position to be influenced by private interests when doing their job.
- perceived conflict of interest: where a public official is in a position to appear to be influenced by private interests when doing their job.
- potential conflict of interest: where a public official is in a position where they may be influenced in the future by private interests when doing their job.⁷

A conflict of interest can also be pecuniary or non-pecuniary and, as is appropriate, TransGrid's policies differentiate between these two conflicts.

Mr Pevec and Mr Murdocca met at the University of Wollongong in the mid 1990s when they were both doing course work for a degree in Civil Engineering. Accounts vary about how well they knew each other. Witnesses to the Commission, who were also engineering students at that time, have stated that Mr Pevec and Mr Murdocca socialised regularly as part of the same circle of friends.

Mr Pevec lied about his relationship with Mr Murdocca the first time he was spoken to by officers of the Commission, in September 2008. Mr Pevec claimed that he did not know of Mr Murdocca's background "...in terms of previous works or anything" and that he had met Mr Murdocca "for the first time" in mid-2005 when Mr Murdocca was carrying out the subcontract at the Sydney West site on behalf of Wheeler Contracting.

To some extent it is not relevant how well they did or did not know each other at university, which was 10 years prior to Sage's involvement with TransGrid, if there had been no contact in the intervening years. Despite this, the Commission's investigation revealed that Mr Pevec and Mr Murdocca re-established their relationship after attending the same party in 2003. They went on to socialise with each other on a number of occasions, including the christenings of their children, and the Pevecs' wedding. Mr Pevec and Mr Murdocca made deliberate attempts to conceal the extent of their relationship.

As has been noted earlier in this report, Mr Pevec also gave Mr Murdocca the telephone number of Leancrest Pty Ltd for Sage to obtain copper needed for the earthing strips for the palisade fences.

⁷ From *Identifying and Managing Conflicts of Interest in the Public Sector*, Independent Commission Against Corruption & Crime and Misconduct Commission, Sydney & Brisbane, 2004.

At the time of the contracts in question TransGrid had several policies in place that dealt with conflicts of interest. These included:

TransGrid: Our Code of Ethics and Conduct, 2005

A conflict of interest arises when our personal interests, or those of people close to us, conflict with the impartial performance of our public or occupational duties.

A conflict of interest would exist where we have a personal interest, or a family member, relative or anybody close to us has an interest that could lead us to be interested in the way we carry out our duties. The perception of a conflict of interest could arise where circumstances exist which lead a reasonable person to think that we could be so influenced.⁸

In February 2006 and March 2006, Mr Pevec attended TransGrid's training in this Code and his supervisor subsequently emailed him a copy of the Code.

Furthermore, Mr Pevec demonstrated during his appearance before the Commission that he understood what a conflict of interest entailed and, ironically, said he understood it much better since he had attended ICAC training in which this issue was specifically discussed.

Section 4.5 of the TransGrid Quotation and Tender Opening Guidelines includes:

Any person assessing the tender documents with a known potential conflict of interest should declare their interest. This person may need to withdraw from the entire evaluation process or from that area to which the conflict applies depending upon the particular circumstances involved. [Emphasis in original].⁹

TransGrid also provides clear advice to contractors on procurement. TransGrid's e-Tendering website includes a "Rules of Tendering" section which informs potential tenderers that in their dealings with TransGrid they are required to comply with the *NSW Government Code of Practice for Procurement*, which includes standards of behaviour. The website also includes a "Policy Documents" section that has links to both the *NSW Government Code of Practice for Procurement* and *TransGrid Business Ethics: A guide to Contractors, Customers and Suppliers*.¹⁰

8. *TransGrid: Our Code of Ethics and Conduct*, TransGrid, 2005, p.15. The most recent version of this policy, issued in 2008, contains the same provisions.

9. *TransGrid Quotation and Tender Guidelines*, issue date, 4 October 2000, Section 4.5, p.5. The updated version of this policy, issue date 26 May 2006, contains the same reference to conflicts of interest.

10. *TransGrid Business Ethics: A guide to Contractors, Customers and Suppliers* was issued in 2008, replacing *TransGrid Business Ethics: A Guide to Contractors, clients and agencies*, TransGrid 2003, which was in place at the time of the contracts in question. The text relating to conflicts of interest in both documents is identical.

In addition, TransGrid's conditions of tendering for palisade fencing contracts specify that:

All dealings with the Principal and employees, contractors, and sub-contractors of the Principal shall be undertaken in compliance with TransGrid Business Ethics, A guide to Contractors, Clients and Agencies [sic]. The Guide is available from the Manager/Supply Management of TransGrid or by visiting TransGrid's website at www.transgrid.com.au.¹¹

The onus is on the tenderer/contractor to obtain a copy of this Guide. Mr Murdocca was asked during the public inquiry whether he had obtained a copy of the Guide when tendering for C1167. He responded that he was only a tenderer at that stage, not a contractor. Mr Murdocca was then asked if he had obtained a copy of this Guide after he had been awarded the contract for C1167. He answered that he had not, and was unable to provide any valid reason why he had failed to do what was required.

TransGrid Business Ethics: A Guide to Contractors, clients and agencies states very clearly:

If a conflict of interest in your work for TransGrid exists or arises, you must disclose it to TransGrid. A conflict of interest arises if your own interests, or those of other people close to you, conflict with your obligations to TransGrid.

A conflict would exist where you have a personal interest, or your relative, company, employer or other person known to you has an interest, that could lead you to be influenced in the way you carry out your duties to TransGrid.¹²

Mr Pevec and Mr Murdocca deliberately failed to declare the conflict of interest arising from their relationship. They also took considerable steps to hide their relationship. For example, Mr Murdocca instructed his employees on more than one occasion not to mention that he knew Mr Pevec and that they were friends. Their attempts to conceal the truth increased after Mr Murdocca appeared before the Commission in March 2008 in relation to Operation Monto, the investigation into RailCorp, which was covered in some detail by the print and electronic media and in which Mr Murdocca was named as a person of interest. The Commission's report, issued in September 2008 made findings of corrupt conduct against him.¹³

11. Section 8.1 of TransGrid's *Conditions of Tendering* for Contract C1167. The same passage appears in the tender documents for C1193 and C1204, although under a different section.

12. *TransGrid Business Ethics: A Guide to Contractors, clients and agencies*, TransGrid, March 2003.

13. *Investigation into bribery and fraud at RailCorp, Fifth Report*, Independent Commission Against Corruption, September 2008.

In addition to the policies and procedures already in place at the time of the conduct, TransGrid has since amended its Evaluation Matrix to include the requirement that tender evaluation committee (TEC) members sign that they have declared any conflicts of interest in regard to the tender evaluation.

It is difficult for an agency to audit or detect when persons deliberately choose not to disclose personal interests they know they are required to declare. TransGrid's policies and procedures in regard to conflicts of interest are adequate, as are the training and other steps TransGrid takes to inform staff and clients of these measures.

In view of these considerations, the Commission does not make any recommendations to TransGrid in regard to conflicts of interest.

Tender evaluation committees

TransGrid advised the Commission that, in general, tender evaluation committee ("TEC") members have a telephone discussion prior to meeting to recommend a contractor. TEC members are also not required to record their individual assessments/scores prior to the final discussion and decision regarding the preferred contractor.¹⁴

TransGrid also advised the Commission that TEC members generally reach a consensus when recommending a contractor; however, it also suggested that if a major disagreement arose in an evaluation process, a record would be made to this effect.¹⁵ While it is appropriate to make a record in these circumstances, it is not a formal requirement.

The TECs for the palisade fencing contracts comprised two technical and one commercial representative. John Hempstead and Mr Pevec were the technical representatives and Leo O'Connor was the commercial representative on the TEC for C1167. Mr Hempstead told the Commission he had not received training in relation to his role as a panel member. Instead he trained himself by accessing the relevant policies on the TransGrid intranet.

It is interesting to compare the operation of TECs to recruitment selection panels. Across the state public sector, recruitment panel members are generally required to attend accredited merit selection training. Members are also usually required to record individual scores for each applicant, and later each interviewee, prior to final recommendations being made. These scores form part of the official panel papers. These measures help preserve the integrity of the recruitment process and the independence of individual panel members. For example,

14. Statement of David Van Beek, TransGrid Corporate Audit and Risk Manager, 29 April 2009, p.9.

15. *ibid*, pp. 9 and 10.

a requirement for individual panel members to record their own scores potentially makes it more difficult for them to be improperly influenced by a peer once they have committed their initial views to writing.

The same training requirements and practices are not always required for tender selection panels, as was the case at TransGrid. However, given the similarity in processes, there is an argument that the same approach should be considered.

Similarly, while it is commendable that Mr Hempstead undertook to inform himself of his responsibilities as a TEC member, there are corruption risks for TransGrid in such an ad hoc approach. Indeed, this problem was recognised in a procurement audit¹⁶ and procurement review¹⁷ undertaken by TransGrid in recent months.

The audit noted that implementing a structured and consistent training program for all levels of procurement activities throughout the organisation could reduce the risk of compromised procurement processes.

TransGrid's Supply Management Group currently conducts training courses for officers who carry out procurement activities up to \$10,000. This training covers ethical responsibilities in procurement and TransGrid procurement methods for all levels of procurement. The audit report recommended that the above training be included in the New Employee Induction Program as a means of enhancing officers' awareness of TransGrid's procurement requirements.¹⁸

While including this training as part of the induction for new employees is an important corruption prevention measure, the Commission recommends (at Recommendation 5) that TransGrid considers ensuring that all personnel who act as members on a tender evaluation committee undergo a procurement training program.

In the interests of transparency, a report officially stating the minority view should also be submitted with a majority report when a TEC cannot make a unanimous recommendation. The minority report should identify the source and reasons for the disagreement as to the preferred tenderer.

The investigation also highlighted a lack of clarity among the members of the TEC for C1167 as to who was the Convenor and the individual roles of panel members. While Mr Hempstead was the senior technical representative on the TEC, Mr Pevec was the most experienced in regard to palisade fences. When asked by Mr Murdocca's counsel whom he regarded as in charge of the TEC for C1167, Mr O'Connor replied:

16. *Procurement > \$100,000*, TransGrid Internal Audit Report, February 2009, Section 2.4. Managing Purchase Order Amendments, p.12.

17. *Procurement Review*, TransGrid, December 2008.

18. *Procurement > \$100,000*, TransGrid Internal Audit Report, February 2009, p. 24.

We were equal. I was in charge of the commercial side of things, and the technical people ...were in charge of the technical side of things.

Mr Pevec agreed that his role on the TEC was to assess tenders from a technical point of view and that involved, in the case of contract C1167, the following:

I just basically, once the submissions are submitted, you go through all the tender documentations and use the matrix that's been developed in terms of assessing open tenders. I believe on that one, 1167, I can't remember the exact dates. It would have – it would have – I don't remember my engagement or my – how I was actually put on that evaluation, but that was basically, my sole role was to give other officers within TransGrid my interpretation and my understanding of what was presented.

In practical terms Mr Pevec had sole responsibility for assessing the technical merits of the tender. Although Mr Hempstead was also a technical representative on the TEC, he made it clear to the Commission that his role concerned matters pertaining to the various sites, rather than the technical aspects of palisade fencing. He was more concerned with the site specifics of the tender. He said:

During the evaluation process in 1167 I had had nothing to do with palisade fences before, so Goran had a lot more knowledge about palisade fencing obviously because of his work on the specification previously so I tended to defer to him on the technical side, yeah.

The Commission recognises that the differing roles, responsibilities, and reporting lines of the TEC members – two technical and one commercial – provide for some legitimate separation of focus by individuals in the evaluation process. The Commission also recognises that the two tender representatives may have different areas of expertise/specialisation. However, if the roles of panel members become too rigidly separated this can provide an opportunity for a motivated person to manipulate the discussion and influence the final outcome. For instance, the view that there is a clear distinction between commercial and technical roles could undermine the independence of individual panel members by enforcing a perception that they are subject to the advice of the designated 'expert'.

The general confusion surrounding the identity of the panel convenor also meant that no one was clearly responsible for the overall operation of the panel and ensuring that key processes were properly undertaken.

In addition, TransGrid's Procurement Review also revealed discrepancies in the understanding of the tender evaluation

process and use of the evaluation matrix document. In particular, there was uncertainty over whether the matrix is "a tool or an answer as some believed the approach was different dependent on the outcome of the matrix or the individual manager approving the recommendation of the preferred tenderer".

TransGrid has advised that it intends to give greater guidance to TEC members which will include, where practical, individual completion of the evaluation matrix by technical officers.¹⁹

Recommendation 4

That TransGrid's procurement procedures make provision for minority reports and require that any minority reports be submitted with majority reports to the appropriate approval authority.

Recommendation 5

That TransGrid considers ensuring that all personnel who act as members of a tender evaluation committee undergo a procurement training program and that the procurement training program include:

- an explanation of the roles and responsibilities of each tender evaluation committee member;
- an explanation of the roles and responsibilities of the tender evaluation committee convenor;
- an explanation of the Evaluation Matrix (or equivalent document) and how the tenders are scored;
- the processes involved in signing the Evaluation Matrix (or equivalent document);
- the circumstances in which a tender evaluation committee member may decide to submit a minority report, who this report would be submitted to and the processes involved in submitting this report;
- the processes involved in preparing the report recommending the preferred tender.

19. Statement of David Van Beek, TransGrid Corporate Audit and Risk Manager, 9 June 2009, p. 3. TransGrid has advised the Commission that it is considering discontinuing the evaluation matrix and undertaking a benchmark of other evaluation systems. If TransGrid does adopt a new evaluation system, the importance of providing appropriate guidance and training for procurement staff remains.

Gifts, benefits and hospitality

At the time of the contracts in question, TransGrid had numerous policies and procedures in place to address the offering and acceptance of gifts. Extracts from these are set out below:

Gifts, benefits and hospitality in TransGrid – Our Code of Ethics and Conduct, 2005

Hospitality, or a gift or benefit should never be solicited or requested for ourselves or anyone else. Hospitality, or a gift or benefit should never be accepted if we think, or a reasonable person would think, that we could be influenced in the way we do our job as a result of the hospitality, gift or benefit.

.....

Gifts of cash (in any amount) are never acceptable.

.....

The policy distinguishes between token gifts and benefits, and non-token hospitality, gifts and benefits, and the circumstances in which they can and cannot be accepted. This includes that:

Token gifts may include chocolates, calendars, pens, cups, alcohol or gifts up to an approximate value of \$25.00.

Non-token hospitality, gifts and benefits may include invitations to a restaurant, sporting or entertainment tickets, or an individually targeted commercial discount.

If money or gifts are offered in order to obtain a benefit or favour it is illegal. It is called bribery and is one form of corruption. Similarly, if a bribe is sought or accepted, it is corruption.²⁰

TransGrid Business Ethics: A Guide to Contractors, clients and agencies

Gifts or benefits must not be offered to any TransGrid employee, which is designed to gain any advantage for yourself or your organisation, or which the public could reasonably see as likely to cause that TransGrid employee to depart from his or her proper course of duty. Token gifts may be given or accepted if the gift is not likely to be seen as compromising.

Cash should not be, in any circumstances, offered to a TransGrid employee.²¹

The payments made by Mr Murdocca to Mr Pevec and the provision of a ticket, valued at \$2,500, for attendance at the 2007 Melbourne Grand Prix and Mr Pevec's acceptance of these were clear breaches of the above requirements.

It is generally well understood and accepted that public officials should not be permitted to accept expensive gifts and hospitality offered in the course of their public duties. This position was clearly reflected in TransGrid's policies and procedures.

Frequent social interactions between public officials and contractors that involve the provision of hospitality can also undermine the professional nature of a relationship.

The Commission recognises that public officials and contractors who are required to be in regular contact can be friendly in their dealings with each other. However, a distinction should be made between a friendly professional working relationship, and a friendship. A friendship would generally involve contact outside of the working environment. The corruption risks around the blurring of this boundary are significant when a public official is performing an oversight role and the social interactions also involve the provision of benefits to the public official.

In this matter, Mr Pevec attended a number of social events as Mr Murdocca's guest. These included Sage's Christmas party held at the Pure Platinum "gentlemen's club".

TransGrid's policies permitted the acceptance of token gifts and benefits (to a value of \$25), in some circumstances. Many public sector agencies use monetary values to help distinguish the types of gifts that can be accepted by public officials. While this approach has some merit, in the Commission's view, another important factor is the nature of the relationship between the gift giver and the public official.

Agencies should be mindful of allowing staff involved in procurement to engage in behaviour or activities which increase the personal or social aspect of their interactions with contractors. Examples include accepting gifts (of whatever value) from contractors, attending meals, Christmas parties and corporate events that are purely social in nature. This sort of activity creates an environment in which the risk of collusion and bribery is increased.

20. *TransGrid: Our Code of Ethics and Conduct*, TransGrid, 2005, p.15.
[The most recent version of this policy, issued in 2008, contains the same provisions except that a token gift now has an approximate value of \$50.]

21. *TransGrid Business Ethics: A guide to Contractors, clients and agencies*, TransGrid, 2003, p.2.

TransGrid has recognised this risk in regard to procurement officers involved in the tendering process and its policy “Acceptance of Gifts, Benefits and Hospitality” includes the following provision:

Staff involved in evaluating tenders, must not accept any form of gift or hospitality from tenders or potential tenders, during the tendering period.²²

The Commission agrees with this provision and, accordingly, makes no recommendation in regard to this issue.

It is worth making a comment on the contact between TransGrid staff and contractors after contracts have been awarded. The Commission recognises that many of TransGrid’s substations are in regional and isolated areas away from commercial precincts. TransGrid officers conducting site visits at such locations may not always be in a position to provide their own refreshments. The Commission makes a distinction between light refreshments, such as tea, coffee and sandwiches, and more formal, and expensive, hospitality. In certain situations, such as the isolated site visits described, it is not unreasonable that public officers be offered, and accept, light refreshments from contractors during business meetings and working lunches. It is important, however, that TransGrid provides guidance to staff in regard to the level of hospitality that is, and is not, appropriate in such situations, to minimise the risk that TransGrid staff are compromised in their dealings with contractors.

Release of information to favour Sage

Technical drawings of the substation sites comprised part of the tender specifications for C1167 that potential tenderers purchased from TransGrid’s e-Tendering website. These drawings were in an Adobe PDF format – that is, although potential tenderers could download these drawings from the website it was difficult for them to alter the drawings.

The Commission found that on Saturday, 3 June 2006, three days prior to the closing of tenders for C1167, Mr Pevec emailed Mr Murdocca technical drawings concerning palisade fences in a computer aided design (CAD) format. This software allows the drawings to be edited and manipulated and would usually only be released to the successful tenderer after they had been awarded the contract. Mr Pevec’s improper provision of the CAD drawings gave Mr Murdocca an advantage in his preparation of Sage’s tender for C1167 – a benefit which was not afforded to the other tenderers.

During the course of Sage’s contracts with TransGrid, Mr Pevec favoured Mr Murdocca with his own technical expertise as well as providing confidential documents from Wheeler Contracting, and from other palisade fencing contractors, and a TransGrid tender evaluation matrix. This was in breach of the following section of the TransGrid policy, “General Responsibilities and Selection of Procurement Method”.²³

Section 4.4: Confidentiality

All information contained in tenders/contracts, quotations/purchase orders and miscellaneous offers (Consultancy Agreements, Maintenance Agreements, Licence Agreements and the like) shall be treated as confidential. This policy shall be maintained both before and after offers have been made and accepted by TransGrid.

Only the name and address of Tenderers including the successful Tenderer may be revealed to third parties. All other enquiries shall be requested in writing and directed to the Manager/Supply Management for written response.

All TransGrid quotation and tender documentation, including working papers, is the property of TransGrid and shall be treated as confidential and shall not be passed or made available to any unauthorised third party.

TransGrid’s Code of Ethics and Conduct also deals with confidential information. There was no legitimate excuse for Mr Pevec’s provision of confidential information to Mr Murdocca, despite his various claims that he did so inadvertently or as part of his duties.

Mr Pevec had legitimate access to palisade fencing tenders and contracts in the course of his duties. Even after he was not directly overseeing these contracts, he was part of the project group that could access shared email folders. The need for access to information for operational purposes must be balanced against the possibility that such information will be misused.

Strategies to manage confidential information include the following record-keeping provisions:

- information contained in records is classified as confidential or non-confidential.
- security labels (e.g. ‘in-confidence’, ‘protected’) are assigned to particularly sensitive documents.
- an audit trail exists, which logs accesses of electronic documents that contain confidential information.

22. *Acceptance of Gifts, Benefits and Hospitality*, TransGrid policy, issue date 13 January 2005, Section 4.1.5, p.4.

23 *General Responsibilities and Selection of Procurement Method*, TransGrid policy, issue date, 25 May 2006. p.7.

- access to confidential information is restricted only to those officers, or other individuals, that need to access it.
- the processes for gaining access to, releasing, modifying or releasing confidential information are all clearly documented.

The areas for review and potential reform that TransGrid has identified in regard to confidential information include:

- adopting a centralised approach to the recording of communication with tenderers
- expanding the declaration in the procurement process to include release of information and dealings with contractors
- reviewing current policies and procedures in relation to the portability of data including USB flash drives, laptops and Local Area Network information technology structures
- reviewing records management including the storage of email²⁴
- including a specific provision in relevant policies that information received from a tenderer or contractor not be disclosed to a competitor without written authorisation of the owner of the information
- including in the existing declaration required of tender evaluation committee members that they have not disclosed confidential information²⁵.

Recommendation 6

That TransGrid undertakes its proposed review of policies and procedures to address the corruption risks arising from the unauthorised release of confidential information.

Concluding comments:

This is not the first Commission investigation where a procurement officer and contractor have colluded to improperly benefit from a public agency. Such conduct can be difficult to detect, and corrupt and motivated individuals can manipulate systems to their benefit.

In the main, TransGrid had, and has, appropriate procurement policies and procedures in place. Its recent review and audit of aspects of its procurement processes has recognised areas that can be strengthened and the ICAC's corruption prevention recommendations address similar areas of concern.

²⁴ Statement by David Van Beek, TransGrid Corporate Audit and Risk Manager, dated 6 June 2009.

²⁵ Written advice from TransGrid, 28 July 2009.

Appendix 1: The role of the Commission

The ICAC Act is concerned with the honest and impartial exercise of official powers and functions in, and in connection with, the public sector of New South Wales, and the protection of information or material acquired in the course of performing official functions. It provides mechanisms which are designed to expose and prevent the dishonest or partial exercise of such official powers and functions and the misuse of information or material. In furtherance of the objectives of the ICAC Act, the Commission may investigate allegations or complaints of corrupt conduct, or conduct liable to encourage or cause the occurrence of corrupt conduct. It may then report on the investigation and, when appropriate, make recommendations as to any action which the Commission believes should be taken or considered.

The Commission can also investigate the conduct of persons who are not public officials but whose conduct adversely affects or could adversely affect, either directly or indirectly, the honest or impartial exercise of official functions by any public official, any group or body of public officials or any public authority. The Commission may make findings of fact and form opinions based on those facts as to whether any particular person, even though not a public official, has engaged in corrupt conduct.

The ICAC Act applies to public authorities and public officials as defined in section 3 of the ICAC Act.

The Commission was created in response to community and Parliamentary concerns about corruption which had been revealed in, inter alia, various parts of the public service, causing a consequent downturn in community confidence in the integrity of that service. It is recognised that corruption in the public service not only undermines confidence in the bureaucracy but also has a detrimental effect on the confidence of the community in the processes of democratic government, at least at the level of government in which that corruption occurs. It is also recognised that corruption commonly indicates and promotes inefficiency, produces waste and could lead to loss of revenue.

The role of the Commission is to act as an agent for changing the situation which has been revealed. Its work involves identifying and bringing to attention conduct which is corrupt. Having done so, or better still in the course of so doing, the Commission can prompt the relevant public authority to recognise the need for reform or change, and then assist that public authority (and others with similar vulnerabilities) to bring about the necessary changes or reforms in procedures and systems, and, importantly, promote an ethical culture, an ethos of probity.

The principal functions of the Commission, as specified in section 13 of the ICAC Act, include investigating any circumstances which in the Commission's opinion imply that corrupt conduct, or conduct liable to allow or encourage corrupt conduct, or conduct connected with corrupt conduct, may have occurred, and co-operating with public authorities and public officials in reviewing practices and procedures to reduce the likelihood of the occurrence of corrupt conduct.

The Commission may form and express an opinion as to whether consideration should or should not be given to obtaining the advice of the Director of Public Prosecutions with respect to the prosecution of a person for a specified criminal offence. It may also state whether it is of the opinion that consideration should be given to the taking of action against a person for a specified disciplinary offence or the taking of action against a public official on specified grounds with a view to dismissing, dispensing with the services of, or otherwise terminating the services of the public official.

Appendix 2: Corrupt conduct defined and the relevant standard of proof

Corrupt conduct is defined in section 7 of the ICAC Act as any conduct which falls within the description of corrupt conduct in either or both sections 8(1) or 8(2) and which is not excluded by section 9 of the ICAC Act. An examination of conduct to determine whether or not it is corrupt thus involves a consideration of two separate sections of the ICAC Act.

The first (section 8) defines the general nature of corrupt conduct. Subsection 8(1) provides that corrupt conduct is:

- (a) *any conduct of any person (whether or not a public official) that adversely affects, or that could adversely affect, either directly or indirectly, the honest or impartial exercise of official functions by any public official, any group or body of public officials or any public authority, or*
- (b) *any conduct of a public official that constitutes or involves the dishonest or partial exercise of any of his or her official functions, or*
- (c) *any conduct of a public official or former public official that constitutes or involves a breach of public trust, or*
- (d) *any conduct of a public official or former public official that involves the misuse of information or material that he or she has acquired in the course of his or her official functions, whether or not for his or her benefit or for the benefit of any other person.*

Subsection 8(2) specifies conduct, including the conduct of any person (whether or not a public official), that adversely affects, or that could adversely affect, either directly or indirectly, the exercise of official functions by any public official, any group or body of public officials or any public authority, and which, in addition, could involve a number of specific offences which are set out in that subsection.

Subsection 9(1) provides that, despite section 8, conduct does not amount to corrupt conduct unless it could constitute or involve:

- (a) *a criminal offence, or*
- (b) *a disciplinary offence, or*
- (c) *reasonable grounds for dismissing, dispensing with the services of or otherwise terminating the services of a public official, or*
- (d) *in the case of conduct of a Minister of the Crown or a Member of a House of Parliament – a substantial breach of an applicable code of conduct.*

Three steps are involved in determining whether or not corrupt conduct has occurred in a particular matter. The first step is to make findings of relevant facts. The second is to determine whether the conduct, which has been found as a matter of fact, comes within the terms of sections 8(1) or 8(2) of the ICAC Act. The third and final step is to determine whether the conduct also satisfies the requirements of section 9 of the ICAC Act.

Section 13(3A) of the ICAC Act provides that the Commission may make a finding that a person has engaged or is engaged in corrupt conduct of a kind described in paragraphs (a), (b), (c), or (d) of section 9(1) only if satisfied that a person has engaged or is engaging in conduct that constitutes or involves an offence or thing of the kind described in that paragraph.

A finding of corrupt conduct against an individual is a serious matter. It may affect the individual personally, professionally or in employment, as well as in family and social relationships. In addition, there is no right of appeal against findings of fact made by the Commission nor, excluding error of law relating to jurisdiction or procedural fairness, is there any appeal against a determination that a person has engaged in corrupt conduct. This situation

highlights the need to exercise care in making findings of corrupt conduct.

In Australia there are only two standards of proof: one relating to criminal matters, the other to civil matters. Commission investigations, including hearings, are not criminal in their nature. Hearings are neither trials nor committals. Rather, the Commission is similar in standing to a Royal Commission and its investigations and hearings have most of the characteristics associated with a Royal Commission. The standard of proof in Royal Commissions is the civil standard, that is, on the balance of probabilities. This requires only reasonable satisfaction as opposed to satisfaction beyond reasonable doubt, as is required in criminal matters. The civil standard is the standard which has been applied consistently in the Commission. However, because of the seriousness of the findings which may be made, it is important to bear in mind what was said by Dixon J in *Briginshaw v Briginshaw* (1938) 60 CLR 336 at 362:

... reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the fact or fact to be proved. The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal. In such matters 'reasonable satisfaction' should not be produced by inexact proofs, indefinite testimony, or indirect inferences.

This formulation is, as the High Court pointed out in *Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd* (1992) 67 ALJR 170 at 171, to be understood:

... as merely reflecting a conventional perception that members of our society do not ordinarily engage in fraudulent or criminal conduct and a judicial approach that a court should not lightly make a finding that, on the balance of probabilities, a party to civil litigation has been guilty of such conduct.

See also *Rejek v. McElroy* (1965) 112 CLR 517, the *Report of the Royal Commission of inquiry into matters in relation to electoral redistribution*, Queensland, 1977 (McGregor J) and the *Report of the Royal Commission into An Attempt to Bribe a Member of the House of Assembly, and Other Matters* (Hon W Carter QC, Tasmania, 1991).

As indicated above, the first step towards making a finding of corrupt conduct is to make a finding of fact. Findings of fact and determinations set out in this report have been made applying the principles detailed in this Appendix.



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