

**INDEPENDENT COMMISSION AGAINST CORRUPTION
OPERATION PARAGON**

**TRANSPORT FOR NEW SOUTH WALES
(Formerly Roads and Maritime Service and Roads and Traffic Authority)**

RESPONSE to the Chief Commissioner's request for report

1 Introduction and Summary

- 1.1 Transport for New South Wales (**TfNSW**), formerly Roads and Maritime Services (**RMS**), has been assisting the Independent Commission Against Corruption in its Operation Paragon investigation.
- 1.2 TfNSW recognises (i) the important work done by the Commission in uncovering corruption in NSW and (ii) the Commission's expertise in the areas of uncovering and preventing corruption.
- 1.3 TfNSW provides the information in this document in response to the request made by Chief Commissioner the Honourable Peter Hall QC on 23 June 2021 at the conclusion of one of the days of public hearing in the Operation Paragon investigation as supplemented by the communication from the solicitor assisting the Commission dated 9 July 2021.
- 1.4 Specifically, this document outlines the improvements and reforms TfNSW has undertaken to manage corruption prevention, detection and response across its operations. It includes details of steps taken by TfNSW to recover public funds. It draws from the output of disciplinary investigations TfNSW has conducted; audits conducted; and other material including statements which have been provided to the Commission.
- 1.5 In summary, TfNSW has an action plan to support its reforms to contract management and procurement. Completed actions and steps in the process of implementation include:
- (1) A restructured Regulatory Operations Branch, stood up in April 2021, includes a newly established Partnerships and Regulatory Assurance Directorate. This team provides assurance for regulatory activities by leading and managing key delivery partnerships with regulatory and service delivery partners, and developing and implementing robust governance frameworks to support the branch's key deliverables. This includes providing delivery assurance of service providers, managing the National Heavy Vehicle Regulator transition, and leading the Branch's planning, procurement and contract advisory and audit and investigation functions. This Directorate works closely with branch subject matter experts and corporate services business partners to plan the forward procurement pipeline and ensure compliance to TfNSW procurement processes.
 - (2) Additional procurement controls in the form of vendor due diligence and vendor creation controls. Funding has been obtained for this financial year to implement supplier risk modules as part of TfNSW's existing Ariba contract management system. The project is currently at the discovery phase. A discovery assessment is required to align the Commercial and contract management requirements including

related category strategic requirements with the Supplier Lifecycle and Performance capability and the Supplier Risk capability.

- (3) Implementation of a TfNSW Goods and Services Procurement Standard in December 2020, replacing previous TfNSW and RMS procurement frameworks. This provides a consistent principles based approach to procurement of goods and services and infrastructure across TfNSW.
- (4) Additional procurement controls through procurement analytics. The new TfNSW Procurement data analytics function is currently being set up with appropriate access levels in the relevant procurement systems. The first report into vendor spend and Purchase Order volumes will look at data for Q1 of FY21/22, and should be completed in October 2021. Reporting on vendor spend and Purchase Order volumes, along with relevant insights, will occur on a quarterly basis as a minimum.
- (5) Reconfiguring systems and implementing mechanisms to identify non-compliance.
- (6) Presentations to senior leadership teams on procurement rules and processes including those applying to professional service contracts.
- (7) Continuation of a data analytics program by the internal audit function to monitor trends and fraud risks across the procurement lifecycle and to monitor the use of purchase cards.
- (8) Appointment of a Manager Procurement Processes and Systems and a Manager Procurement Strategy and Governance accountable for ensuring procurement policies and systems are fit for purpose, understood and achieving their intended outcomes.
- (9) Establishment of a team of procurement advisors responsible for assisting senior management plan and undertake procurement activities in an ethical and effective manner.
- (10) Continuing to invest in internal audits relating to procurement to provide assurance over how procurement activities are managed.
- (11) Actions being progressed to improve the level of reporting on procurement spend to better enable management to monitor and understand trends relating to procurement activity.

1.6 The following activities have been undertaken to enhance fraud and corruption prevention:

- (1) Creation of cluster wide (excluding Sydney Metro) Fraud and Corruption Prevention and Workplace Conduct and Investigations teams. In September 2020, TfNSW initiated the Corporate Functions Review which resulted in:
 - (a) Merging the fraud and corruption prevention functions of TfNSW, Sydney Trains and NSW Trains to become a single centralised function servicing all Transport cluster agencies with the exception of Sydney Metro; and
 - (b) Merging the investigations functions of TfNSW and Sydney Trains to become a single centralised function, servicing all Transport cluster agencies.

This merger and centralisation of these functions has resulted in enhanced resourcing, streamlining of various processes and consistency in messaging. It has also led to the development of a new Fraud and Corruption Strategy due to be approved and endorsed this financial year with a focus on education and awareness, assurance and compliance, reviewing fraud and corruption risk and controls and reviewing the risk remediation activities across the Transport cluster.

- (2) All allegations received by TfNSW (including the former RMS) that involve corruption are reported to the Commission through a quarterly schedule and more serious and systemic allegations and complaints escalated to the Commission when they are identified.
- (3) Participation of over 8,152 staff in probity and ethics in procurement training since 1 July 2018.
- (4) Continued operation of the ethics hotline available to staff for reporting corruption issues in a confidential manner.
- (5) The implementation of a new Mandatory Training Framework which has a number of objectives including among other things, reducing the likelihood of high-consequence events and embedding key behaviours and standards across the workforce. The following new training modules which form part of the Transport Essential training program have been recently released:
 - (a) Living our code of conduct – mandatory training for all new starters and a refresher for all current staff;
 - (b) Professional ethics – mandatory refresher training every two years for non-frontline staff;
 - (c) Professional ethics for leaders – mandatory training for all new leaders; and
 - (d) Professional ethics for leaders (refresher) – mandatory refresher training for leaders every two years.
- (6) Development of a single Declarations Portal which integrates staff reporting of conflicts of interest, gifts and benefits and senior service declarations. The technology solution will be completed and rolled out to staff in late 2022 – early 2023.

1.7 This document addresses the following topics:

- (1) (Section 2) background to the Commission's Operation Paragon investigation and liaison with the Commission regarding its operations;
- (2) (Section 3) TfNSW; the dissolution of RMS; and the role of TfNSW in heavy vehicle regulation;
- (3) (Section 4) specific responses to the Commission's request for information from TfNSW including:
 - (a) acknowledgement of shortcomings in procurement processes in the former Compliance Operations Branch;

- (b) reforms to procurement processes, including external reports obtained by RMS (as it then was) from Deloitte to identify gaps in policies, procedures or systems; and
 - (4) (Section 5) recovery proceedings.
- 1.8 The topics addressed in this document overlap, necessarily, with the Commission's Operation Ember investigation, which held public hearings in 2019 (and submissions in 2020). TfNSW assisted the Commission during that investigation.

2 Background to the Commission's Operation Paragon investigation and liaison with the Commission regarding its operations

- 2.1 On 7 May 2018, an anonymous caller contacted the TfNSW Hotline to report alleged misconduct involving the work conduct of Mr Alexandre Dubois, Heavy Vehicle Project and Support Officer, Compliance Monitoring.
- 2.2 The general nature of the complaint suggested that Mr Dubois was awarding contracts to "mates" for the "average speed safety cameras on NSW roads" and receiving a monetary reward. This information was then provided to the RMS Corruption Prevention and Investigation Section (**CP&IS**).
- 2.3 The nature of the complaint was similar to a complaint received in January 2018 against former RMS employee Mr Samer Soliman, Manager for Heavy Vehicle Programs, Compliance Monitoring, which was the subject of the Commission's Operation Ember investigation.
- 2.4 On 22 May 2018, the Chief Executive of RMS notified the Commission of allegations involving Mr Alexandre Dubois.
- 2.5 On 4 June 2018, the Commission notified RMS that the Commission would investigate the matter. RMS was asked to maintain strict confidentiality regarding the investigation which it did.
- 2.6 With the approval of the Commission, RMS procured an external review by Deloitte (see section 4 below). It also initiated a safety review of roadside signage and infrastructure that included a review of Safe-T-Cam sites to ensure no safety issue arose.
- 2.7 With the approval of the Commission, an internal covert investigation was conducted. That investigation involved an analysis of RMS Outlook email accounts, Objective System, Telstra Mobile Usage Statements, and information obtained from the Internet identified the following possible issues:
 - (1) Price fixing/collusion between Mr Dubois and numerous contractors to perform civil works during the upgrade of Safe-T-Cam sites around NSW.
 - (2) Possibility that Safe-T-Cam site upgrades were not required.
 - (3) False information being provided by Mr Dubois to Finance Division to enable the valuation of road safety infrastructure.
 - (4) Possibility that in 2011/12 Mr Dubois awarded contracts to a company owned by a relative.

- (5) Possibility that the Safe-T-Cam refurbishment program was based on a report orchestrated by Mr Dubois on false information.
- 2.8 Until 18 June 2019, the Commission's operation remained covert.
- 2.9 During 19 June 2019 to 14 October 2019, RMS conducted disciplinary proceedings in relation to the conduct of Mr Dubois and Mr Steyn.
- 2.10 Mr Dubois declined to participate in an interview and declined to answer questions in writing. Mr Steyn made limited admissions.
- 2.11 RMS produced Mr Dubois' disciplinary report to the Commission pursuant to a section 22 notice dated 18 November 2019 (Ref: E18/0736/AS-02-055). The report found that allegations of the following nature were substantiated:
- (1) Failure to declare conflicts of interest (including disclosing connections and information about those connections);
 - (2) Failure to seek permission to engage in secondary employment; and
 - (3) Use of work resources for personal use.
- 2.12 The report also examined the apparent alteration of tax invoices.
- 2.13 Mr Steyn's disciplinary report is contained at RAP Vol 10.2 Steyn Disciplinary, showing RMS found that allegations of the following nature were substantiated:
- (1) Failure to disclose connections and information about connections;
 - (2) Timesheet falsification; and
 - (3) Use of work resources for personal use.
- 2.14 Notwithstanding those findings, until the Operation Paragon investigation was made public, RMS was impeded in its ability to fulsomely identify gaps exploited by the corrupt conduct allegedly engaged in by Mr Dubois and Mr Steyn, due to (i) the covert nature of the Commission's investigation, (ii) the conduct allegedly engaged in by Mr Steyn and Mr Dubois, and (iii) the absence of co-operation by Mr Dubois, in particular, in the internal RMS processes. Given (i) the Commission's extensive investigation into the corrupt conduct allegedly engaged in by Mr Dubois and Mr Steyn, and (ii) the amalgamation of RMS with TfNSW (meaning the development of new procurement systems), TfNSW has not conducted a 'root and branch' review into its procurement systems that were exploited by Mr Dubois and Mr Steyn.
- 2.15 Nevertheless, Mr Steyn's disciplinary report does report on the control weaknesses exploited by Mr Dubois and Mr Steyn or which meant the conduct of Mr Dubois and Mr Steyn remained undetected.

3 TfNSW; the dissolution of RMS; and the role of TfNSW in heavy vehicle regulation

- 3.1 TfNSW is the agency responsible for managing many aspects of transport in New South Wales. It is charged with developing and delivering road, rail and maritime networks as part of the transport.

- 3.2 On 1 December 2019, the *Transport Administration Amendment (RMS Dissolution) Act 2019* commenced. By that Act, RMS's functions were transferred to TfNSW.
- 3.3 TfNSW is a statutory corporation constituted by the *Transport Administration Act 1988 (TAA)*.
- 3.4 The TAA provides for TfNSW to have a range of functions under that Act and other statutes. Notably, those other statutes include the *Roads Act 1993* and the *Road Transport Act 2013*.
- 3.5 At the start of the relevant period in 2009, the responsibility for services and projects related to compliance with and enforcement of road rules and regulations sat with the Compliance and Enforcement Branch in the then-RTA. After the RTA had become the RMS, the branch became known as the Compliance Operations Branch.
- 3.6 Also as at 2009, the RTA included a Camera Enforcement Branch as part of the Licensing, Registration and Freight directorate. As the name suggests, the Camera Enforcement Branch was responsible for camera programs across the State, such as the Safe-T-Cam program and Point-to-Point (**P2P**) program.
- 3.7 Relevantly, after the RTA became the RMS in 2011, one of the responsibilities of the Compliance Operations Branch, which was part of the Safety and Compliance Division, was heavy vehicle programs. The RMS had various programs in relation to ensuring the safe use of roads by heavy vehicles. That included an established network of heavy vehicle safety stations or heavy vehicle checking stations (HVSS or HVCS, respectively).¹
- 3.8 On 10 February 2014, the *Heavy Vehicles National Law (HVNL)*² scheme commenced in NSW.³ A heavy vehicle is defined in the HVNL as a vehicle that has a gross vehicle mass or aggregate trailer mass of more than 4.5 tonnes.⁴
- 3.9 The object of HVNL is to establish a national scheme for facilitating and regulating the use of heavy vehicles on roads in a way that:⁵
- (1) promotes public safety;
 - (2) manages the impact of heavy vehicles on the environment, road infrastructure and public amenity;
 - (3) promotes industry productivity and efficiency in the road transport of goods and passengers by heavy vehicles; and

¹ Extract from Operation Paragon Opening Address, T6-8.

² And other States and Territories, except Western Australia and the Northern Territory. For the HVNL, Queensland is the host jurisdiction, with each of the other participating jurisdictions (i.e. all states and territories except Western Australia and the Northern Territory) adopting the Queensland legislation through application Acts. This scheme is often known as an 'applied law scheme': see eg, *Pearce v Florenca* (1976) 135 CLR 507 at 517-8; *Union Steamship Co of Australia Pty Ltd v King* (1988) 166 CLR 1 at 14; and *Port MacDonnell Professional Fishermen's Association Inc v South Australia* (1989) CLR 340 at 372.

³ *Heavy Vehicle (Adoption of National Law) Act 2013* (NSW).

⁴ HVNL, s 6.

⁵ HVNL, s 3.

- (4) encourages and promotes productive, efficient, innovative and safe business practices.
- 3.10 As at February 2014, Compliance Operations Branch was responsible for the HVNL scheme which included a number of different programs such as the Safe-T-Cam program, as well as P2P operations.
- 3.11 In February 2018, NSW agreed to transition all HVNL regulatory activities to the National Heavy Vehicle Regulator as part of a consolidated transition program. The first stage of the process, due diligence, has been completed.⁶ The changes to the Heavy Vehicle Unit are discussed later at 4.98.

4 Specific responses to the Commission's request

- 4.1 On 23 June 2021, Chief Commissioner the Honourable Peter Hall QC stated:

I would like to think that your client would be proactive in producing, whether in report form or in any other form, relevant material for the Commission to fully assess what seems to have been a major breakdown in management controls and the like. Perhaps there's some explanation from your agency. It may be that one can never get properly to grips in a constructive way with what was missing, what went wrong, whose responsibility it was and if there weren't any audits, what's the explanation for that. In other words, I'm just raising these matters so that you can give some consideration as to what material your client, of its own initiative, should provide to the Commission so that all these issues can be properly answered. Certainly the Commission has received information to date, including no doubt from your client, but I do think there's some onus on your agency to assist the Commission in a constructive way. If the evidence as to failures in the past at multiple levels is in fact the case, I draw no firm conclusions as to that because there's simply not been enough evidence from which I can reconstruct what happened, what did happen or didn't happen, what should have happened et cetera, but I think it's a matter for your client to quite frankly present to the Commission some convenient form the fruits of its investigation. No doubt there's been some internal inquiries into all of these matters and the unhappy history, and of course behind it all was a very vast sum of public money that seems to have gone missing in action. So, there are very strong public interest issues in the Commission having all the assistance and all of the relevant information which would be within the control of your client. I advise you in any event to liaise with the solicitor for the Commission to perhaps inform as to how you would propose to impart that sort of information.

- 4.2 On 9 July, TfNSW received an email from the solicitors assisting the Commission in the following terms:

I refer to Chief Commissioner's comments made on 23 June 2021 at T2546, where he required that the Transport for NSW (TfNSW):

"be proactive in producing, whether in report form or in any other form, relevant material for the Commission to fully assess what seems to have been a major breakdown in management controls and the like."

⁶ See <https://www.nhvr.gov.au/about-us/national-services-transition>.

The Commission has determined that a report reviewed and endorsed by the Minister or a TfNSW official of sufficient seniority would be the most appropriate form to address the Chief Commissioner's concerns.

The Commission would be assisted if the report addressed the below areas of concern and particularly, whether there were any relevant policies or procedures in place that should have been complied with, whether there were any systems aimed at detecting breaches of any such policies or procedures and why these systems seemingly failed to detect Mr Dubois and Steyn's alleged conduct over such a lengthy period:

As applicable to the Heavy Vehicle Enforcement Unit between 2009 and June 2019:

1. Planning and authorising programs of work;
2. Developing and approving the procurement method for authorised work;
3. The processes involved for establishing and sourcing a new vendor;
4. Evaluating and authorising tenders and quotes;
5. Conducting vendor due diligence;
6. The process for creating contracts with existing vendors;
7. The processes involved in relation to allocating contract work to existing vendors;
8. Processes involved in relation to managing supplier performance;
9. Invoicing and payment for work;
10. Monitoring programs of work including asset and budget management;
11. Any relevant audits conducted on the Heavy Vehicle Unit; and
12. Any other factors that TfNSW believes contributed to the scale, extent and non-detection of the alleged corruption involving Mr Dubois and Mr Steyn.

Remedial measures taken by TfNSW to date

The Commission would be further assisted if the report addressed what, if anything, TfNSW has done since the conduct on the part of Mr Dubois and Mr Steyn was identified to:

- a) identify gaps in previous policies, procedures or systems;
- b) enact new policies, procedures or systems;
- c) ensure compliance with any such new policies, procedures or systems;

to ensure corrupt conduct allegedly committed by Mr Dubois and Mr Steyn doesn't reoccur or is detected at the first opportunity.

Further has TfNSW identified if there any residual deficiencies that exist identify, if so what future measures are needed to mitigate those deficiencies.

Please advise the current status of the Heavy Vehicle Unit and changes to its status since the end of time period applicable to this investigation.

- 4.3 This section addresses each of those matters. Text from the above request is repeated in **blue**. As will be seen, those matters are interrelated, and TfNSW's answers should be read as a whole, along with other material provided to the Commission by TfNSW and its employees, both in Operation Paragon and Operation Ember.
- 4.4 In this respect, as might be expected, much of the description of processes appears in the statement of Albert Bass dated 27 October 2020. Mr Bass is currently a Senior Manager, Procurement Strategy in the Corporate Services division in TfNSW. Relevantly to the Commission's Operation Paragon investigation, Mr Bass was Chief Procurement Officer within RMS' Strategic Procurement branch between October 2017 and August 2019 and held procurement and policy/governance positions during the period the subject of this investigation.
- 4.5 This document also extracts relevant findings and recommendations from the internal audit about compliance monitoring undertaken by Deloitte on procurement practice within the Compliance Monitoring section. The scope of that internal audit, settled on 29 January 2019, was to focus on the adequacy and effectiveness of controls across three panels within the Compliance Branch (Heavy Vehicle Unit Detection & Enforcement (HVU), Detective Enforcement Systems and Electrical & Maintenance) in the following three areas:
- (1) Governance and reporting;
 - (2) Planning and sourcing activities; and
 - (3) Contract management.
- 4.6 The Internal Audit Report – Procurement practices within Compliance Monitoring section dated May 2019 (**2019 Deloitte Report**) is contained in Corruption Prevention Volume 4 at pages 678 to 702 and is discussed later.

The Commission would be assisted if the report addressed the below areas of concern and particularly, whether there were any relevant policies or procedures in place that should have been complied with, whether there were any systems aimed at detecting breaches of any such policies or procedures and why these systems seemingly failed to detect Mr Dubois and Steyn's alleged conduct over such a lengthy period:

Planning and authorising programs of work;

- 4.7 The Compliance branch within Compliance and Regulatory Services (**CaRS**) division, as it then was, delivered risk-based regulatory activities that motivate safe and compliant road user behaviour. Its purpose was to engage, educate, deter, detect, enforce and prosecute (as appropriate) road users in NSW to improve compliance with relevant road transport legislation.
- 4.8 The Compliance Monitoring section within Compliance branch operates specific programs that include planning and authorising programs of work related to (but not limited to): fixed,

mobile and red-light speed cameras; heavy vehicle average speed enforcement; and Safe-T-Cam.

- 4.9 Within the Compliance branch, the process of planning and authorising programs of work involved a concentration of procurement authority at lower levels of the organisation. TfNSW agrees that this created some opportunity for work to be undertaken for which there was no business or operational need (“unnecessary work”). To prevent unnecessary work being undertaken, processes would have had to involve monitoring, at a more granular level, of those with responsibility to authorise programs of work by someone else other than Mr Steyn, Mr Dubois or Mr Soliman.
- 4.10 However, it is not possible to say whether more granular involvement might have prevented any unnecessary work from being undertaken. Unlike in respect of Mr Soliman’s work, which related to redundant trials and studies, the work the subject of this investigation appears to be at least work which either needed to be undertaken or at least was not undertaken wholly unnecessarily.
- 4.11 Whilst there was (and continues to be) a mandatory corporate requirement for divisional and branch business plans, there was no requirement for unit level plans.
- 4.12 As a result of the creation of the new Partnerships and Regulatory Assurance Directorate in the Regulatory Operations Branch (discussed in more detail below) any new work in the procurement pipeline for the Regulatory Operations Branch is first discussed with the new Partnerships and Regulatory Assurance area in the first instance to determine procurement approach.
- 4.13 This involves the preparation and submission of a briefing note for procurement tender exercises with approval level dependent on value of contracts to align with delegation levels. The intended benefit of this change is that it shares the procurement task between the relevant asset owners and the oversight branch, in addition to having signoff from the appropriate financial delegate. This provides an additional control to ensure compliance with TfNSW procurement processes.

Developing and approving the procurement method for authorised work;

- 4.14 The Compliance branch developed and approved the procurement method for authorised work in accordance with the RMS Procurement Policy and Procurement Manual.
- 4.15 Under the RMS’ decentralised operating model, the branch was responsible for its own procurement and contract management of suppliers and services. Accordingly, the Compliance Monitoring section had accountability for the development of its procurement strategies, tendering and evaluation activity, contract award and contract management. The Procurement section within Business Services division advised on the goods and services procurement process and provided tools and systems that enabled the business to reduce cost, improve performance and mitigate risk.
- 4.16 Albert Bass gives the following an overview of the RMS procurement model at [10]-[23] of his statement dated 27 October 2020:
- 10) *RMS operated in a decentralised environment whereby Divisions were responsible for their own procurement and expenditure for direct procurement. Direct procurement included goods/services used specifically within an RMS Division such as the point to point (P2P) cameras used by RMS. Indirect procurement was generally for goods and/or services that were utilised by all Transport agencies.*

For example, facility services and stationery, the procurement of which was managed by TSS [Transport Shared Services] on RMS' behalf. RMS staff were able to seek assistance from external providers or internally from RMS' Strategic Procurement Business Unit.

- 11) *In accordance with the provisions of RMS's then strategic procurement framework, a "procurement strategy" was required if the acquisition of goods/services was not from a pre-existing tender panel or a pre-qualification scheme, and the threshold of the procurement exceeded \$250,000.*
- 12) *There were different approaches and steps in the procurement lifecycle for construction related procurement. The usual steps in the procurement lifecycle of something of a \$2M magnitude required that a strategic sourcing option be followed because the threshold of \$250K had been exceeded. This meant that a procurement strategy needed to be built where you had to do your planning; understand the market and who were the players in that market; link the proposed work to the users affected by that work; identify the correct processes and delegation required to conduct the procurement activity; etc. At a minimum at the initial point, the business area proposing the procurement of goods and services related to construction must reach out to the Construction Procurement Director. That Director was supported by Procurement Specialists who were responsible for assessing whether the business unit had the capability to undertake the procurement. If not, the Director would arrange for Procurement Services to either manage the procurement or provide guidance through the procurement process.*
- 13) *After the initial contact with the Construction Procurement Director, I expected several activities involving cross collaboration across the agency to occur including:*
 - a) *building the procurement strategy in consultation with procurement*
 - b) *confirming budget approval in consultation with finance section*
 - c) *internal design review to ensure compliance with relevant building codes etc*
 - d) *internal environmental and safety review*
- 14) *A Manager, Procurement Governance and Strategy within my team liaised with the author of a procurement strategy to provide advice before the strategy was submitted to me for assessment and approval.*
- 15) *In my assessment of the procurement strategy, I was heavily reliant on the author to ensure all the facts outlined in the submission were correct. My general practice was that I would call the author of the procurement strategy to obtain an overview of the procurement strategy to ensure the intended objectives could be achieved, due diligence was performed and the overall procurement strategy was in line with the strategic procurement framework.*
- 16) *Where the magnitude of the project was over \$10M, the proposal required a gateway review by Treasury. If the funding source was 100% federally funded, the Commonwealth guidelines had to be followed. In the case of a panel, the gateway process does not apply because there is no commitment of funds.*

- 17) *For large expenditure of \$10M and above, there is a requirement for agencies to consider whether a gateway review is needed. Gateway reviews are independent expert reviews that agencies must organise at certain key decision points in the project lifecycle, including in the planning phase. Gateway reviews apply to capital, recurrent and ICT projects. The business case would address the criteria and identify options for how the project risk might be managed based on the unique merits of the project. The criteria are available on the NSW Buy or NSW Treasury website. I would expect that the RMS' Engineering Contracts Manual would be guiding end users to identify the criteria for such reviews and seek advice if unsure.*
- 18) *My expectation was that where activities were being carried out under a certain program of work these should not be separated. Individual pieces of work should be included in the overarching procurement strategy or business plan to ensure that the costs were aggregated. The monitoring of this for procurement in construction projects was not part of my experience as I predominantly oversighted goods and services procurements.*
- 19) *The Executive Director of Technical Services in the former RMS was responsible for oversight of procurement for construction projects. I would expect that there would have been allocated project managers for construction projects otherwise there would have been the risk of individual projects occurring that were disconnected from the rest of the network.*
- 20) *NSW was split into several regions. Each region had a Director that was responsible for managing that regions category of spend.*
- ...
- 22) *Usually, contract periods should not exceed five years, hence you would not update a procurement strategy, you would build a new one. If you were seeking to extend a contract beyond five years, an exemption would need to be approved by the Chief Executive. Where a panel is being set up, the period of that panel must be specified, and it cannot be longer than five years before being refreshed through an open market process. Moreover, a contract with a contractor on a panel cannot extend beyond that initial five-year period commencing on the date the panel is set up.*
- 23) *It is absolutely the case, that you would expect to see any proposal to set up a panel supported by a procurement strategy or a business case that would elaborate on why the panel was being set up. A major decision relating to outsourcing activities previously provided using internal resources would need to be informed by a business case with consultation across affected business areas. If the procurement related to goods and services, the procurement strategy would have had to come to me as the Chief Procurement Officer. However, for construction related procurements, that is not the case. I expect that the procurement strategy or business case would have had to go to Technical Services Section. That Section also looked after all the construction related panels across RMS.*
- 4.17 TfNSW accepts that overview as being accurate as at the time prior to the dissolution of RMS.
- 4.18 The Instrument of Delegation, located in the Procurement Manual, stated that “for all purchases, the same delegate cannot approve incurring expenditure and authorise

payment". It appears to TfNSW that this particular policy was never enforced in the Compliance branch in the period the subject of this inquiry as Mr Steyn and Mr Dubois both approved expenditure and authorised payment of invoices issued by contractors.

- 4.19 On 12 October 2017, Mr Dubois sought an increase in the delegations available to Mr Soliman, himself and Mr Steyn on the basis that the financial delegations provided to them in Equip, being an IT system used by the HVP Unit to raise contracts, was only \$250,000 which did not match their delegation manual approval figures.
- 4.20 Different procurement methods for construction work are set out at "Appendix 1-A Roads and Maritime Procurement Methods" in *RMS Engineering Contracts Manual Section 1 - Introduction to Roads and Maritime Services' Contracts for Construction* (see page 826 of Corruption Prevention Volume 2). Appendix 1-A also breaks down the typical advantages and disadvantages associated with the various procurement methods.
- 4.21 The Delegations Manual sets out exactly who has the authority to approve various aspects of the procurement method and process for construction works. The level of authority required to approve the procurement method and process depended on the estimated cost and type of construction work contemplated. A complete breakdown of these delegations from 2009 to April 2017 (relevant during the period of the conduct the subject of this inquiry) can be found in the following manuals:
- (1) RTA Delegations Manual dated 6 July 2009;⁷
 - (2) RTA Delegations Manual dated 8 November 2010;⁸
 - (3) RMS Delegations Manual dated 27 February 2012;⁹
 - (4) RMS Delegations Manual dated 12 November 2015;¹⁰ and
 - (5) RMS Delegations Manual dated 4 April 2017.¹¹

The processes involved for establishing and sourcing a new vendor;

- 4.22 In accordance with the RMS Procurement Manual, the form of procurement process was dependent on a financial threshold. This included a procurement strategy document being generated and depending on the amount the project was worth, that document would go to the person with that delegation for approval and sign off. When the procurement strategy document was being put together, the Procurement Manual would be followed and as part of this it would be expected that due diligence would be part of the request for proposal, tender evaluation and the selection of the appropriate vendor.¹²

⁷ See pages 1 to 120 of CP Volume 2.

⁸ See pages 121 to 263 of CP Volume 2.

⁹ See pages 264 to 397 of CP Volume 2.

¹⁰ See pages 67 to 97 of CP Volume 6.1.

¹¹ See pages 741 to 812 of CP Volume 2.

¹² Statement of Roger Weeks dated 21 May 2019 at [41]-[45].

- 4.23 Following the procurement process and the approval of a new vendor by the delegate, a vendor was established in RMS's Equip system following the raising of a purchase order. The creation of a new vendor was performed by the finance team within the RMS.
- 4.24 The statement of Theresa Jabson dated 8 April 2019, which was provided to the Commission as part of its Operation Ember investigation provides the following information regarding vendor creation at the RMS:
- 17) *If a supplier does not exist in RMS vendor system, a form called "IMS Vendor Creation Form" must be completed. Attached to this form, must be a print out of the ABN check to show the company's trading name along with a copy of the relevant quote or agreement. If the goods have already been received or service rendered, the form must attach a copy of the invoice, along with the ABN printout to validate that the ABN trading name and the name of the vendor match the name on the attached invoice. A copy of the EFT authorisation form must be completed by the vendor and attached supporting document (i.e. bank statement or blank cheque book) to validate the bank account provided. The bank account must match the trading name of the vendor as per ABN printed from the Australian Taxation Office. Once the documents are completed, I review the documents and sign and authorised the creation of the vendor to the Vendor Creation Team. The finance officer sends the documents by email and the original form is mailed to the vendor's team.*
 - 18) *A vendor will remain on the RMS system unless they become inactive for 12 months, after which time they would need to validate their credentials again.*
-
- 26) *A change request is created in Equip by RMS to request the creation of a new vendor and contract and bank account documents must be attached.*
 - 27) *The Transport Shared Services vendor team will review the request and create the vendor number in Equip. The vendor number is sent to the RMS contact in order for the purchase order to be initiated.*
 - 28) *This is different to the legacy SAP system. Under the legacy SAP system, the role of the Finance Officers were to review these documents provided and create the purchase order. The Senior Finance Officer reviews the signed documents, check approvers delegation level and if contract was disclosed before the purchase order is released. The purchase order is emailed to the Project Managers so they can provide the purchase order number to the vendor and the accounts payable email to forward the invoice. Once the product is provided or service rendered the vendor can raise an invoice for payment relating to that particular contract.¹³*
- 4.25 In her electronic record of interview (**EROI**) with the Commission on 3 November 2020, Theresa Jabson stated:

Yes, so my, my team's role is pretty much they've got two Finance Officer at that time which was called, and I know the names would go back and forth, they were

¹³ Statement of Theresa Jabson dated 8 April 2019 at [17]-[18] and [26]-[28].

called Contracts and Finance Officer. Those two Finance Officer would be processing invoice and creating of purchase orders. Once the paper request is done in the system it's then verified by the Senior Finance Officer or the Senior Contracts Manager. This person would check the delegation. It would check the disclosure was done if appropriately in CM21. There's a signature of the Senior Manager and I guess when it comes to that probably as a side approval, I have a meeting with the Senior or the Principal Managers and the General manager at that time to discuss any projects. So, a lot of the things which they would normally submit would been okayed by the managers. So, when my team does the request in the system, I would verify it and if there's something that they're not sure they would check with me. Especially with when we started doing the construction because we have to have new project created on WBS and other instances we have to create, we also create I should probably add, we also create vendors if there's new vendors. We look at quotes, contracts, documentation that they can provide, bank account, EFT form signed by the vendors for us to initiate the process. So, the senior person would also, Finance Officer would also do the month end accrual, so the role is to ensure that is any invoices or work that we haven't processed that we take into account for the month. We get the approval and documentation from various project managers and, also we do the journal if we need to move funds from one project to another.¹⁴

4.26 For minor physical works and services contracts: where a tenderer is not a Prequalified or Registered Contractor with TfNSW, the tenderer's business name and/or company identity is to be checked against the websites of the Australian Business Register and ASIC. This is to ensure that the tenderer is a genuine organisation. Evidence of such verification should be in the Tender Assessment Report and retained on file.¹⁵

4.27 According to the delegations manuals, a 0-5 delegate (on a scale of 0 to 7 with 0 being the Chief Executive, 5 a Unit Manager and 7 being general staff) from Finance and Performance had approval to create and/or amend a Vendor Record in SAP using Form 681.¹⁶

4.28 Mr Bass identified difficulties with lack of oversight and discretion of delegates in his statement:

15) *In my assessment of the procurement strategy, I was heavily reliant on the author to ensure all the facts outlined in the submission were correct.*

...

37) *I did not have oversight of specific project risks, unless my advice was sought.*

...

¹⁴ See page 510 of CP Volume 6.1.

¹⁵ See page 1149 of CP Volume 2 for *RMS Engineering Contracts Manual Section 5 – Minor Physical Works and Services* dated 30 November 2015.

¹⁶ See page 34 of CP Volume 2.

39) *Each Division had their own risk and compliance mechanisms in place however I was not always involved in developing those and for some Divisions did not have the visibility of this.*

...

49) *If a business area did want to go out to open market, in my role as Chief Procurement Officer, I would absolutely have wanted to see the business justification for this occurring (given that RMS would have spent a lot of time and money in setting up the panels and pre-qualification schemes and assessing panel member capabilities). However, no special exemption was required as the use of panels was a matter of best practice. The decision was at the discretion of the financial delegate relevant to that procurement. As alluded to earlier in my statement in relation to risk at paragraph 31, it is possible that the financial delegate could do things incorrectly or make errors of judgement if they were not fully cognisant of policy, procedure and the principles behind the best practice arrangements that were in place.*

...

83) *As Chief Procurement Officer responsible for goods and services procurement, because I reported to the Business Services Division, I had a completely separate reporting line to the Technical Services Division that was responsible for construction related procurement.*

Evaluating and authorising tenders and quotes;

4.29 The procedures in place at RMS to evaluate and authorise tenders and quotes are addressed in Mr Bass's statement as follows:

60) *If a respondent is non-conformant with a requirement set out in the RFT, they cannot be assessed further if the conformance was a mandatory requirement. Else that respondent must be assessed solely on what they did provide in their tender. All respondents must be treated equally and no one respondent can receive any competitive advantage during the evaluation process.*

61) *Assessment of a tender response is based on the detail behind responses to each requirement and whether criterion specified are essential or non-essential. Where no suppliers met essential criterion above a threshold (eg 50%), you would have to retender and consider using more communication channels to encourage more suppliers to respond.*

62) *I am told that one of the evaluation team members was not a party to the email chain at Annexure F. Where there are issues identified with conformance with tender requirements or the capability of one or more suppliers to do the work required, all members of the evaluation team must be involved in the evaluation process. In the circumstances indicated in the email, I would expect that the evaluation team would seek probity advice internally in the first instance. Where necessary, external probity advice may be sought. In the latter case, there are guidelines that need to be followed and the evaluation team would need to reach out to the central infrastructure team (Technical and Project Services Section in the case of construction) for advice and assistance.*

- 63) *Any decision to include a probity advisor on an evaluation panel is not based on a financial threshold but risk. Usually, this decision is made through the procurement strategy based on the risk assessment that is part of that strategy. A probity advisor cannot participate in the scoring. The probity advisor attends all of the tender evaluation team meetings and provides probity advice and guides good decision making.*
- 64) *It is not possible to tell from reading the email chain between Mr Chehoud and others that he was the probity advisor for the tender evaluation, but it seems unlikely.*
- ...
- 67) *However, if assessment against the criteria mean that a respondent is not capable of performing any of the work required, they could not be included in the panel. An overall weighted score of zero means that, by default, Lancomm could not get on the panel. I think it is laughable that a company scoring zero would be awarded a panel contract. There is something very wrong if this happens.*
- 68) *The decision is ultimately for the financial delegate.*

- 4.30 TfNSW accepts that a decentralised procurement model where the manager had no subject matter expertise increased the opportunity for the alleged corrupt conduct of Mr Dubois and Mr Steyn.
- 4.31 As noted above, the relevant unit is now supported by dedicated procurement advisor, to assist it in ensuring its procurement complies with the Procurement Manual in respect of the role and function of a subject matter expert on a tender panel. TfNSW provided this information to the Commission in its submissions in reply in Operation Ember.¹⁷
- 4.32 TfNSW repeats the additional initiatives referred to in subparagraphs 1.5 above relating to additional procurement controls in the form of vendor due diligence and vendor creation controls and additional procurement controls through procurement analytics.

Conducting vendor due diligence;

- 4.33 The systems in place to evaluate and authorise new vendors and conduct due diligence included the CM21 and IMS Vendor forms.
- 4.34 Mr Bass describes the management of procurement risk at RMS as follows:
- 37) *In my role as Chief Procurement Officer, I had the delegation to approve all procurement strategies within RMS. I had oversight of enterprise procurement risks, which affect the RMS organisation as a whole. I did not have oversight of specific project risks, unless my advice was sought.*
- 38) *Most procurements in RMS were managed in a decentralised environment. There was no overall holistic view of spend across the organisation and hence the risk of non-compliance was higher than if you were to operate under a centralised model. This has been the case for as long as I can remember. For example, when RTA*

¹⁷ Submissions in Reply dated 31 March 2020, page 3.

became RMS there was a Chief Procurement Officer and one other support staff to manage policy but no capacity to manage compliance.

- 39) *In terms of risk tolerance, because RMS operated in a decentralised environment, it was almost as if each Division was operating as a separate company on its own. Each Division had their own risk and compliance mechanisms in place however I was not always involved in developing those and for some Divisions did not have the visibility of this. My role was to develop procurement policy frameworks and Divisional heads were responsible for ensuring that those frameworks are being implemented within their Divisions to eliminate or minimise procurement risks. If information came to me that indicated that a business area was significantly exceeding its risk tolerances, I would be taking a close look at what that business area is doing and recommending strategies to fix that.*
- 40) *The majority of risks that have been exposed to me could be attributed to a lack of knowledge of policy and procedure. For example, people approving things that they did not have the delegated authority under the Delegation Manual to approve.*
- 41) *For each supplier that RMS engaged with, the procurement policy framework provided the guidance for end users in relation to the due diligence required before a supplier was engaged including management of any conflicts of interest. The responsibility and accountability for ensuring this happened was up to the financial delegate relevant to the procurement to make the necessary checks and ask appropriate questions before signing off on the procurement. I am not aware that risks associated with community pressures or membership of certain groups (not just criminal groups) is considered in risk assessments that are conducted.*
- 42) *I understand that anyone at the level of Senior Manager or above is required to sign a yearly conflicts of interest form that they have no known associations with any organisations in order to carry out their role. In addition, anyone at any level who is required to be involved in any procurement activity, is required to sign a manual form and declare any conflict of interest including that they do not have any conflict of interest. This is not the case for raising a purchase order or shopping cart request. The requirement only applies to senior executive roles, referred to as TSSM band and above.*
- 43) *The annual declaration process is an online process managed by Corporate. Once the declaration is signed, the form is registered and stored on the individual's personnel file if there is no conflict of interest. If there is a conflict of interest declared, this is work flowed to the individual's direct manager to be dealt with.*
- 4.35 Mr Weeks, former Director, Compliance and now Acting Executive Director of Customer Coordination and Service Delivery, identified a number of checks and balances he put in place after reviewing the alleged conduct the subject of the Commission's Operation Ember investigation:
- 93) *Following becoming aware of the issues with the procurement of the weigh scales involving Novation Engineering I have put in place a number of temporary checks and balances measures to ensure that I have complete oversight of matters which are below my delegation level. I summarise these below:*
- (a) *Independent probity advisors for any tender evaluation committee (TEC)*
 - (b) *Independent members on each TEC*

- (c) *All procurement requests from relating to heavy vehicle safety stations, heavy vehicle inspection stations and heavy vehicle systems issued by the Compliance Operations team are now required to be escalated through the Senior Manager of Compliance Monitoring and Compliance Operations rather than directly at officer level with major requests to be escalated time.*
- (d) *Additional reporting requirements which require Senior Manager or Director approval, regardless of financial delegation, on all procurement matters in Compliance Monitoring addressing:*
 - (i) *What the proposed expenditure is for*
 - (ii) *Why it is necessary for the proposed expenditure to occur*
 - (iii) *What the priority of the proposed transaction is and any implications if the transaction does not proceed*
 - (iv) *Demonstration of best value for money and evidence of fair market rate/value*
 - (v) *Any other relevant information.*
- (e) *A review of expenditure under PCards.*

4.36 Other checks on tenderers are discussed briefly below.

Registration of interest phase

4.37 The following information is taken from the RMS Engineering Contracts Manual Section 2 – Registration of Interest Phase and Preparation of Information Documents (C2-GC21 Major Contracts Only). This section of the manual is contained at pages 838 to 976 of CP Volume 2.

4.38 For certain major construction contracts (large value major contracts or major contracts requiring specialised work), the tendering process may be conducted in two phases: Phase 1 (Registration of Interest Phase) and Phase 2 (RFT Phase). During the Registration of Interest (**ROI**) phase, applicants may be evaluated for the following:

- (1) Capability, capacity and experience;
- (2) Proposed Key Personnel
- (3) Understanding of the Project requirements
- (4) Demonstrated capacity for successful collaboration with NSW Government (where applicable).¹⁸

4.39 Where an Assessment Committee is of a view that the financial assessment is required at the ROI phase, a financial assessment of the applicant's financial resources and liquidity should take place. This would normally be required for applicants who are committed on a number of large projects at the time of submitting their application or for some

¹⁸ See page 851 of CP Volume 2.

interstate/foreign companies tendering for the first time for a RMS project. This assessment is to eliminate applicants from further consideration if it does not demonstrate sufficient financial capacity to satisfactorily undertake the intended project. Furthermore, the relationship between the applications including the existence of related companies and common directorships and ownerships should be assessed.¹⁹

Tender assessment phase

- 4.40 The following information is taken from the *RMS Engineering Contracts Manual Section 3 – Tender Process (C2-GC21 Major Contracts Only)*. This section of the manual is contained at pages 977 to 1122 of CP Volume 2.
- 4.41 According to section 3 of the manual, the following are assessed in relation to tenderers at the tender assessment phase of a major construction contract:
- (1) Quality systems;
 - (2) Recent performance in carrying construction contracts which are similar to the works in tender;
 - (3) Current work load and resources available to complete the works in tender within the specified time;
 - (4) Organisation structure and key staff who have been assigned responsibility under the contract;
 - (5) Claims history;
 - (6) Work Health & Safety management experience and performance;
 - (7) Environmental management experience and performance
 - (8) Workplace relations, skills and training development.

Invoicing phase

- 4.42 Vendor due diligence was also conducted at the invoicing and payment for work stage. During her EROI with the Commission on 3 November 2020, Ms Jabson stated:

Yes, so normally what we do is if a vendor and I guess this vendor must have had a vendor number created in SAP, which is now what we call Equip. If the vendor uses that ABN and it's probably under called, like they submitted the invoice and it says protect three services, we, we do checks that the vendor is called that vendor and if that vendor then claims GST on the tax invoice but they're not, we normally flag that to Project Managers, or, sometimes we don't get to notice it until the invoice is there. So they may have sent the quote under Project Three Services with the ABN but when we process it we know that there's that we do checks especially vendors that I knew or vendors that we haven't used regularly to flag that this vendor can't claim GST so therefore they shouldn't be submitting GST on their invoices. On the same token this can trade and protect but I always have this advice from Accounts Payable that that time RMS don't like to deal with sole trader

¹⁹ See page 852 of CP Volume 2.

just because of the risk. That's why I flagged it whether this vendor, because there are also instances and we've had this before where the ABN or the ATO hasn't updated so I might ask for a certificate saying can you ask the vendor to provide a certificate because there might be instances where the vendor's information is not updated by the ATO and it has happened before but in this instance I flagged that the paperwork, yeah, doesn't match with what I can see, yeah.²⁰

- 4.43 TfNSW agrees that information security is a key tenet of transparency and fairness in contracting and an important corruption control. TfNSW also emphasises that it is very difficult to prevent unauthorised disclosure of information, as demonstrated by Mr Dubois' unauthorised disclosure of information to Mr Towik Taha, Mr Hassan Alameddine, Mr Barack Hadid and Mr Chadid Chahine during informal meetings where pricing, quotations, descriptions of works involved and which company would be awarded the work were discussed (see T1074[39]).
- 4.44 However, RMS/TfNSW has implemented improvements to information security in the tendering process through the transition to the use of the etendering website, which is a secure portal for advertising and receiving tenders. The current TfNSW Goods and Services Procurement Standard provides requirements for the use of the e-tender website for all procurements in excess of \$250,000.
- 4.45 Following the consolidation of the RMS and TfNSW procurement functions, the RMS Procurement Manual has been retired and a harmonised manual and procedure was implemented in late 2020. The TfNSW Goods and Services Procurement Standard now governs Goods and Services Procurement across all TfNSW functions included functions performed by the former RMS.
- 4.46 For construction related procurement, the Engineering Contracts Manual 6 which governs professional services construction, mandates procurement via the e-tender website or e-quote other than for single source tenders. TfNSW is still in the process of harmonising the Engineering Contracts Manual with the legacy procurement procedures of TfNSW (prior to the merger with RMS). It is anticipated that this work will be completed in by mid-2022.

The process for creating contracts with existing vendors;

- 4.47 The process for creating contracts with existing vendors within the Compliance branch was set out in Ms Jabson's statement provided to the Commission in its Operation Ember investigation:
- 8) *I can state that the process for procurement during my time within the Compliance Branch was as follows.*
 - 9) *Project Managers prepare all the contract negotiations with the vendors and obtain all the required quotes.*
 - 10) *The Project Manager discusses the proposed contract and quotes with their Principal Manager in order to obtain project approval.*

²⁰ See page 514 of CP Volume 6.1.

- 11) *If project approval is granted by the Principal Manager, I check the budget allocation for the project.*
- 12) *Once it was determined which supplier they had selected, the project managers provide vendor information and contract documents to the Finance Unit.*
- 13) *If a supplier is an existing vendor, the purchase order is created but if a supplier doesn't exist in the RMS vendor system, the Finance Unit prepares the documentation for the creation of the vendor.*
- 14) *Once the vendor account is obtained, the purchase order creation is initiated by the Finance Officers in my team. The purchase order requests together with other contract documents were emailed by the project managers to the Finance Unit group email address COB_finance@rms.nsw.gov.au.*
- 15) *Once the Project Managers had completed the procurement process of obtaining quotes and have an agreed contract in place, a Purchase Order can then be raised reflecting the agreed terms of the contract.*
- 16) *SAP legacy system (now called Equip) used to manage the creation of purchase order by the Finance Unit.²¹*

4.48 Ms Jabson also discussed the contract management database and accounts system:

- 22) *During my role in Compliance Branch as the Team Leader Finance, RMS used contract database including 'CM21' and accounts system 'SAP (legacy system) and was replaced by 'Equip'. Objective was also introduced as RMS electronic document and records management system.*
- 23) *Currently RMS operates CM21 and Equip. Equip replaced the legacy system SAP which was used within the RMS until Equip was introduced on 1 July 2016.*
- 24) *CM21 was and is currently used to record and manage contract details and SAP was used for payment details. Payment details are now dealt with through Equip since July 2016.*
- 25) *Since the introduction of Equip, RMS continues to create the request of the purchase Orders however, Transport Shares Services staff (TSS) now undertakes the vendor verification and creation of the purchase order.*

The processes involved in relation to allocating contract work to existing vendors;

4.49 Where panels are in place, authorised personnel approve decisions to award work to panel providers.

4.50 Mr Bass stated:

²¹ Statement of Theresa Jabson dated 8 April 2019.

- 23) *There is no 'one-size-fits-all' approach to the awarding of work to panel members. Each panel will have its own rules that must be followed. In order to achieve value for money, the decision regarding the appropriate competitive process using that panel will be dependent on the unique requirements and the panel rules. What I can say, is that the decision must be documented in written form. The decision is made by the financial delegate, they have the ultimate accountability for the decision.*
- 24) *Similarly, the panel rules determine the thresholds and process to be followed in obtaining requests for quote from panel members. These panel rules are internally prepared documents that are developed and agreed on by the financial delegate prior to the panel being used.*
- 25) *Several tools are provided to assist with estimation. This includes membership to IBISWorld to benchmark certain work and be provided with industry reports to assist with supplier market analysis, benchmarking the market rates and industry operating conditions. Without having specific knowledge, I expect there might be more stringent processes and a knowledge base for construction related projects.*
- 26) *When estimating, the costs included in the estimate will depend on the contract method chosen and the value for money that you are seeking to achieve. The method chosen might be 'build and maintain' or 'build only' if a maintenance contract was already in place. Alternatively, you could choose a 'design, build and maintain' contract if you knew the market was capable to provide you this holistic approach. The decision on the contract method for a construction related project is made during the planning phase and contained with the procurement strategy which should take into account the capability of the business unit to manage the different contract method options. This is assessed by the Technical Services Section. The procurement strategy is signed off by the financial delegate.*
-
- 33) *I can confirm that no-one in the Compliance and Regulatory Services Division had delegated authority to approve any stage of the procurement process for construction related projects.*
- 34) *TSS had responsibility for monitoring and identifying whether a construction related procurement was approved by an authorised delegate. However, it is my understanding that it would not be possible for TSS to identify issues with the delegated authority if the procurement information was stored in the RMS contract management system (CM21) rather than Transport Equip because TSS did not have access to CM21. CM21 is managed by the Commercial Services team within the Project and Technical Services Division. Transport Equip is the system used across the cluster to manage goods and services procurements. The other system for managing procurements that TSS does not have access to PMWeb (Project Management Software for Capital Construction).*
- 35) *My reading of the Delegations Manual in relation to the authority to approve estimates is that this is an administrative delegation and seems to sit within the Technical and Project Services Division.*

- 36) *The definition of 'infrastructure development' and 'non-infrastructure development' referred to in Section 5.5 of the delegation manual has always been a grey area. I am unaware whether the terms are formally defined anywhere.*
- 4.51 Paragraph 1.2 of Deloitte's report into its audit of RMS procurement processes, and provided to the Commission as part of its Operation Ember investigation stated:
- Although authorised delegates also approve decisions to award work to each panel provider, the justification for these decisions is not always well documented and subsequently open to challenge from other panel members regarding its fairness, transparency and ability to demonstrate value for money principles. This is further exacerbated by the absence of:*
- (1) *Formal panel member performance assessments and monitoring*
 - (2) *Periodic reporting on panel member usage*
 - (3) *Clear rules governing the decision making process for awarding work to panel providers – each panel appears to adopt a different set of criteria for awarding work.*
 - (4) *A periodic conflict of interest declaration process for staff involved in awarding work to panel members.*

Processes involved in relation to managing supplier performance;

- 4.52 Monitoring of panel member capacity, usage and performance was performed on an infrequent and informal basis.
- 4.53 In both Operation Ember and Operation Paragon, management of supplier performance was concentrated in the Manager of the HVP unit, Mr Soliman, and his subordinates within the HVP unit, Mr Steyn and Mr Dubois. It was in all their interests that supplier performance not be scrutinised above them.
- 4.54 Deloitte identified for TfNSW that there was no current requirement to formally monitor panel member financial capacity or usage on a periodic basis. It was agreed that TfNSW implement the following:
- (1) A structured and centralised reporting process on panel usage will be developed and implemented. This reporting will be provided to the Director, Compliance on a periodic basis.
 - (2) A process for formally monitoring panel member performance will be developed and implemented for each panel. The results of this process will be reported to the Director, Compliance on a periodic basis.
 - (3) A process will be established for periodic review of financial viability/capacity of panel members for those who are awarded more than \$250,000 of work per annum or are assessed as high risk.
- 4.55 In Operation Ember, TfNSW made submissions in the following terms (emphasis in original):

25. *At [689], Counsel Assisting submits that the evidence ‘supports a finding that in the period January to June 2017, there was no system within RMS for checking whether parts invoiced by Novation were supplied to the maintainer or otherwise to RMS’. At [714], Counsel Assisting submits that ‘[t]here was no system for reconciling goods delivered with invoices paid. In addition, there was an arrangement involving Mr Soliman using his subordinate Mr Singh to assist him with administrative work associated with facilitating payments to Novation. These features enabled Mr Soliman to enact false invoicing for spare parts, undetected.’ At [723], Counsel Assisting also raised concern that there ‘was no oversight of Mr Soliman’s authorisation of the expenditure on scale parts’. At [886], Counsel Assisting submits that there ‘was no robust system within the HVP Unit for verifying deliverables against the scope of works quoted for’. Counsel Assisting also submits at [887] that there ‘was no independent way of verifying that the goods and services invoiced were actually delivered and that they fell within the scope of works for which the quote had been accepted’.*
26. *A number of responses can be made about these submissions.*
27. *First, it should not be overlooked that the responsibility for establishing and supporting a robust system was that of the Manager of the HVP Unit, Mr Soliman. Whilst Counsel Assisting has listed some of Mr Soliman’s responsibilities at [46], the complete list key roles and responsibilities in his position description was as follows (emphasis added):*
- *Management of multiple concurrent programs and projects delivered by a team of multidisciplinary project management personnel incorporating technical and infrastructure components.*
 - *Manage the technical transition of all related regulatory, databases and information exchange systems from the current RMS based management structure to management and oversight by the National Heavy Vehicle Regulator (NHVR).*
 - *Identify, manage and develop business requirements for major heavy vehicle and Road Safety regulatory systems located throughout the States motorways.*
 - *Work with internal and external stakeholders to ensure delivery of effective operational systems management to high performance standards in a service delivery model that provides a 24/7 regulatory environment.*
 - *Manage a dedicated team of technical and infrastructure related personnel ensuring that the team works cohesively and delivers maintenance and projects effectively and efficiently.*
 - ***Ensure that high financial and budgetary standards are applied to the delivery of projects and ensure that effective business measurement and reporting are delivered to senior management on all operational and project based work.***

- *Manage multiple service delivery stakeholders and partners **to ensure value for money and effective service delivery** that minimises risk for RMS.*
 - *Manage complex and growing inter-agency relationships involving inter- and intra-State partners including other regulatory jurisdictions, NSW police and the NHVR.*
 - *Ensure effective contract management and cost effective outcomes for the Branch.*
28. *TfNSW supports Counsel Assisting’s general submission (at [1130]) that Mr Soliman’s conduct was “brazen”. There is evidence that Mr Soliman deliberately evaded the RMS systems that were in place; so much is plain by his request of subordinates to raise purchase orders for him.*
29. *Secondly, it was always open to a member of staff in the HVP Unit to verify the fact and scope of goods and services delivery. In the period January to June 2017, referred to by Counsel Assisting, it should be noted Section 5.1, Procurement Manual (Version 3, effective 9 September 2014) required that the goods and services be certified (signed and dated) as received. This process has been further refined, as set out in section 5.1.1 of the Procurement Manual (in similar terms from version 4 onwards, which was effective from 1 August 2017). The process requires that the goods and services be receipted in Transport Equip prior to the invoice being received as, if this does not occur, an ‘invoice exception’ will sent to the purchase order creator’s workflow inbox. That is, alerting the purchase order creator to the fact that the goods and services have not been recorded as received.*
30. *Thirdly, Counsel Assisting concedes it was reasonable for RMS staff, as Mr Thevathasan did, to rely on their Manager’s word that the goods and services had been delivered and the invoice could be paid.*
31. *Fourthly, the gravamen is ultimately a concern as to the absence of an ‘independent’ actor in the system. There were of course audit processes within RMS, as well as disciplinary processes, which could operate to, respectively, sample or investigate suspect behaviour.*
32. *Finally, TfNSW advises that there is now increased reporting generated by the Equip system. The Equip system no longer allows invoices to be issued in excess of the purchase order amount. Quotes are now annexed to the purchase order creation in the system, and the TSS team check the quotes as against the purchase order information inputted into Equip.*
- 4.56 As summarised above, performance monitoring was identified as a matter for improvement by Deloitte at paragraph 2.2 of its report:

Monitoring of panel member capacity, usage and performance is performed on an infrequent and informal basis. We identified that:

- (1) *Panel members are required to provide KPI performance reporting on a monthly basis to RMS. This process is not enforced.*

- (2) *Panel expenditure/usage is not formally monitored or reported.*
- (3) *The financial capacity of panel members to deliver work is not periodically assessed.*

Root cause: Management indicated that the cost, time and resources required to enforce panel member performance monitoring outweighed the dollar value that would be derived from contractual penalties. There is no current requirement to formally monitor panel member financial capacity or usage on a periodic basis.

Agreed management action:

- (4) *A structured and centralised reporting process on panel usage will be developed and implemented. This reporting will be provided to the Director, Compliance on a periodic basis.*
- (5) *A process for formally monitoring panel member performance will be developed and implemented for each panel. The results of this process will be reported to the Director, Compliance on a periodic basis.*
- (6) *A process will be established for periodic review of financial viability/capacity of panel members for those who are awarded more than \$250,000 of work per annum or are assessed as high risk.*

4.57 Since the structural change in April 2021, the role of Director Compliance no longer exists. These panel reports and assessments is now a function of, and is now performed by, the newly established Partnerships and Regulatory Assurance Directorate.

Invoicing and payment for work;

4.58 Invoices were approved via a computerised system whereby the user would fill in the value of the invoice and schedule a payment. The user could see the value of the applicable purchase order. If the invoice was for a partial amount, the system would remove that amount from the total amount remaining on the purchase order.²²

4.59 Ms Jabson's statement in Operation Ember states:

- 21) *Once an invoice is received from the vendor where the goods or services have been rendered or provided, it is received into the finance unit group email. The Finance Officers checked that a purchase order was created and it has enough funds to pay for the invoice. If not, the purchase order request is requested from the project managers for completion. The finance unit send a copy of the invoice to the project manager for review and approval. If the invoice is in accordance with the contract terms and conditions, the project manager approves the invoice. If the invoice is not correct, they must discuss this with the vendor directly and notify the finance unit. The project manager then sends an email approving it back to the finance unit group email. Once email approval is received, the Finance Officers process confirmation in legacy SAP and forward the invoice with the service entry number to the Accounts Payable email address (tssinvoices@transport.nsw.gov.au). The accounts payable verify the purchase order number, vendor number, ABN, and banking details*

²² Counsel Assisting's closing submissions dated 7 February 2020 at [701].

*matched the invoice. Once this is completed, it is matched and the invoice is sent to the vendor payment team so the payment by EFT or cheque is made to the vendor.*²³

- 4.60 TfNSW notes that it may not be practical to implement cost-effective systems that independently monitor the characteristics of quotes. TfNSW, like all agencies, places trust and confidence in its senior officers such as Mr Dubois and Mr Steyn. Those senior officers owe duties and have responsibilities to their employing agency.
- 4.61 TfNSW supports the submission that Mr Steyn and Mr Dubois took care to ensure that some of the red flags were not noticed by their manager, Mr Soliman.
- 4.62 Additional procurement controls relating to order splitting prevention and a data analytics program to detect suspicious invoicing practices is discussed at 1.5.

RMS delegations manual

- 4.63 The RMS Delegations Manual provided that “the same delegate cannot approve incurring expenditure and authorise payment”. There was an apparent failure to ‘enforce’ RMS policy requiring that the same delegate should not authorise expenditure and payment.
- 4.64 It is no longer possible for a delegate to both approve expenditure and authorise payment of invoices issued by a supplier relating to work performed for TfNSW.
- 4.65 The new TfNSW Equip system no longer allows the same delegate to perform both functions. A procurement automatically moves through the system as an upwards workflow preventing the same delegate performing functions at different points in the process (ie. approving expenditure and authorising payment). Further features of this Equip system are identified in this document, below. TfNSW can also provide additional information about the operation of the Equip system if that would assist the Commission.²⁴
- 4.66 TfNSW concedes that it is concerning that there is no evidence that the invoice splitting was picked up and queried by anyone within the financial operations at RMS, despite multiple invoices being issued on the one day and within one week.
- 4.67 Mr Soliman sought to obscure his influence and control of purchases made from Novation Engineering and AZH Consulting by pressuring and deceiving staff under his management and direction.²⁵ This appears to have also been the case with Mr Dubois and Mr Steyn.
- 4.68 During her EROI, Ms Jabson was taken to specific problematic invoices and asked for her comments Ms Jabson stated that she considered the following to be problematic and would raise a “red flag”:
- Company provides incorrect ABN;
 - Company not registered as a vendor but looking to progress payment or already purchased items raises red flag; and

²³ Statement of Theresa Jabson dated 8 April 2019 at [21].

²⁴ Submissions in Reply dated 31 March 2020 at [6]-[8].

²⁵ Corruption Prevention Submissions dated 31 March 2020 at [37].

- Contract splitting.²⁶

4.69 Ms Jabson stated that she did not consider the following to be problematic or to raise a “red flag”:

- Use of personal email addresses on invoices;
- Acceptance or letter of offer signed before purchase order as it was normal behaviour for approvals to be given verbally by a manager and paperwork to be completed retrospectively;
- Employees using other employee's profit centres;
- Approving purchase orders for completed works;
- A recently registered company making a quote as long as they have a valid Certificate of Registration; and
- Companies without phone numbers or odd looking addresses.²⁷

4.70 Ms Jabson also discussed how she had made every attempt to teach Mr Dubois and Mr Steyn the correct procedures and policies and how disappointing it was for her to see that Mr Dubois and Mr Steyn intentionally disregarded the rules that were in place. She said the following:²⁸

Yeah and then this is what I was saying to Suja earlier on I said this probably be the hardest for me because I'm talking for both, not just for Alex so they're, I work closely with them and I guess with Alex looking after all the checking station and Craig looking after all the Safety Cam or average speed I had to due to the I guess the role that I was in, I had to slowly teach them to do what they need to learn because Equip started in 2016, I then had to tell them, look this is what you have to do, this is what you have to guide, and to make matters worse my team was removed from Compliance in 2017. So my expertise in finance, procurement, budget I had to provide that to them and I probably could say that I could have done, I'd done a very good job and I think not just to them but also other team members within Compliance that did not do anything fraudulent. But the saddest thing is that they've taken the opportunity to take. To take it into where we are now and I just don't know what to say to them because I know them.

And I see a lot of people grow, meaning like in all their careers, they were this and now they're this. I never thought of that and it makes it hard that they've used it to their advantage. But even I think, even though I left in 2017 or 2016 December, I still continue to support because I think and I think a lot of people would say this to you that I was, my team was the only one that would process a lot of the procurement, the purchase order, invoicing, processing, even doing the month end. So a lot of that then suddenly had to be given to them when we left the branch in 2017 April. But we still continued to provide support because we had the

²⁶ See pages 514, 516 to 517 and 534 of CP Volume 6.1.

²⁷ See pages 516, 520, 529 to 531 and 536 of CP Volume 6.1.

²⁸ See pages 541 to 542 of CP Volume 6.1.

knowledge. Unfortunately they were the ones left within Compliance. So, yeah. It's sad.

- 4.71 In terms of construction contract payments, the delegations manual, at all relevant times, stipulated who exactly had the authority and responsibility to make those payments. A 1 to 5 delegate (1 being a Director and 5 being a Unit Manager) was authorised to make payments for major, minor and professional services contracts in the construction industry. Prior to the November 2015 RMS Delegations Manual, a 1 to 4 delegate was authorised for major construction contracts.²⁹

Monitoring programs of work including asset and budget management;

- 4.72 Budgets and forecasting is addressed in the Statement of Roger Weeks dated 21 May 2019:

- 34) *The way our budget works is that it is all project based, with an associated work breakdown structure (WBS) code including line items for capex (Capital Expenditure) and opex (Operational Expenditure).*
- 35) *The scope of that budget is to deliver business as usual activities.*
- 36) *If a new project is forecast within a budget cycle then funds are bid for at that point time.*
- 37) *Only the finance team can create a WBS code. There should not be the possibility for a manager to pay for something that is not within the scope of a WBS project. The purchase order has to be linked to the WBS code and should be relevant to the type of work being paid for.*
- 38) *I receive regular financial budget reports and generally meet monthly (and have done so for the past 12 months) with senior managers and finance business partners to go through each section's budget and the branch budget to look at any over and under spends and projected run rate. These meetings provide me with a high-level oversight of live projects and where they are up to even if my delegation is not triggered. The meetings also identify any need for any reforecasting.*
- ...
- 39) *Included in my delegation is the ability to redirect underspent money within my branch before it is offered up to corporate finance for reallocation.*
- 40) *An example of such a decision was my redirection of unspent monies from a completed Windows 7 project to fund two projects where system upgrades were required that had not been allocated specific funding.*

- 4.73 Reforms in this area were outlined by Mr Weeks in his statement at paragraph 93 (see 4.35 above) and were also discussed in TfNSW's submissions CP submissions in operation ember as follows.

²⁹ For Contract Payments delegations see pages 75, 207, 343, 655 and 787 of CP Volume 2.

5. *TfNSW notes the evidence of Ms Marks and Mr Soliman that the HVP unit was 'siloe'd' ([44]) and the concern that the budget overrun in the HVP unit 'did not raise any red flags [46].*
6. *Many of the initiatives described in this submission, including enhanced monitoring and reporting, are designed to ensure that the Director of Compliance has greater oversight of the budget of each of the units within the branch.*
7. *It is likely that some of the functions of the Heavy Vehicle Program (HVP) unit, part of the Compliance and Regulatory Services Division (CaRS) of RMS, will be transferred to the Commonwealth and the National Heavy Vehicle Regulator (NHVR). It is still not confirmed which functions may transfer to the NVHR, or when.*
8. *Additionally, the HVP unit is undergoing reform as part of the RMS and TfNSW amalgamation. In bringing together the functions of the two agencies, the reform involves a review of the HVP's functions and management structure. This reform is ongoing and the outcome of what the new structure will look like is not yet known.*

4.74 The review and reform that Mr Weeks discusses in his statement and mentioned in the paragraph immediately above resulted in the Regulatory Operations Branch referred to in paragraph 1.5 at its initial creation in February 2020 (subsequently restructured in April 2021) and discussed in greater detail in 4.98 to 4.101 below.

Any relevant audits conducted on Heavy Vehicle Unit; and

- 4.75 The primary audit conducted by TfNSW was the 2019 Deloitte report.
- 4.76 An audit was also conducted in 2016. It was not focused on contract management and expenditure. It did not identify the specific conduct allegedly engaged in by Dubois, Steyn and Soliman.
- 4.77 These and other external audits are discussed below.

2016 KPMG Report

- 4.78 In accordance with the 2015-16 RMS Internal Audit Plan, RMS commissioned KPMG to undertake an internal audit of heavy vehicle on-road enforcement program management. This audit focused on:
- (1) Governance;
 - (2) Business planning, risk management and reporting;
 - (3) On-road enforcement planning;
 - (4) Training and development;
 - (5) Technology enablers; and

- (6) Offender management and reporting.
- 4.79 The *Internal Audit Report – Heavy Vehicle On-road Enforcement Program Management* dated August 2016 (**2016 KPMG Report**) is contained in CP Volume 4 at pages 403 to 419.
- 4.80 The overall rating in relation to the adequacy and effectiveness of controls that manage key risks associated with heavy vehicle on-road enforcement program management was assessed as “moderate improvement required.” Key summary of KPMG’s audit findings are as follows:
- (1) Strategic and operational planning requires a formalised risk-based approach;
 - (2) Lack of formal reporting on outcomes achieved as a direct result of enforcement activities;
 - (3) Controls and processes over the management of heavy vehicle defects should be strengthened; and
 - (4) Opportunities for operational improvement exist.
- 4.81 The 2016 KPMG Report also outlined the agreed management actions to address the audit findings. This included now completed actions to:
- (1) Review and update the Heavy Vehicle Regulations Compliance and Enforcement Strategy to reflect a risk-based and outcomes based approach;
 - (2) Define measurable outcomes that are linked to strategic objectives;
 - (3) Expand the scope of the Authorised Inspection Scheme audits to include tracing of retained inspection records to defects cleared; and
 - (4) Establish a complaints management process within Compliance Operations and monitor trends.

2019 Deloitte report

- 4.82 Compliance Monitoring commissioned Deloitte to undertake an internal audit on procurement practice within Compliance Monitoring. The scope of that audit, settled on 29 January 2019, was to focus on the adequacy and effectiveness of controls across three panels within the Compliance Branch (Heavy Vehicle Unit Detection & Enforcement (**HVU**), Detective Enforcement Systems and Electrical & Maintenance) in the following three areas:
- (1) Governance and reporting;
 - (2) Planning and sourcing activities; and
 - (3) Contract management.
- 4.83 The *Internal Audit Report – Procurement practices within Compliance Monitoring section* dated May 2019 (**2019 Deloitte Report**) is contained in Corruption Prevention Volume 4 at pages 678 to 702.

- 4.84 Overall, Deloitte assessed the adequacy and effectiveness of controls within the Compliance Branch (including the HVU) as “moderate improvement required”. The following are internal audit findings that Deloitte considered as requiring attention:
- (1) Lack of documented justification in awarding work to some panel members;
 - (2) Panel member capacity, usage and performance is not formally monitored and reported; and
 - (3) Non- compliance with tender assessment committee composition and financial capacity requirements.
- 4.85 TfNSW agrees that some of those matters may have increased the opportunity for Mr Dubois and Mr Steyn to engage in misconduct. The 2019 Deloitte Report outlined the agreed management actions and has informed many of the initiatives outlined in this statement.
- 4.86 TfNSW has already implemented the following sourcing initiatives:
- a. Refinement of the non-compliance register:
 - i. The underlying data of the non-compliance register is distributed to agency procurement contacts in a variety of forms depending on their preference i.e. raw data, Tableau dashboard.
 - ii. Procurement staff utilise the data to determine if a deep dive review or investigation into non-compliance issues is required to determine if systemic issues exist.
 - b. Equip system alerts re non-compliant procurements:
 - i. Financial approval of shopping carts is part of the oversight that ensures compliant procurements. A shopping cart may be rejected for a variety of reasons including non-compliance, and when this happens the requestor is notified.
 - ii. Reporting on rejected carts is possible, however if notifications to an audience wider than the requestor is required, system changes would be necessary. The current initiative to enabled up-front compliance checks into the approval workflow should address this issue. Once the request is approved and sourcing completed, TSS create the purchase order and enter the compliance code, which forms the basis of compliance reporting already noted.
 - c. Training has been provided to WBS project managers on accessing budget information in Equip. This ensures WBS project managers have greater visibility over expenditure against WBS codes.
 - d. Manual Receipting (non-ARIBA vendor) Improvements:
 - i. Prompts are provided including what documents are to be uploaded in the goods receipting part of Equip.
 - ii. The required/mandatory fields for receipting via SRM confirmation and in ML81N are being reviewed. It is noted that there is no mandatory requirement for uploading attachments to the receipts, but in general, business users

(depending on what the PO is for) would upload copies of signed timesheets, claims, and invoices.

1. SRM Confirmation, mandatory fields are:

- Confirmation Name
- Reference Document
- Quantity (Confirmed Quantity) and
- Goods Recipient
- Delivery Date cannot be a future date

2. Service Entry via ML81N (in ECC):

- Short Text
- Person Responsible Internally (PRsp. Intern.)
- Reference
- Service Selection (selecting the service line you want receipt against)
- Quantity
- Document Date cannot be a future date

- e. Enhanced availability of relevant expertise to the now, Regulatory Operations Branch, including:
- i. Finance business partners have been made available for each division, including the Regulatory Operations Branch. The finance business partners support each division in its budgeting processes and enhance their capacity to comply with the Investment Governance Framework and relevant NSW Treasury policies and Circulars. The availability of such support, and the relevant policies and guidance material available through the RMS intranet page, serves to enhance the budgeting skills of divisions, including as to the ability to carry over capital expenditure budgets into the next financial year;
 - ii. A dedicated procurement advisor for the Branch.
- f. The Finance and Procurement team at TfNSW is currently progressing invoicing initiatives, including:
- i. An order splitting prevention initiative, in consultation with sourcing SMEs. This initiative will include identifying spend across the cluster by supplier and business unit;
 - ii. A review of Labour Hire renewals and extensions by regional teams to ensure the correct supplier margin under SCM0007 applied;

- iii. Compliance checks of professional service engagements against the SCM0005 Standard Commercial Framework;
- iv. Standard checks against policy for TSS managed procurement; and
- v. Flagging of non-compliant procurement by TSS.

Broader audits

- 4.87 TfNSW have also taken part in a number of whole of business audits. These include those conducted by the NSW Auditor-General and KPMG or Deloitte.
- 4.88 The NSW Auditor-General has released the following audit reports about TfNSW and its predecessor agencies:
- (1) *Financial Audit Volume 8 Focusing on Transport and Ports* dated 30 November 2011;³⁰
 - (2) *Financial Audit Volume 7 Focusing on Transport* dated 18 November 2014;³¹
 - (3) *Special Report Fraud Survey* dated 10 November 2016;³²
 - (4) *Financial Audit Volume 9 – Report on Transport* dated 1 December 2016;³³
 - (5) *Performance Audit – Sydney region road maintenance contracts* dated 15 June 2017;³⁴ and
 - (6) *Financial Audit* dated 28 November 2018.³⁵
- 4.89 As part of the RMS Internal Audit Plan 2015-16, KPMG was requested to undertake an analysis of emerging themes and risk in relation to procurement activity across TfNSW. The *KPMG Procurement Thematic Analysis* dated August 2016 is contained in CP Volume 4 at pages 345 to 347.
- 4.90 As part of the 2016-17 RMS Internal Audit Plan, KPMG was requested to undertake a review of financial budget management. The *KPMG Leave Review – financial Budget Management (Phase 1)* report dated May 2018 is contained in CP Volume 4 at pages 596 to 623.
- 4.91 TfNSW has commissioned multiple audits on specific procurement activities as well as other business units and their procurement practices. These include:

³⁰ See CP Volume 4 at page 17.

³¹ See CP Volume 4 at page 178.

³² See CP Volume 4 at page 381.

³³ See CP Volume 4 at page 420.

³⁴ See CP Volume 4 at page 523.

³⁵ See CP Volume 4 at page 624.

- (1) *KPMG Internal Audit Report – Maintenance Materials and Equipment Procurement* dated April 2016;³⁶
- (2) *KPMG Internal Audit Report – Engineering Services PSC Panels – Procurement and Contract Management* dated June 2016;³⁷
- (3) *KPMG Internal Audit Report – Hired Plant Procurement and Contract Management by Regional Maintenance Delivery* – dated November 2016;
- (4) *KPMG Internal Audit Report – Management of Purchasing Cards/Data Analytics* – dated April 2016;
- (5) *KPMG Internal Audit Report – Asset Maintenance Goods, Materials, Works and Services Procurement and Contract Management (Regional and Freight Division)* dated August 2017;³⁸
- (6) *Deloitte Internal Audit Report – M4 Smart Motorway Procurement Management* dated September 2017;³⁹
- (7) *Deloitte Internal Audit Report – Engagement and Management of Professional Service contractors and Labour Hire* dated March 2018.⁴⁰
- (8) *Deloitte Internal Audit Report – M4 Smart Motorway Procurement Management (stage 2 and 3)* – dated November 2018;
- (9) *Deloitte Internal Audit Report – Procurement and strategic sourcing compliance (goods and services)* – dated November 2018;
- (10) *Deloitte Internal Audit Report – Procurement of engineering professional services from MU Group* – dated October 2018;
- (11) *Deloitte Internal Audit Report – Procurement of professional services contractors* – dated June 2019;
- (12) *Deloitte Internal Audit Report – PSC and infrastructure contract procurement management* – dated June 2019;
- (13) *Deloitte Internal Audit Report – Procurement of Road Maintenance Goods, Materials, Works, Services and External Equipment Hire* – dated January 2020;
- (14) *Deloitte Internal Audit Report – Professional services and infrastructure contract procurement compliance* – dated October 2020; and
- (15) *Deloitte Internal Audit Report – Procurement and strategic sourcing compliance (goods and services)* – dated October 2020.

³⁶ See CP Volume 4 at page 286.

³⁷ See CP Volume 4 at page 301.

³⁸ See CP Volume 4 at page 488.

³⁹ See CP Volume 4 at page 507.

⁴⁰ See CP Volume 4 at page 569.

Any other factors that TfNSW believes contributed to the scale, extent and non-detection of the alleged corruption involving Mr Dubois and Mr Steyn.

4.92 There are multiple examples of TfNSW employees identifying when Mr Dubois and Mr Steyn have failed to comply with TfNSW policies and procedures. Once identified, TfNSW employees approached Mr Dubois and Mr Steyn in good faith and provided them with assistance to ensure future compliance with TfNSW policies and procedures. These instances are evidenced in emails contained in Corruption Prevention Volume 1 and are listed below:

- (1) Email Evans to Steyn RE_ AA Steel piping Preferred supplier (2010-04-28);
- (2) Email Dubois to Pringle RE_ Issue of Purchase Order _ WBS for HVCS Maintenance_ Mt Boyce & Marulan (2010-11-15);
- (3) Email Pringle to Dubois re Timesheets (2010-12-09);
- (4) Email Evans to Dubois et al re consistent and proper contract documentation (2011-02-04);
- (5) Email Evans to Dubois Re CM21 Insurance Compliance (2011-02-04);
- (6) Email Jabson to Dubois BMN CM21 11.2933.0406 (2011-05-23);
- (7) Email Jabson at RTA to Dubois Requesting GEC CM21 Details (2011-08-17);
- (8) Email Marks to Dubois re Work Order 17 for 10.2930.0638 (2011-09-26);
- (9) Email Jabson to Kevill requesting approval for Galston Gorge Accruals (2011-09-26);
- (10) Email Shrestha to Dubois Re PAI (Principle Arranged Insurance) (2011-09-27);
- (11) Email McCaffery to Dubois re PAI Declarations (2011-12-06);
- (12) Email Marks to Dubois - Bell HVIS TIRTL and related support contract (2012-04-13);
- (13) Email Jabson to Dubois Re PO Accruals (2021-04-19);
- (14) Email Marks to Dubois FW_ TIRTL Support contract (2021-08-13);
- (15) Email Shrestha to Dubois re Contracts declaration in Risk Console System (2013-01-16);
- (16) Email Shrestha B to Dubois re contract 13.2930.0259 declaration (2013-03-27)
- (17) Email JABSON T to RMS Finance & DUBOIS A Re CBF Project Invoice 38 (2013-06-06)
- (18) Email Fenech to RMS Re M&M PO request (2015-02-03)

- (19) Email Debnath to Dubois RE_ Shopping Cart 1000022476 (2016-07-21)
- (20) Email Walter to Dubois HVES request for performance report (2016-12-06)

The Commission would be further assisted if the report addressed what, if anything, TfNSW has done since the conduct on the part of Mr Dubois and Mr Steyn was identified to:

identify gaps in previous policies, procedures or systems;

enact new policies, procedures or systems;

ensure compliance with any such new policies, procedures or systems;

to ensure corrupt conduct allegedly committed by Mr Dubois and Mr Steyn doesn't reoccur or is detected at the first opportunity.

Further has TfNSW identified if there any residual deficiencies that exist identify, if so what future measures are needed to mitigate those deficiencies.

- 4.93 TfNSW repeats its Corruption Prevention Submissions in Operation Ember dated 31 March 2020.
- 4.94 TfNSW has implemented all the actions identified in the 2019 Deloitte Report.
- 4.95 It also repeats its introductory remarks in this document.
- 4.96 In summary, TfNSW has an action plan to support its reforms to contract management and procurement. Completed actions and steps in the process of implementation include:
 - (1) A restructured Regulatory Operations Branch, stood up in April 2021, includes a newly established Partnerships and Regulatory Assurance Directorate. This team provides assurance for regulatory activities by leading and managing key delivery partnerships with regulatory and service delivery partners, and developing and implementing robust governance frameworks to support the branch's key deliverables. This includes providing delivery assurance of service providers, managing the National Heavy Vehicle Regulator transition, and leading the Branch's planning, procurement and contract advisory and audit and investigation functions. This Directorate works closely with branch subject matter experts and corporate services business partners to plan the forward procurement pipeline and ensure compliance to TfNSW procurement processes.
 - (2) Additional procurement controls in the form of vendor due diligence and vendor creation controls. Funding has been obtained for this financial year to implement supplier risk modules as part of TfNSW's existing Ariba contract management system. The project is currently at the discovery phase. A discovery assessment is required to align the Commercial and contract management requirements including related category strategic requirements with the Supplier Lifecycle and Performance capability and the Supplier Risk capability.
 - (3) Implementation of a TfNSW Goods and Services Procurement Standard in December 2020, replacing previous TfNSW and RMS procurement frameworks. This provides a consistent principles based approach to procurement of goods and services and infrastructure across TfNSW.

- (4) Additional procurement controls through procurement analytics. The new TfNSW Procurement data analytics function is currently being set up with appropriate access levels in the relevant procurement systems. The first report into vendor spend and Purchase Order volumes will look at data for Q1 of FY21/22, and should be completed in October 2021. Reporting on vendor spend and Purchase Order volumes, along with relevant insights, will occur on a quarterly basis as a minimum.
- (5) Reconfiguring systems and implementing mechanisms to identify non-compliance.
- (6) Presentations to senior leadership teams on procurement rules and processes including those applying to professional service contracts.
- (7) Continuation of a data analytics program by the internal audit function to monitor trends and fraud risks across the procurement lifecycle and to monitor the use of purchase cards.
- (8) Appointment of a Manager Procurement Processes and Systems and a Manager Procurement Strategy and Governance accountable for ensuring procurement policies and systems are fit for purpose, understood and achieving their intended outcomes.
- (9) Establishment of a team of procurement advisors responsible for assisting senior management plan and undertake procurement activities in an ethical and effective manner.
- (10) Continuing to invest in internal audits relating to procurement to provide assurance over how procurement activities are managed.
- (11) Actions being progressed to improve the level of reporting on procurement spend to better enable management to monitor and understand trends relating to procurement activity.

4.97 The following activities have been undertaken to enhance fraud and corruption prevention:

- (1) Creation of cluster wide (excluding Sydney Metro) Fraud and Corruption Prevention and Workplace Conduct and Investigations teams. In September 2020, TfNSW initiated the Corporate Functions Review which resulted in:
 - (a) Merging the fraud and corruption prevention functions of TfNSW, Sydney Trains and NSW Trains to become a single centralised function servicing all Transport cluster agencies with the exception of Sydney Metro; and
 - (b) Merging the investigations functions of TfNSW and Sydney Trains to become a single centralised function, servicing all Transport cluster agencies.

This merger and centralisation of these functions has resulted in enhanced resourcing, streamlining of various processes and consistency in messaging. It has also led to the development of a new Fraud and Corruption Strategy due to be approved and endorsed this financial year with a focus on education and awareness, assurance and compliance, reviewing fraud and corruption risk and controls and reviewing the risk remediation activities across the Transport cluster.

- (2) All allegations received by TfNSW (including the former RMS) that involve corruption are reported to the Commission through a quarterly schedule and more

serious and systemic allegations and complaints escalated to the Commission when they are identified.

- (3) Participation of over 8,152 staff in probity and ethics in procurement training since 1 July 2018.
- (4) Continued operation of the ethics hotline available to staff for reporting corruption issues in a confidential manner.
- (5) The implementation of a new Mandatory Training Framework which has a number of objectives including among other things, reducing the likelihood of high-consequence events and embedding key behaviours and standards across the workforce. The following new training modules which form part of the Transport Essential training program have been recently released:
 - (a) Living our code of conduct – mandatory training for all new starters and a refresher for all current staff;
 - (b) Professional ethics – mandatory refresher training every two years for non-frontline staff;
 - (c) Professional ethics for leaders – mandatory training for all new leaders; and
 - (d) Professional ethics for leaders (refresher) – mandatory refresher training for leaders every two years.
- (6) Development of a single Declarations Portal which integrates staff reporting of conflicts of interest, gifts and benefits and senior service declarations. The technology solution will be completed and rolled out to staff in late 2022 – early 2023.

Please advise the current status of the Heavy Vehicle Unit and changes to its status since the end of time period applicable to this investigation.

- 4.98 The restructured Regulatory Operations branch stood up its structure in April 2021. This included 6 new Directorates:
- (1) Heavy Vehicle Safety & Compliance
 - (2) Regulatory Systems & Technology
 - (3) Customer Licensing
 - (4) Customer Performance & Improvement
 - (5) Vehicle Safety
 - (6) Partnerships and Regulatory Assurance
- 4.99 Many of the functions performed by the former Heavy Vehicle Programs Unit now sit within the Regulatory Systems & Technology Directorate.

4.100 The Partnerships and Regulatory Assurance Directorate has been established to provide assurance for regulatory activities by developing and implementing governance frameworks to assist the branch in achieving its key deliverables. Within this unit the Assurance & Agreements team has a dedicated procurement advisory function, commercial and governance resources and reporting functions. This Directorate works closely with branch subject matter experts and corporate services business partners to plan the forward procurement pipeline and ensure compliance to TfNSW procurement processes.

4.101 Some of the key functions of the Assurance & Agreements team include:

- (1) Oversight of procurement projects and initiatives
- (2) Quality Assurance of any requests to the Executive Director for procurement approvals
- (3) Asset Management review when end of life product procurement is being considered
- (4) Maintaining contract management records
- (5) Monitoring contractor performance (this function is still in development)
- (6) Advising on contract variations

5 Recovery processes

5.1 TfNSW has also taken steps to recover the loss and damage suffered arising from the matters the subject of the Commission's Operation Paragon investigation (and the Commission's previous investigation, Operation Ember).

Novation Engineering & Stephen Thammiah (Novation Parties)

5.2 [Redacted text block]

5.3 [Redacted text block]

[REDACTED]

AZH Consulting, Ali Hamidi & Zoe Hamidi (AZH Parties)

- 5.4 In a letter to the AZH Parties dated 21 May 2019, RMS made allegations that the conduct of the AZH Parties, as uncovered by the Commission's Operation Ember investigation, caused RMS loss and damage. On 24 May 2019, RMS commenced proceedings in the Supreme Court of New South Wales against the AZH Parties to recover the monies paid to the AZH Parties. On the same day, the RMS obtained freezing orders against the AZH Parties.
- 5.5 On 10 June 2020, RMS and AZH Parties entered into a Deed of Release by which AZH Parties agreed to pay \$777,768.16. On that date, 10 June 2020, RMS received \$777,768.16 from the AZH Parties.
- 5.6 RMS filed a notice of discontinuance in relation to the Supreme Court proceedings against the AZH Parties on 12 June 2020. On 23 June 2020, orders were made by consent that the freezing order made on 24 May 2019 against the AZH Parties be dissolved.

Samer Soliman

- 5.7 As part of Operation Ember, ICAC investigated whether, between July 2015 and February 2019, RMS employees Samer Soliman and Jainesh Singh partially and dishonestly exercised their official functions in relation to the awarding of contracts to Novation Engineering and AZH Consulting. It is alleged that Mr Soliman received a financial benefit for his role in helping to secure the work awarded to Novation Engineering and AZH Consulting.
- 5.8 In a letter to Mr Soliman dated 13 September 2019, RMS made allegations that the conduct of Mr Soliman caused RMS loss and damage. Whilst Mr Soliman did not admit the allegations, RMS and Mr Soliman entered into a Deed of Release on 20 December 2019 by which Mr Soliman agreed to pay RMS the sum of \$432,500. On that date, 20 December 2019, RMS received \$432,500 from Mr Soliman.

Craig Steyn & Alexandre Dubois

- 5.9 On 2 June 2021, RMS commenced proceedings in the Supreme Court of New South Wales against Mr Craig Steyn to recover the kickbacks paid by RMS contractors to Mr Steyn and representing a loss of government funds. Freezing orders were obtained to secure recovery and the matter is listed for directions on 16 November 2021.
- 5.10 From conducting searches into Mr Alexandre Dubois' assets and liaising with the NSW Crime Commission, TfNSW is aware that the NSW Crime Commission have frozen the assets of Mr Dubois. Due to actions taken by the NSW Crime Commission in relation to Mr Dubois, TfNSW has not taken steps to recover monies and assets from Mr Dubois.

6 Endorsement

- 6.1 This document is endorsed by TfNSW.
- 6.2 TfNSW remains ready and willing to assist the Commission with its important work in relation to Operation Paragon, including by way of the provision of further information if necessary.



Solicitor for TfNSW
28 September 2021

