

Misconduct within the Department of Communities relating to country building projects

7 April 2022



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CHAPTER ONE

Introduction

- [1] Responsibility for providing State housing in regional Western Australia passed through a number of agencies before settling in the Department of Communities in 2017.¹
- [2] For convenience this report will refer to 'Housing' as a term covering work done under whatever department was responsible during the period 2010-2020.
- [3] Following the arrest of the Assistant Director General of the Department of Communities in 2019 on corruption charges the Department of Communities undertook a review of all business areas including Housing.²
- [4] Mr David Leszenko, Acting Director Construction, enforced policies and procedures in relation to contracts and encouraged his staff to report anomalies.
- [5] A Housing official noticed discrepancies in documentation about a country housing project and brought it to the attention of Mr Leszenko. The Commission investigation and this report are the result of that action. Housing is to be commended for the steps that have been taken to identify and reduce corruption. The officer's actions were appropriate and are acknowledged.
- [6] This report examines the behaviour of Mr Mark Ainslie, a senior project delivery manager with Housing, from his appointment on 1 October 2013 until his resignation took effect on 5 March 2020 following receipt of a disciplinary letter.
- [7] It details a public officer corruptly taking advantage of his position in relationships between Mr Ainslie and Mr Peter Haxby, HRD Construction Management, and Mr Nicholas Rumenos, head of Griffin Plant Hire Pty Ltd trading as Griffin Civil. Both Mr Haxby and Griffin Civil were awarded lucrative contracts by Mr Ainslie. In return, Mr Ainslie received payments from both men. The Commission is of the opinion that Mr Ainslie's conduct amounts to serious misconduct:

*A public officer corruptly takes advantage of the public officer's employment as a public officer to obtain a benefit for himself.*³

¹ Department of Housing; Housing Authority.

² On 19 November 2021 Mr Paul Whyte was imprisoned for a term of 12 years with parole eligibility.

³ *Corruption, Crime and Misconduct Act 2003*, s 168 (CCM Act) s 4(b).

- [8] In Mr Haxby's case his agreement with Mr Ainslie required payment of 10 per cent of the value of every contract awarded by Mr Ainslie or another Housing employee.
- [9] Mr Ainslie was paid \$65,000 by Griffin Civil into his bank account and a further \$10,000 into a debit card account for his use. Mr Rumenos and Mr Ainslie claim that any payments received by Mr Ainslie were for work he had undertaken for Griffin Civil. There was no written contract. Permission for secondary employment was never sought from Housing. Mr Rumenos made payments to his brother and directed him to forward the money totalling \$65,000 to Mr Ainslie's bank account. Mr Rumenos denies this was an attempt to disguise payment. Invoices submitted by Mr Ainslie for work alleged to have been completed are not supported by confirmatory material. If any meaningful work was undertaken, which the Commission doubts, its purpose was to enable Mr Rumenos to pay Mr Ainslie \$75,000 in a way that would avoid detection.
- [10] Mr Ainslie had considerable discretion over the award of contracts for construction, renovation and repair of country housing. The projects were predominantly social housing projects in regional and Aboriginal communities. He was not held to account until Mr Leszenko began inquiries. Mr Ainslie then resigned. This report should serve as a warning to all other departments to ensure they have strong corruption prevention controls. Having procedures is not enough. They must be followed and enforced. Is every CEO confident that the events outlined in this report could not happen in their own department?

The relationship between Mr Ainslie and Mr Haxby: 10 per cent of every contract

Mr Ainslie

- [11] Mr Ainslie has relevant trade qualifications in building and construction. From 1985 to 2000 he was employed at the Department of Training as a lecturer at TAFE moving to Head of Department and Director of Construction.⁴
- [12] It was here that he met Mr Haxby and they formed a relationship with Mr Haxby which Mr Haxby describes as collegial rather than personal. He considers Mr Ainslie to be an acquaintance.
- [13] After working for eight years in the construction industry Mr Ainslie worked full-time in his own business, A.F.T. Group (WA) Pty Ltd (AFT), from June 2008 until it was effectively liquidated on 30 September 2013. His appointment to Housing was delayed for a time but on 1 October 2013 Mr Ainslie commenced as a senior program delivery manager. In this position Mr Ainslie held a delegated authority to engage contractors for amounts less than \$250,000. This made him a public officer within the Commission's misconduct jurisdiction.
- [14] The collapse of AFT had a devastating effect on Mr Ainslie's personal finances and within six months of starting at Housing he had personal debts of over \$137,000 and a home loan of approximately \$372,000.
- [15] Mr Ainslie was reliant on his own and his wife's salary. Their combined salaries were insufficient to easily relieve their debts. Less than two months since commencing at Housing the HSBC Bank demanded payment within seven days of an amount of \$26,653.14 owing from a personal credit card.
- [16] In short, Mr Ainslie was highly motivated to find sources of extra money. He was also highly unlikely to be loaning money to others.

Mr Haxby

- [17] Mr Haxby has relevant qualifications in building and construction. Mr Haxby was a lecturer, senior lecturer and head of department at TAFE for 24 years.
- [18] After resigning from TAFE he worked for Mr Ainslie's company. In evidence under oath Mr Haxby said he worked for eight months for AFT while a resume prepared by him stated that he worked for three years. He moved to Melbourne for a time after AFT, employed in the construction industry, particularly in training roles.

⁴ Institute of Technical and Further Education (TAFE).

- [19] By 2013 Mr Haxby was looking for employment in Western Australia. The role of a Housing superintendent was one which suited him.

The role of superintendent

- [20] A superintendent is Housing's representative at a construction site. A superintendent makes regular visits to check progress, ensure work is being performed satisfactorily and consider variations. A superintendent will generally report back to a Housing project manager.
- [21] The work may involve the superintendent in substantial travel throughout Western Australia.
- [22] Housing employs project managers and superintendents but not in sufficient numbers. They are augmented by approved contractors who are not public officers. Approved contractors may then be invited to quote for specific contractual work. Work is generally assigned by a Housing project manager such as Mr Ainslie. During the period of his employment there was little oversight as to how Mr Ainslie allocated jobs among those who submitted quotes to obtain superintendent work.

Mr Ainsley and Mr Haxby agree to a corrupt bargain

- [23] About three weeks after he commenced work as a project manager Mr Ainslie approached Mr Haxby with a proposition.
- [24] Mr Ainslie would do his best to get Mr Haxby (trading as HRD Constructions) appointed as a superintendent approved by Housing to tender or quote for work. Once he was appointed, in return for giving Mr Haxby work, Mr Ainslie would receive 10 per cent of any contract Mr Haxby won from Housing whether involving Mr Ainslie or another project manager. And so a corrupt bargain was struck.
- [25] The first step was to have Mr Haxby approved by Housing as a contractor. Mr Ainslie helped Mr Haxby prepare documents for appointment as a superintendent. One important document was a resume outlining Mr Haxby's work and experience. Mr Haxby included an inflated timeframe for work he had done with AFT as part of his background and experience. This was an important fact for a resume. But disclosing it would expose the lengthy prior relationship and Mr Ainslie to the suggestion that he was favouring HRD Constructions. When Mr Ainslie allocated jobs among those who submitted quotes to obtain superintendent work, Mr Ainslie would have to declare a conflict on all contracts won by Mr Haxby. Under Housing's conflict policy he probably would have been precluded from awarding contracts to Mr Haxby. Mr Haxby asked Mr Ainslie to check his resume to ensure Mr Haxby stood the best chance of appointment. Mr Ainslie emailed back with comments and

asked Mr Haxby to remove Mr Ainslie as a reference and to edit his criteria using examples that relate to the work Housing required.⁵

- [26] Mr Haxby duly made changes to his resume before emailing it to Housing as part of an expression of interest as an approved vendor to supply superintendent representative services.⁶
- [27] The resume was false. Not only did he remove Mr Ainslie as a reference, Mr Haxby removed work which he had described as project manager for 'AFTGroup'. Mr Haxby kept the same description of the work but instead described it as having been performed for a different company, Clarke Constructions. The falsity hid the relationship between the two men.
- [28] Mr Haxby registered a business name, HRD Construction, to trade with Housing. He was the only employee. On 12 May 2014 HRD Construction became an approved vendor on Housing's system and Mr Ainslie emailed Mr Haxby a copy of the confirmation with a two word note 'FYI mate'.⁷ Two days later Mr Ainslie gave Mr Haxby some extra information including an internal Housing document required by all superintendent representatives when performing a site review as well as a general guide to the functions of a superintendent representative.
- [29] Mr Ainslie was now in a position to be involved with all procurement contracts that HRD Construction were tendering for and could influence decisions in favour of HRD Construction, especially when those contracts were for amounts less than \$50,000.
- [30] A Housing project manager such as Mr Ainslie has authority to approve contracts under \$50,000 without obtaining competitive quotes. For contracts between \$50,000 and \$250,000, three competitive quotes are required (except for an Aboriginal corporation). For contracts in excess of \$250,000 an open tender process is required and a panel formed to evaluate the tenders. In practice the project manager has considerable latitude in selecting a contractor for a particular project.
- [31] The misconduct risks are obvious. Unless there are proper controls, a project manager can award contracts under \$50,000 without scrutiny. Even if a quotation exceeds \$50,000 a project manager can manipulate the process with a compliant contractor. The contractor submits a quote below \$50,000 which is accepted. The contractor then applies for variations to bring the total value above \$50,000. The variations are approved by the project manager. This is known as invoice splitting and is forbidden.

⁵ Email Mr Ainslie to Mr Haxby 28 October 2013 (Exhibit No. 00764-2020-0031).

⁶ Email Mr Haxby to Mr Ainslie 20 January 2014 (Exhibit No. 00764-2020-0032).

⁷ Exhibit No. 00764-2020-0409.

- [32] A project manager (or anyone with contractual authority) must declare in writing any conflict of interest which might lead to actual or perceptual bias. Mr Ainslie consistently did not declare any actual or potential conflict of interest. Despite his friendship and financial relationship with Mr Haxby Mr Ainslie never did so. Instead he actively concealed any relationship and repeatedly failed to declare a conflict when awarding work to Mr Haxby. This was no error.

Mr Ainslie gives Mr Haxby a helping hand

- [33] Because of his financial situation Mr Ainslie was highly motivated to get Mr Haxby work at Housing. Mr Haxby and Mr Ainslie met with one another either at the Grosvenor Hotel, Sienna's Leederville or the Mantra on Hay on a number of occasions between November 2016 and July 2019. The purpose of these meetings was to discuss current projects at Housing in which Mr Haxby had an interest, and corrupt payments to Mr Ainslie.⁸
- [34] HRD Construction was entitled to be paid under Housing's superintendent services agreement, which allowed for progressive part payments at intervals after an invoice had been delivered for services provided and in a sum relative to the inspected building work by the building contractor. It was not usual or expected for HRD Construction to be paid in advance for work yet to be performed, nor was it expected that contractors communicate directly with decision-makers like Mr Ainslie through their personal or direct email contacts and yet Mr Haxby did.
- [35] On 13 August 2014 Mr Ainslie assisted Mr Haxby with an application to quote for a project at Jankurna Street, Karratha. The assistance involved Mr Ainslie providing specific costing for the job.⁹ Mr Haxby did not win this job.
- [36] During August 2014 Mr Ainslie also assisted Mr Haxby to prepare quotations and proposals for services for two construction sites in Paraburdoo and Mullewa. Mr Haxby did not win the Paraburdoo job. In most instances where Mr Ainslie provided his assistance HRD Construction was successful in obtaining contracts.
- [37] When Mr Ainslie was the project manager for a job won by HRD Construction Mr Haxby would send invoices directly to Mr Ainslie. On 14 October 2014 Mr Haxby invoiced Housing for \$3,600 for the Mullewa project, \$2,950 for the Katanning project and \$800 for a project in Norseman. Given the low level payment required for each of these invoices and the financial delegation, Mr Ainslie did not need to do anything other than stamp each invoice with a direction to the Housing procurement division that they be paid.

⁸ P Haxby transcript, private examination, 16 December 2021, p 49.

⁹ Exhibit No. 00764-2020-0410 and 00764-2020-0034.

- [38] Between 12 August 2014 and 22 December 2014 HRD Construction received 14 separate payments for invoices presented for payment totalling \$34,529.¹⁰
- [39] By 24 December 2014, two days after the last payment from Housing that year, Mr Haxby had deposited \$3,300 into two accounts controlled by Mr Ainslie. This represented approximately 10 per cent of the invoiced amount and was in accordance with their agreement.

Invoice splitting

- [40] As well as assisting Mr Haxby with quotation comment and content, Mr Ainslie also engaged in invoice splitting. A contractor might seek payment for a variation in the contract. There are many legitimate reasons for a variation—such as expansion of the work originally contracted and unexpected issues that arise. But a variation cannot be used for the dominant purpose of inflating a contract beyond the amount of \$50,000 or \$250,000 when a different procurement process would be required.
- [41] Manipulating controls in this way is colloquially known as invoice splitting and is forbidden. It defeats the purpose of the delegated limits. The approval of a variation invoice for payment is, by definition, an additional payment to the contractor on top of the quoted price. This was a mechanism for Mr Ainslie to keep directly sourcing HRD Construction without question. There were no controls in place to prevent that occurring. Housing relied on the project manager, who was leading the procurement process, to 'do the right thing'.
- [42] Mr Ainslie suggested to Mr Haxby that quotes submitted by HRD Construction for consideration for particular jobs should be kept below the dollar value of \$50,000 to avoid the requirement for three quotations. Mr Ainslie was permitted to directly source a supplier without putting the job 'to market' for work below the \$50,000 threshold. The project in Patupis Street, Eucla, in April 2019 is an example where HRD Construction was directly sourced as a contractor without a competitive quote process. The contract was awarded for \$42,690 to HRD Construction but a later unnecessary variation for \$8,760 bumped the total cost over the \$50,000 critical point when competitive quotes should have been obtained.
- [43] On 29 May 2019 a contract for a project at Millard Road, Fitzroy Crossing, was awarded to HRD Construction for \$46,500. It was directly sourced by Mr Ainslie. Mr Ainslie approved variations in June and September 2019 for a total value of \$12,700.¹¹
- [44] Mr Haxby was also a beneficiary of a Coral Bay project to be discussed later. He was given superintendent representative work at the instigation of

¹⁰ Exhibit No. 00764-2020-0605.

¹¹ Exhibit No. 00764-2020-0589.

Mr Ainslie.¹² HRD Construction was certified as being allowed five visits to the Coral Bay site. However, there is no evidence that Mr Haxby attended. Mr Haxby gave evidence that he did attend on one occasion. Mr Haxby was not aware that Mr Ainslie approved the quotation however HRD Construction still accepted payment.

- [45] Between 6 February and 14 May 2015 HRD Construction was paid \$26,306 in total by Housing for 13 separate invoices. On 14 May 2015 \$2,500 was transferred from HRD Construction's business advantage account to Mr Ainslie's personal bank account in furtherance of their agreement. Between 14 May and 4 June 2015 HRD Construction was paid \$19,693.50 in total by Housing through eight separate invoices. On 11 June 2015 another deposit was made to Mr Ainslie's personal bank account for \$2,500 and again another \$4,000 on 6 July 2015.
- [46] Between 11 June and 3 July 2015 Housing made other payments to HRD Construction for invoices submitted to a total value of \$18,000. And so it continued.
- [47] In total, between 12 August 2014 and 28 January 2020, HRD Construction invoiced \$1,157,698.85 to Housing. Mr Haxby paid Mr Ainslie during the same period \$123,500 which is very close to the agreed 10 per cent.¹³
- [48] Mr Haxby told the Commission that he had put another \$11,500 into a debit card savings account for Mr Ainslie's use. During a meeting at the Grosvenor Hotel on 10 July 2019 Mr Haxby handed Mr Ainslie his own debit card which Mr Ainslie used for purchasing goods and withdrawing cash totalling an additional \$11,500.
- [49] In evidence Mr Haxby said that whilst he didn't knowingly add 10 per cent to the cost of the invoices that he presented for payment, he was acutely aware that he needed to make some money from the arrangement and accommodate money to be paid to Mr Ainslie.

¹² Exhibit No. 00764-2020-0023.

¹³ Payments to Mr Ainslie by Mr Haxby totalled \$123,500, which represents 10.67 per cent of the payments made by Housing to Mr Haxby, that is, \$1,157,698.85.

CHAPTER TWO

Mr Ainslie and Mr Haxby agree to lie about their arrangement

- [50] Mr Ainslie and Mr Haxby were clearly aware their agreement acted as a bribe. To frustrate any potential enquiry, they agreed on a false story to explain the payments made by Mr Haxby to Mr Ainslie as legitimate.
- [51] The initial story was that when Mr Haxby had been in financial difficulties around 2012 Mr Ainslie had loaned him \$30,000 to assist with his divorce. The second part of the story was that Mr Haxby had loaned Mr Ainslie \$15,000 'piecemeal' in 2018 for a trip to Bali and to purchase a vehicle. Mr Ainslie had 'paid back' this loan in June-July 2021. To reinforce the story Mr Ainslie directed Mr Haxby to 'put it down as "loan" in case anyone saw the transaction'.¹⁴
- [52] The third part of the story was that Mr Haxby had paid amounts of money to Mr Ainslie for work the latter had done on Mr Haxby's house or other jobs.
- [53] Even before Mr Haxby and Mr Ainslie were subject to a searching examination by counsel assisting the Commission, the story lacked plausibility.
- [54] Mr Haxby in fact paid Mr Ainslie \$123,500. The most generous acceptance of the story they concocted left a considerable shortfall between the financial and the real.
- [55] At the time Mr Ainslie purportedly loaned Mr Haxby \$30,000, Mr Ainslie was under great financial stress. He lacked sufficient funds to make such a loan.

The lie unravels

- [56] When the Commission conducts an investigation it brings considerable resources to bear. For many months investigators and analysts pore over financial records and other material including emails, SMS messages and other documents. Bank statements are routinely obtained.
- [57] In the course of an investigation a witness may be summoned to give evidence on oath or affirmation. There are severe penalties for giving false and misleading testimony.¹⁵
- [58] The Commission appoints an experienced lawyer as Counsel to assist the Commission in the examination of a witness. Counsel's role is to examine a witness by asking questions and tendering evidence. The Commissioner

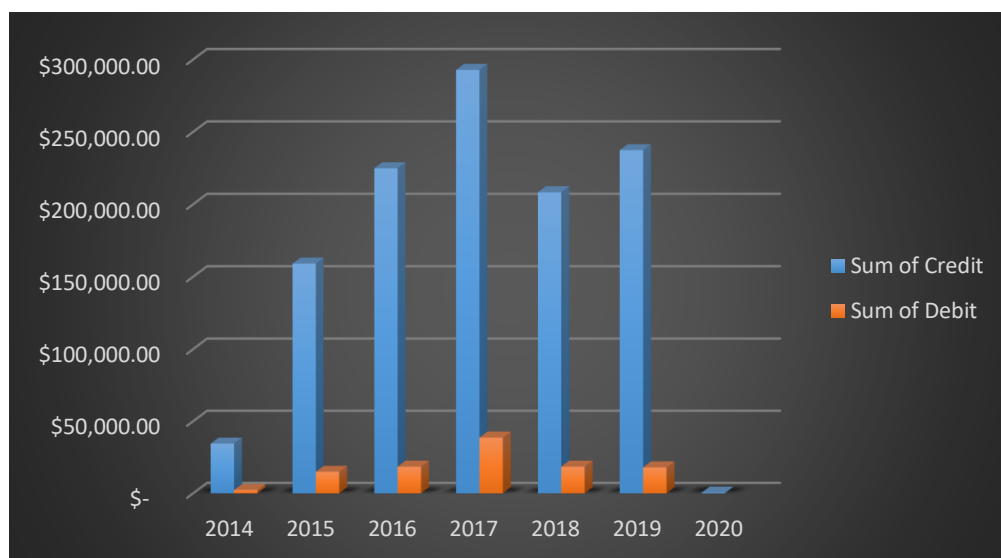
¹⁴ P Haxby transcript, private examination, 16 December 2021, p 9.

¹⁵ *Corruption, Crime and Misconduct Act 2003*, s 168.

presides over the examination. A witness such as Mr Haxby may be unaware of information the Commission has gathered. Or they may underestimate the extent to which an investigation has proceeded before an examination. Any attempt at prevarication is likely to be exposed. So it was in this case.

Mr Haxby's examination by the Commission

- [59] Mr Haxby was summoned to a private examination on 6 December 2021. Despite every witness being advised of their entitlement to legal representation, Mr Haxby chose not to have a lawyer.
- [60] During his examination Mr Haxby persisted with the false story for some time growing visibly more uncomfortable as his explanations to Counsel became less plausible.
- [61] Eventually, Mr Haxby was shown the graph below, prepared by Commission investigators, illustrating between the period of 12 August 2014 to 28 January 2020 HRD Constructions was paid \$1.157 million by Housing and in turn HRD Constructions paid \$111,000 to Mr Ainslie accounting for 9.59 per cent of the payment HRD Constructions had received from Housing. As it turned out, the graph shown to Mr Haxby was incomplete because in the course of his evidence he disclosed a further \$1,000 payment to Mr Ainslie. He also gave evidence that he had given Mr Ainslie a debit card into which he had deposited \$11,500.



Graph No. 1: Payments from Housing and payments to Mr Ainslie by Mr Haxby.

- [62] The graph had a dramatic effect. After expressing disbelief about the amount of money Mr Haxby said:

I can - I can change what I said. I was trying to protect him a little bit, but, ah, he just, ah, wanted, ah, 10 per cent of the takings, what I got.

*... he's a good man ...*¹⁶

- [63] Mr Haxby then admitted part of his earlier evidence was false. He said that the explanation about the \$30,000 was untrue as was the explanation of \$15,000.¹⁷
- [64] Mr Haxby also gave evidence about work that had been done on his home property by Mr Ainslie. Mr Ainslie had been paid \$500 in cash. Mr Haxby had secured some work in Norseman. He subcontracted Mr Ainslie who was paid directly by the owner. This evidence negated an explanation that payments were relating to work supposedly done by Mr Ainslie to assist Mr Haxby.
- [65] Mr Haxby's examination that day ended and he was strongly advised to seek a lawyer.
- [66] When Mr Haxby's examination resumed on 16 December 2021 he was legally and competently represented. With the assistance and advice of his solicitor, Mr Haxby cooperated in great detail with the Commission. Mr Haxby produced documents corroborating the true version of events. Because of his subsequent co-operation and truthfulness, the Commission has concluded that it is not in the public interest to recommend a prosecution of Mr Haxby for initially giving false testimony.¹⁸
- [67] Mr Haxby's case illustrates the importance for a witness to obtain competent legal advice before giving evidence, not halfway through when the damage is done.
- [68] Throughout the examination Mr Haxby insisted that he had in fact carried out his superintendent tasks competently and conscientiously. In his response to the draft report Mr Haxby insisted that at all times the work he performed and the amounts he was paid was for value. Conceding his misconduct he never shirked his responsibility to attend to the tasks he was engaged to perform. This is not entirely true as on some occasions he was paid in advance and had not completed site inspections. On other occasions he was given site inspections by Mr Ainslie beyond those normally required. In his response Mr Haxby asserts that he genuinely believed that he was entitled to charge for administrative work performed notwithstanding that he may not have completed all site inspections.

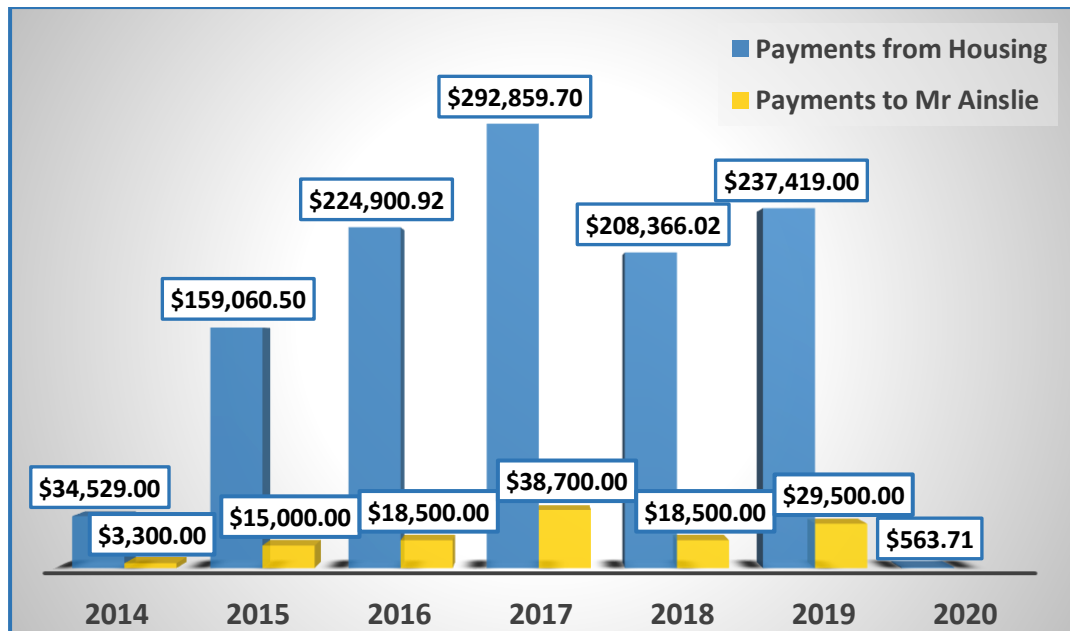
¹⁶ P Haxby transcript, private examination, 6 December 2021, p 97.

¹⁷ P Haxby transcripts, private examinations, 6 and 16 December 2021, p 99 and p 21 respectively.

¹⁸ CMM Act, s 168.

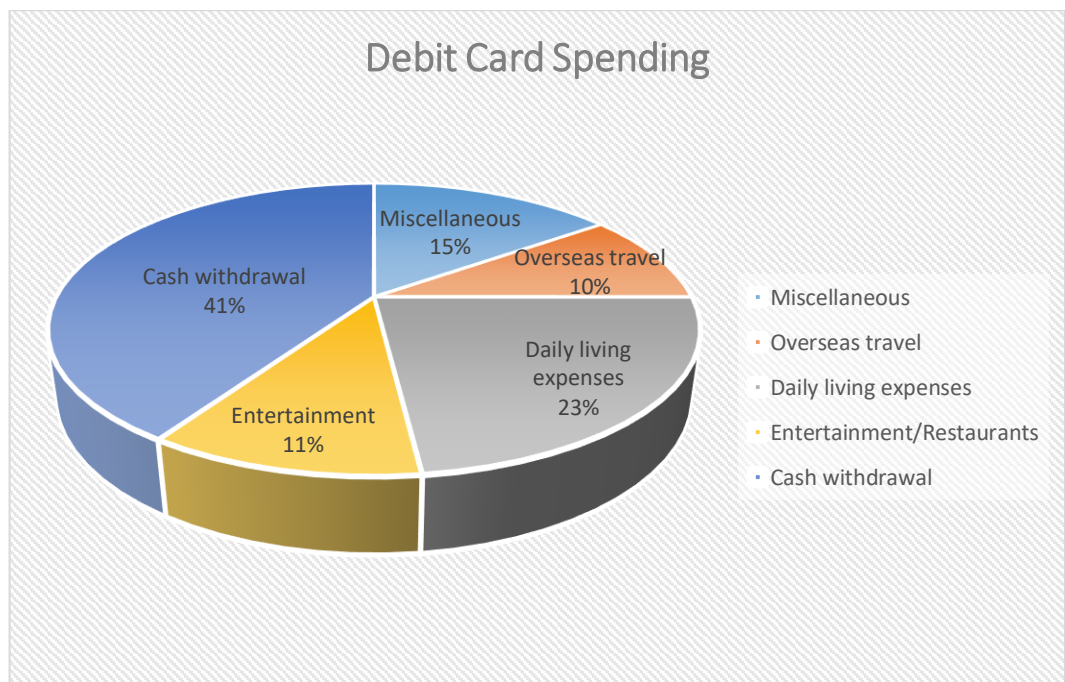
- [69] If Mr Haxby submitted a quote which included amounts for site visits, Housing would be entitled to believe he had made these visits when he submitted invoices. There is no way to test whether Housing received value for accepting the quotation.
- [70] However, the focus for this investigation is not whether Mr Haxby competently performed the duties which were allocated to him but on the sustained behaviour of a public servant, Mr Ainslie, who enriched himself without regard to the public purse. It can never be known whether Mr Haxby performed his work adequately winning new contracts because of his good performance or whether he was given work because Mr Ainslie was assured of 10 per cent commission each time.
- [71] In his response Mr Haxby denies inflating his quotations to cover the 10 per cent he was to pay Mr Ainslie. The Commission concludes, that the contracts were inflated to cover the extra 10 per cent.
- [72] On 13 August 2014 Mr Ainslie emailed Mr Haxby:
- Go in at \$2080 per visit x 12 visits plus 1 PC visit and 1 final defect visit total 14 visits.*
- Total \$29,120 includes the 10????*
- [73] On 16 December 2021 Mr Haxby was examined about whether he itemised a cost per visit in his invoices. After explaining a conversation he had with an officer from Housing he said:
- So I understood a little more of that procedure. So that's why my invoices were not say for \$40,000 they were not eight visits at \$5,000 an invoice there might be an 8,000 or a 12,000 and that depended on also my cash flow, upcoming flights and accommodation, all those types of things, and also payments to Mr Ainslie.*
- The dollars I put in, I was acknowledging you know, I had to pay 10%.¹⁹*
- [74] Mr Haxby agreed with Ms Nelson, counsel assisting, that he invoiced Housing depending on his personal cash flow and what Mr Ainslie's demands were.
- [75] Graph No. 2 summarises the total payments made by Mr Haxby to Mr Ainslie.

¹⁹ P Haxby transcript, private examination, 16 December 2021, p 12.



Graph No. 2: Total payments from Housing and payments to Mr Ainslie by Mr Haxby.

[76] Graph No. 3 shows how Mr Ainslie used Mr Haxby's debit card for his own use with funds supplied by Mr Haxby and Mr Rumenos.



Graph No. 3: Debit card payments and expenditure.

Mr Ainslie's examination by the Commission

[77] Mr Ainslie was examined on 8 December 2021. He also did not seek to be legally represented.

[78] For some time Mr Ainslie persisted with the explanation that he had advanced \$30,000 to Mr Haxby to help the latter out of financial difficulties. Mr Ainslie was unaware that Mr Haxby had recanted.

[79] Mr Ainslie's account was not initially challenged. However, when it became clear that Mr Ainslie was persisting in giving false evidence counsel assisting, Ms Nelson, focussed on the lie:²⁰

Did you need him to get work so that you could get money from him? --- I can't recall - no, I don't think so, but I can't recall fully.

[80] After further questioning:²¹

Mr Haxby has told the Commission that you and he had an agreement whereby he would pay 10 per cent of all payments he received from the Department [Housing] for work that he did. Was there such an agreement, Mr Ainslie? --- There may have been, but I did not enforce it, as such. I may have discussed it with him, but I didn't enforce it at all.

[81] Counsel asked again:²²

Was there an agreement between you and Mr Haxby whereby he would pay you personally 10 per cent of all the money he received from the Department [Housing] for work performed by HRD? --- I think so, yes.

[82] Mr Ainslie rejected accusations that his actions were improper.

You also knew that you would get paid by Peter?---You keep referring to this, but that wasn't my influence ... I didn't care about the money.

... The money didn't come into my head, honestly. I'm getting quite annoyed with this now. It did not come into my head.

Well, you can say that all you ... [want], but the fact is that you got 10 per cent out of every contract that he did?--- Well – yeah. The first port of call was always to make the job go as well as I possibly could. That was always my first intention.²³

[83] Mr Ainslie said he used money obtained from Mr Haxby for general living expenses. He thought he would get some money back from Mr Haxby when he awarded him work. On occasions when the money did not come quickly enough Mr Ainslie would ask.

[84] Although at various times Mr Ainslie was equivocal about the arrangement, Mr Haxby's testimony, the documentary evidence, the graph and Mr Ainslie's evidence affirmatively persuades the Commission that:

²⁰ M Ainslie transcript, private examination, 8 December 2021, p 25.

²¹ M Ainslie transcript, private examination, 8 December 2021, p 26.

²² M Ainslie transcript, private examination, 8 December 2021, p 27.

²³ M Ainslie transcript, private examination, 8 December 2021, p 57.

- There was an arrangement between the two men for Mr Ainslie to receive 10 per cent of every job awarded to Mr Haxby by Housing.
- Mr Ainslie acted corruptly in entering into the arrangement.

[85] Mr Ainslie's credibility was adversely affected by other matters.

[86] His explanation about the request for Mr Haxby to remove Mr Ainslie's name as a reference on Mr Haxby's original resume makes no sense. He said he didn't want it to be listed:

... to be totally neutral ...

... so he can get in on his own two feet without having me as a reference ²⁴

[87] The better explanation is that he was actively concealing his relationship with Mr Haxby so that he would not have to declare conflicts on each occasion that he awarded Mr Haxby work or sat on a panel to assess tenders, one of which might be from Mr Haxby.

[88] In an application for Mr Haxby to obtain accreditation as a building practitioner in Tasmania Mr Ainslie submitted a second reference statement in a fictitious name. He recommended Mr Haxby as a reputable building superintendent. Mr Haxby did not proceed with the application.

[89] Mr Ainslie's use of a false name in the reference reflects adversely on his credit generally and specifically gives support to the inference that he was actively concealing any connection with Mr Haxby.

[90] The contradictions in his evidence, inconsistency with contemporary records and general implausibility left the Commission unable to rely on much of his evidence unless it was corroborated.

²⁴ M Ainslie transcript, private examination, 8 December 2021, pp 34-35.

CHAPTER THREE

Mr Ainslie and Mr Nicholas Rumenos (of Griffin Civil)

- [91] Mr Ainslie corruptly took advantage of his employment as a public officer in the relationship he cultivated with Mr Nicholas Rumenos head of Griffin Plant Hire Pty Ltd trading as Griffin Civil, a civil works company performing site works, drainage, road works and mining works for future developments. Mr Rumenos is managing director and owner.
- [92] Griffin Civil had contracts with Housing until 2010. Between 2010 and 2016 Griffin Civil was not awarded any work. Griffin Civil was awarded work from 2016 to 2019. The financial value of Griffin Civil's payments from invoices presented to Housing in the period from mid-2016 to the end of 2019 was \$4,051,204.02. Much of this work was awarded by Mr Ainslie or through his influence.
- [93] Mr Rumenos and Mr Ainslie likely first got to know one another at a project for civil works associated with the land development, site and earthworks on a site at George Street in Carnarvon in 2016. Mr Rumenos was keen to get into the construction of mining camps and perhaps saw an opportunity to connect with Mr Ainslie, given his previous experience in mining installation work while he controlled AFT.
- [94] After work at George Street was completed Mr Ainslie claimed in evidence he was doing work 'on the side' for Griffin Civil. This work involved contract estimating in relation to mining installation camps. Mr Ainslie says he was paid at an average rate of \$100 per hour. However, he didn't submit invoices, apart from those that will be discussed shortly. There are no records to confirm his evidence. The figure of \$100 does not match the daily rate claimed in the invoices.
- [95] According to Mr Ainslie the plan was that when Griffin Civil won some mining installation contracts Mr Ainslie would leave his job at Housing and he and Mr Rumenos would set up a business together called Griffin Civil and Infrastructure.
- [96] In August 2016 Griffin Civil submitted a tender for a project in Carnarvon.²⁵ Mr Ainslie chaired a panel that recommended a contract be awarded to Griffin Civil. On 12 August 2016 Mr Ainslie said he wanted Griffin Civil to be the successful tenderer although they were more expensive in price. By 15 August

²⁵ Exhibit No. 00764-2020-0120.

2016 Mr Ainslie gave more detail on his preference for Griffin Civil in rebutting questions from other Housing staff who had queried the recommendation.²⁶

- [97] On 30 August 2016 Mr Ainslie emailed Mr Rumenos that Housing had accepted Griffin Civil's tender of \$1,297,579.93 to provide site works for a development at George Street, Carnarvon. The contractual terms included a requirement that by the end of September 2016 Griffin Civil submitted evidence it had current Public Liability and Contract Works Insurance for the project. Griffin Civil was also required to provide Housing with contract security in the form of two unconditional and irrevocable bank guarantees to a value of \$64,878.00 (within seven days). Once the project reached the practical completion date of 21 October 2016, half that amount would be released from guarantee. The remaining half was required to remain under guarantee until the contract defect liability period, usually six months, had expired. Until these terms were met by Griffin Civil and the documentary evidence received by Housing, the contract stated Griffin Civil were not permitted to commence site works or receive payments from the Department.²⁷
- [98] Griffin Civil did not submit a copy of its Certificate of Currency for Public and Products Liability insurance until 12 October 2016. It also appears that Griffin Civil never obtained the required bank guarantees before lodging an invoice for payment. As Griffin Civil had not complied with the requirement for Contract Security, under the terms of the engagement of Griffin Civil they could not receive payment. In addition, Housing would not have the security of the bank guarantee should any defect in the work performed by Griffin become apparent in the first few months after the work was completed. On 18 October 2016 a Housing Payments Officer queried with Mr Ainslie whether he was prepared to waive the contractual requirement for Contract Security so that payment could proceed. On 18 October 2016, before the practical completion date, Mr Ainslie replied '[a]s the Civil works is now 98% completed and the contractor has completed a good job I am happy on this occasion to waive the insurance'.²⁸
- [99] A year later Mr Ainslie prepared a contractor performance report favourably evaluating Griffin Civil's performance on the project, when potential tenderers for a project in Coral Bay were likely to be under consideration.
- [100] The relationship between Mr Ainslie and Mr Rumenos changed after the Carnarvon project tender. In particular, Mr Ainslie offered to assist Griffin Civil

²⁶ Exhibit No. 00764-2020-0053.

²⁷ Exhibit No. 00764-2020-0058.

²⁸ Exhibit No. 00764-2020-0054.

obtain more work with Housing and he provided this assistance in the form of advance notice of possible work.

- [101] In December 2016 Mr Ainslie emailed a letter he had obtained at Housing that indicated a breakdown in a business relationship between contractors called KCTT and Exmouth Civil. The purpose of sending information from Mr Ainslie's point of view was 'I wanted him [Griffin Civil] to get the job and get in there and get it done'.²⁹

Lot 19 Lefroy Street, Exmouth

- [102] This project is an example where Mr Ainslie engaged Griffin Civil, authorised payment of the invoice, then later had to falsify the RFQ process³⁰ to cover his actions.
- [103] Griffin Civil was engaged to do site works at Lot 19, Lefroy Street, Exmouth. Work was completed by 26 May 2017. On that date Griffin Civil sent Mr Ainslie an invoice dated 23 May 2017 for \$233,464.18. On 25 May 2017 Griffin Civil sent some individual invoices for the global invoice included in the above.³¹
- [104] The global invoice included itemisation of amounts for subsoil drain installation, sewer service installation and electrical conduit installation. There is no evidence that Mr Ainslie ever gave Griffin Civil approval to proceed or had ever received formal RFQs.
- [105] By 7 June 2017 Mr Ainslie had instigated an RFQ for site works that appeared to have already been completed by Griffin Civil. Mr Ainslie was then in a bind when it came to the procurement process. Mr Ainslie asked Mr Rumenos to help him get some other quotes.
- [106] On 7 June 2017 Mr Ainslie sent Mr Rumenos three letters, all identical in content. One letter was a letter of invitation to quote addressed to Griffin Civil. A second letter was an invitation to quote addressed to MKB Industries and a third, identical letter, was an invitation to quote addressed to Direct Contracting. In an email Mr Ainslie asked Mr Rumenos to 'forward on' the attachment.
- [107] Seven days later, during the assessment of an RFQ, Mr Ainslie recommended Griffin Civil be awarded the general maintenance work for the price of \$233,464.18 with a practical date of completion of 14 July 2017. It was documented as having been awarded on 'lowest price'.³²

²⁹ M Ainslie transcript, private examination, 8 December 2021, p 110.

³⁰ Request for Quotation (RFQ).

³¹ Exhibit No. 00764-2020-0420.

³² Exhibit No. 00764-2020-0056 and 00764-2020-0082.

- [108] Of course Griffin Civil had already completed the work and presented invoices for payment. However, on 26 June 2017, Griffin Civil emailed Mr Ainslie two invoices. One was for sewer installation and another for the retaining wall. These were two of the same items in the email Griffin Civil had sent through on 26 May 2017. Mr Ainslie authorised the payment.
- [109] That same day, 26 June 2017, Mr Ainslie was told by support services in Housing that Griffin Civil was not compliant for various insurance certificates required and that Mr Ainslie would need to approve proceeding to payment by effectively waiving the insurance requirements under the contract.
- [110] Mr Rumenos was unable to recall when Mr Ainslie had discussed with him the insurance certificates that were required for Griffin Civil to be paid. The usual contractual obligations for contractors are that they have full insurances in place before invoices will be paid out.
- [111] Effectively, Mr Ainslie had proceeded to hire Griffin Civil without an RFQ process and perhaps without the necessary insurance in place.
- [112] On the following day, 27 June 2017, Griffin Civil emailed to Housing water services installation and subsoil drain installation invoices, which were the same as the amounts as those emailed on 26 May 2017. On 28 June 2017 Griffin Civil emailed Mr Ainslie an invoice for electrical conduit installation.
- [113] On 4 and 11 July 2017 Griffin Civil received total payment of \$135,914.20, over half the original invoice of \$233,464.00. On 13 October 2017 it received the balance of the original invoice.
- [114] Apart from the conditions as to insurance, Griffin Civil was subject to the usual conditions to manage any constructional work defect, usually undertaken by a defects liability period where a proportion of the builder's fee is retained for the extent of the defects liability period. Griffin Civil had, in effect, obtained an exemption from providing insurances and defect retention.
- [115] Apart from Mr Ainslie directly sourcing Griffin Civil's services, it appeared to be a usual practice for Mr Ainslie to ask Mr Rumenos to provide multiple quotes for the same job. This included obtaining quotes from other contractors. Mr Rumenos in his response denies this.
- [116] In September 2017 Griffin Civil was asked to quote on the cost of repairing three roads between units built on Lefroy Street, Exmouth. Griffin Civil quoted \$118,564.00 plus GST.³³

³³ Exhibit No. 00764-2020-0278 and 00764-2020-0277.

- [117] In September 2017 Mr Rumenos provided two more quotes to Mr Ainslie. Griffin Civil were then awarded the contract as the lowest quote. Griffin Civil invoiced that amount to Housing.³⁴
- [118] By September 2019 Mr Ainslie was relaxed enough to be directly tasking the accounts officer at Griffin Civil regarding quoting and invoicing for Housing work, in breach of his duty to his employer.
- [119] In October 2019 Griffin Civil quoted \$96,008.00 for demolition of two houses at McPhee Street Wyndham. This was approved on 28 September 2019. Documentary evidence illustrates that Mr Ainslie told Mr Rumenos about the project in September 2019 and asked him to provide a quote. Mr Rumenos sent through a backdated quote and an invoice within two hours for payment. The invoice was paid on 2 October 2019. A variation of \$36,128 was paid on 7 October 2019. Mr Ainslie then approved a variation within the month for another \$22,843.64. Shortly after, Mr Ainslie went on leave and did no further work for Housing.

A Coral Bay subdivision

- [120] By far the most lucrative project for Griffin Civil was a project for a subdivision at Coral Bay.
- [121] In November 2017 Mr Ainslie took over management of the Coral Bay project with the expectation that an external project manager would manage the infrastructure delivery for a lot owned by an Aboriginal Corporation.³⁵
- [122] By February 2018 Housing had received a proposal by a contractor, JDSi, to be principal project manager and superintendent of the Coral Bay project.
- [123] By letter of offer dated 12 March 2018 Mr Ainslie accepted JDSi's offer for the construction phase of the proposal. On 17 May 2018 JDSi was confirmed as superintendent representative for the project.
- [124] It was now incumbent for Mr Ainslie to be on a tender panel for the site works. He was required to fill out a conflict of interest form. This was a lengthy three-page form asking a series of questions that required yes/no answers and is a staple of a tender process.³⁶ At this stage it was known that Griffin Civil would be applying. However, despite the business and financial arrangement, Mr Ainslie failed to declare a conflict of interest.
- [125] On 1 June 2018 Griffin Civil submitted a tender for \$1,759,912.82. Four days later, on 5 June 2018, the tender panel were given access to tenders for the

³⁴ Exhibit No. 00764-2020-0060.

³⁵ Exhibit No. 00764-2020-0380.

³⁶ Exhibit No. 00764-2020-0400.

evaluation process. On 11 June 2018 Mr Ainslie sent his individual scoring sheet recommending Griffin Civil to the panel convenor.³⁷

[126] On 14 June 2018 Mr Ainslie sent a query to Mr Rumenos. At this stage the tender evaluation process was still ongoing and the query related to the ramifications for Griffin Civil to some of the potential conditions that might be placed on the award of the tender to Griffin Civil.

[127] Mr Ainslie pushed the panel hard to award the tender to Griffin Civil.³⁸ In the preferred tender justification report drafting process, it was apparent that there was some dissatisfaction with Griffin Civil being ranked as a preferred tenderer. In particular, there was dissatisfaction by Mr Nigel Hindmarsh, Director Land and Housing Construction, who wrote:³⁹

This Tender Evaluation & Recommendation Report falls woefully short of describing the decision making process and rationale for selecting the second most expensive tender.

...

Given the very substantial (36%) difference between Griffin and the closest valid tender, there needs to be much clearer narrative about why Griffin is offering \$600k of additional value and how that is a justifiable variance.

[128] However, Mr Ainslie was persuasive and Griffin Civil were awarded the tender by letter dated 13 July 2018 subject to Housing receiving two bank guarantees.

[129] The first progress payment was submitted by Griffin Civil on 16 July 2018, three days after being awarded the tender. The first progress payment was unusually high, representing a considerable proportion of the full contract price as it was for \$609,087.12. An amount of \$669,995.83 was paid on 31 July 2018. Mr Ainslie admitted to the Commission that it was unusual that at that stage Griffin Civil would be paid 100 per cent of the management of the contract, having only been just awarded it.

[130] Mr Ainslie's rush to approve the first progress payment was likely motivated by money as three days after Housing paid the first progress payment on 31 July 2018 Griffin Civil transferred \$20,000 to the bank account of Mr Rumenos's brother, who, on the following day, 4 August 2018, transferred \$10,000 to Mr Ainslie's home loan bank account. On the following day, 5 August 2018, he transferred another \$10,000 to the same bank account.⁴⁰

³⁷ Exhibit No. 00764-2020-0404 and 00764-2020-0063.

³⁸ Exhibit No. 00764-2020-0386, 00764-2020-0383 and 00764-2020-0404.

³⁹ Exhibit No. 00764-2020-0051.

⁴⁰ Exhibit No. 00764-2020-0604.

- [131] On 9 August 2018 Griffin Civil transferred \$20,000 to an account operated by Mr Ainslie under the name 'Construction Assessment & Training'. On 12 August 2018 Mr Rumenos's brother transferred another \$10,000 to Mr and Mrs Ainslie's home loan account, and then \$5,000 again on 30 November 2018. There appears to be no legitimate basis for these payments. It would appear that Mr Ainslie directly financially benefited from the Coral Bay tender project being awarded to Griffin Civil.
- [132] Mr Rumenos sought to explain the use of his brother's bank account on difficulties in transferring the money directly to Mr Ainslie. That may be one, though unlikely explanation. A more reasonable inference is that Mr Rumenos was taking elementary steps to disguise the link between Mr Ainslie and himself an inference Mr Rumenos denies. Mr Rumenos's brother was examined by the Commission but was unable to shed any further light on the transaction.
- [133] During the contract period Griffin Civil was required to provide two bank guarantees for defect retention. The final bank guarantees were released by Mr Ainslie on 16 May 2019 despite Mr Ainslie knowing that the Shire of Carnarvon had serious concerns about the state of the road and an ongoing disagreement as to how remediation would occur.⁴¹
- [134] By October 2019 there was a delay progressing the project because the Shire of Carnarvon rejected the quality of the road servicing done by a subcontractor to Griffin Civil. The disagreement was between Griffin Civil and the subcontractor. Mr Ainslie effectively intervened and told Griffin Civil to find another subcontractor. He subsequently approved a variation payment to Griffin Civil to rectify a portion of the Coral Bay road.⁴²

The capability statement

- [135] Mr Ainslie's credibility was adversely affected by a document he created for Mr Rumenos. Mr Ainslie prepared a document described as capability review attributing to Griffith Civil work done by others. The capability review was to enable Griffin Civil to win work in the mining sector. It was to be provided to companies interested in obtaining services for civil engineering works. Mr Rumenos did not have relevant experience, so Mr Ainslie fabricated details with examples from earlier projects he had completed at AFT. Mr Ainslie's explanation that he was working for Griffin Civil so these details could be truthfully documented, was unconvincing. Mr Ainslie described the capability review as a 'glorification'. Mr Haxby, who had never heard of Griffin Civil or Mr

⁴¹ Exhibit No. 00764-2020-0395.

⁴² Exhibit No. 00764-2020-0109.

Rumenos, was listed as project manager. Mr Ainslie admitted listing Mr Haxby was false.⁴³ The capability report contained significant other falsehoods.

- [136] Two iterations of this document were sent to Mr Rumenos and in the last one, the email to which it was attached stated 'geez I make you look good'.⁴⁴ Mr Ainslie also used a Griffin Civil email address mark@griffincivil.net.au.
- [137] The capability statement reflects adversely on Mr Ainslie's credit as being prepared to perpetuate falsehoods for his own advantage.

Money is paid to Mr Ainslie by Griffin Civil

- [138] Between 17 October 2016 and 19 November 2019 Griffin Civil received 25 separate payments from Housing for invoices presented to a total value of \$4,051,204.02.
- [139] By 20 April 2020 Griffin Civil had facilitated deposits to the value of \$65,000 into an account controlled by Mr Ainslie.

Griffin Civil pays into Mr Haxby's debit card account

- [140] Mr Haxby said that on 1 November 2019 there was a \$10,000 deposit into his progress saver account which originated from a Griffin Civil business account. Mr Haxby had no knowledge of Griffin Civil or the origin of the money. He informed Mr Ainslie that the amount had been deposited. Mr Ainslie was surprised and said he would look into it and for Mr Haxby to leave the issue with him. Rather than looking into it Mr Ainslie used Mr Haxby's debit card to access the money for his own benefit.

The justification for payment is false

- [141] The capability review shows that Mr Ainslie had a close but undeclared relationship with Griffin Civil, a frequent tenderer for Housing work. That relationship, however, does not explain why Griffin Civil paid Mr Ainslie \$65,000 shortly after being awarded the Coral Bay project and immediately after he had approved the first progress payment in unusual circumstances.
- [142] Griffin Civil paid \$10,000 into Mr Haxby's debit card account. Mr Haxby had no relationship with Mr Rumenos or Griffin Civil. Mr Ainslie had possession of the debit card for his own use.
- [143] The total paid to Mr Ainslie by Griffin Civil was \$75,000.

⁴³ M Ainslie transcript, private examination, 8 December 2021, p 67.

⁴⁴ Exhibit No. 00764-2020-0019 and 00764-2020-0049.

- [144] Mr Ainslie and Mr Rumenos needed to explain why Griffin Civil would pay a public sector employee a total of \$75,000 in circumstances where that employee was responsible for awarding contracts of significant value.
- [145] Mr Ainslie gave evidence he engaged in undeclared secondary employment with Griffin Civil because his son was getting married overseas and he needed extra money. Both Mr Ainslie and Mr Rumenos, in evidence before the Commission, stated Mr Ainslie worked for Griffin Civil projects, estimating and pricing up mining camps. Mr Rumenos said this was a verbal agreement. That was a reason for working but not a reason for Mr Ainslie failing to seek approval for secondary employment. Of course an application would disclose the relationship and make clear the conflict of interest, preventing Mr Ainslie from involvement with any quote from Griffin Civil.
- [146] Mr Rumenos was invited to produce any documents that substantiated Mr Ainslie's entitlement to payment of \$75,000. Mr Rumenos responded by producing five invoices dated 2018 and purportedly submitted by Mr Ainslie to Griffin Civil totalling \$55,000.
- [147] The invoices are suspect on their face. The invoices purport to be from A.F.T. Group (WA) Pty Ltd, the company which had gone into liquidation in 2013. Mr Ainslie did not register a similar business name until 4 May 2020, two years after the invoices.
- [148] They are also incorrectly dated and for projects that never got off the ground. They do not include any provision for GST. The invoices Mr Ainslie presented to Griffin Civil total \$55,000, whereas Mr Ainslie was actually paid \$65,000 into his bank account and a further \$10,000 into Mr Haxby's debit account for his use.
- [149] Despite being given ample opportunities to provide proof of the work which Mr Ainslie and Mr Rumenos described in their evidence, neither were able to offer evidence to corroborate their version aside from a handful of emails and the five invoices dated 2018.
- [150] In one project, known as the Hastings Camp, Mr Ainslie submitted three invoices to Griffin Civil claiming 206 hours of work over a three-month time period in 2018. Evidence obtained by the Commission does not establish work was completed by Mr Ainslie on the Hastings Camp in 2018. At 8.01 am on 30 October 2017 Mr Rumenos received an invitation to price work for a 160-person and 240-person camp. At 1.14 pm the same day he forwarded the invitation to Mr Ainslie. A little over 48 hours later at 12:19 pm on 2 November 2017 Mr Ainslie had provided an incomplete costing for a 160-person camp. Even an error in the date of the year as asserted by Mr Rumenos cannot

explain the difference between 48 hours as the maximum that could have been worked, and 206 hours claimed in the invoice.

- [151] Mr Rumenos gave evidence Griffin Civil 'went to a lot of trouble and expense, and in the end they stopped it, because they didn't even have their funding in place'. This was untrue. Griffin Civil were formally notified their application was unsuccessful.⁴⁵
- [152] Griffin Civil's accounts officer gave evidence all five invoices came through the mail together and had already been paid. As the accounts officer didn't pay them, and with Mr Rumenos the only other staff member with access to MYOB internet banking she believes he made the payments. When she queried the payments she was told by Mr Rumenos to just file them away. The accounts officer said it was unusual for Griffin Civil to have no records for projects such as tender documents, quotes or work undertaken.
- [153] There was little evidence to support other claims by Mr Ainslie as to the estimating work he had completed for Mr Rumenos.
- [154] Mr Ainslie gave evidence that payment for these invoices was disclosed in his tax return. This would be expected if the income received from Griffin Civil was legitimate. The income is not disclosed.
- [155] Griffin Civil was unable to produce, and Mr Rumenos confirmed that there was no written contract with Mr Ainslie, no timesheets or any other documentary of employment whether as contractor or otherwise. Mr Ainslie, in evidence, told the Commission 'I've got the evidence on my computer, if you want to subpoena my computer'.⁴⁶ The Commission served notices to produce all the documents relating to work performed by Mr Ainslie.
- [156] A notice to produce documents is similar to a subpoena and carries sanctions for non-compliance.
- [157] Mr Rumenos was served a notice and complied with the notice by producing a series of invoices—the same as those referred to in evidence by the accounts officer.
- [158] His response to a further notice requiring all documents relating to the work specified in the invoices produced nothing further.
- [159] The limited documents provided by Mr Ainslie and Mr Rumenos do not support the contention that contract work was done, certainly none that would amount to \$75,000.

⁴⁵ N Rumenos transcript, private examination, 17 December 2021, p 7.

⁴⁶ M Ainslie transcript, private examination, 8 December 2021, p 96.

- [160] In his response to the draft report Mr Rumenos stated that the payments to Mr Ainslie were for work previously done in estimating costs for the construction of many camps which had not been paid to Mr Ainslie prior to July 2018. The Commission does not accept this statement. An invoice purportedly in respect of Iluka Resources main office is dated 1 November 2018, months after payment to Mr Ainslie.
- [161] An invoice, purportedly for work in connection with Adaman Resources is dated 28 July 2018. Yet the only documents relevant to Adaman Resources are in 2019.
- [162] The Commission concludes that the invoices were a ploy to disguise the payment of a bribe.

CHAPTER FOUR

Procurement by government agencies

Invoice Splitting

- [163] Procurement by government agencies in Western Australia is now governed by the *Procurement Act 2020* administered by the Department of Finance.
- [164] However, there have been procurement rules in force for many years. Every public sector employee engaged in procurement is expected to know them. Currently Rule C4.1 provides the appropriate procurement method.⁴⁷

Monetary Value	Minimum Competitive Requirements
Up to \$50,000	Direct Sourcing
Between \$50,000 and \$250,000	Limited Sourcing
\$250,000 and above	Open Advertisement

Table No. 1: Rule C4.1 Appropriate Procurement Method.

- [165] Rule C4.1 stipulates the following.
- 1 State agencies must use the minimum competitive requirement corresponding with the values specified in the table above, unless an exception or exemption applies.
 - 2 ...
 - 3 A procurement must not be divided in separate parts for the dominant purpose of avoiding the relevant minimum competitive requirement.
- [166] Breach of Rule C4.3 is colloquially known as 'invoice splitting'. Mr Ainslie claimed that he'd never heard the expression invoice splitting.⁴⁸ He agreed that invoice splitting is not a variation.

⁴⁷ Section C, Procurement Planning, is part of the 'Western Australian Procurement Rules (Procurement Direction 2021/22)' that apply to all State agencies and all types of procurement including goods, services and works, as defined in the *Procurement Act 2020* Western Australian State Government Website [Section C: Procurement Planning \(www.wa.gov.au\)](https://www.wa.gov.au/government/procurement-planning), accessed 2 March 2022.

⁴⁸ M Ainslie transcript, private examination, 8 December 2021, pp 49-51.

- [167] Many of Mr Haxby's contracts were originally quoted under \$50,000 and variations were later given by Mr Ainslie to increase the amount paid. It is open to conclude the dominant purpose was to avoid the limit that would trigger limited sourcing and the requirement for other quotes.
- [168] The practice of invoice splitting is illustrated by a contract awarded by Mr Ainslie to an Aboriginal corporation. It also shows that, contrary to his evidence, Mr Ainslie was well aware of invoice splitting and manipulated the contract accordingly.

The Burringurrah Aboriginal Community Chlorinator Installation Project

- [169] The Burringurrah Community is a remote Aboriginal Community in the Shire of Upper Gascoyne, approximately 480 kilometres east of Carnarvon. It has a population ranging from 150 to 200 people. A new chlorinator (prefabricated in Perth) was to be installed at Burringurrah for water treatment.
- [170] Pilbara Meta Maya Regional Aboriginal Corporation was invited to submit a quotation.
- [171] An exception to the procurement rules provides that a single quote up to \$250,000 might be accepted without competitive quotes if the quote is from an Aboriginal corporation.
- [172] Meta Maya submitted a quote of \$271,835.26 to install the chlorinator.
- [173] Obviously this took the quote beyond the \$250,000 limit for approval of a single quotation. The proper course was for the proposed work to be submitted for open tender. On 3 July 2019 Mr Ainslie emailed Meta Maya:

As discussed by phone, I am happy with the quote (\$271,835.26) but in order to be able to directly engage your services I require you to provide a quote of just less than \$250k including GST and then once I have awarded the contract I will request from you a variation to cover the balance.⁴⁹

- [174] Meta Maya subsequently submitted a revised quotation for \$246,505.47. This revised quote was accepted by Mr Ainslie who subsequently issued a variation of \$25,330.
- [175] By the time the payment variation was due, Mr Ainslie had left Housing. Mr Leszenko refused to pay the amount of \$25,330 on the basis that it could not be considered a variation to the original contract of \$246,505.47 for the installation of the chlorinator.
- [176] No adverse finding is made against Meta Maya.

⁴⁹ Exhibit No. 00764-2020-0022.

- [177] Mr Haxby asserted that he was unaware of the procurement requirements and believed (mistakenly) that the reason for keeping quotes under \$50,000 was because Mr Ainslie had already receipted quotes over \$50,000 and that Mr Ainslie was suggesting that he kept his quotes below a particular amount.
- [178] Corporations and individuals that deal with Western Australian government agencies should know what the procurement requirements are and should abide by them. This was a blatant attempt by Mr Ainslie to get around procurement rules. During the course of his employment as a senior project manager, there are many occasions where he granted variations to lift the total paid by the state above the procurement threshold.

CHAPTER FIVE

Conclusion

- [179] The events outlined in this report occurred when controls at Housing were lax. It was a time when the depredations of the Assistant Director General of the Department of Communities, previously employed in other Housing authorities, went unchecked.
- [180] The Commission has seen significant improvement in the enforcement of procedures at the Department of Communities, at least in respect of housing and construction.
- [181] The Department of Communities has advised the Commission that it continues to make significant changes to its operations to reduce misconduct risk. Whilst the full list of changes is extensive, the following are some key changes the Department of Communities has implemented to reduce the ability for activity described in this report to occur again:
- Tiered review and approval process for all construction and consultancy contracts within Housing and Assets.
 - Improved processes to ensure adherence to Treasurer's Instruction 304, particularly regarding invoicing and purchasing.
 - Increased funding for the Integrity, Intelligence and Professional Standards directorate, including progress towards establishing a Corruption Prevention and Education business unit and a proactive intelligence function.
 - Review and implementation of key integrity policies such as the Integrity Framework, Integrity Strategy, Code of Conduct, Fraud and Corruption Control Plan, Conflicts of Interest, Gifts and Benefits, and Secondary Employment.
 - Recruitment of the Principal Fraud and Corruption Control Officer, and second officer specifically working in the Housing and Assets division.
 - Redevelopment of the department's risk management framework and processes.
 - Establishing analytical processes to explore financial and contractual transactions.

- [182] The genesis of this investigation was an officer reporting to their superior an unusual transaction by Mr Ainslie.
- [183] Every public sector officer has a duty to speak up, not remain silent, when confronted by suspected corruption.
- [184] When Mr Leszenko was alerted to the situation he terminated all Mr Haxby's contracts. Mr Haxby later entered into an agreement to repay \$ 10,500.⁵⁰
- [185] When a disciplinary process commenced against Mr Ainslie he resigned from Housing and is now employed by Griffin Civil.
- [186] In the Commission's opinion Mr Ainslie's actions as described in this report constitute serious misconduct.⁵¹
- [187] His actions, together with those of Mr Haxby and Mr Rumenos, have been referred to the WA Police Force.
- [188] Before finalising this report the Commission gave each person who may be adversely affected a reasonable opportunity to make representations. Responses were received from the solicitor for Mr Haxby and the barrister for Mr Rumenos. Those responses have been considered and where appropriate the Commission has adjusted its report. Mr Ainslie did not respond.

⁵⁰ Exhibit No. 00764-2020-0600, 'Peter Haxby and Housing Authority Deed of Settlement and Release', by which 'Mr Haxby undertakes to pay the sum of \$10,500 to the Authority ... by way of payment of \$500 per month, commencing in September 2020, to be paid to the Authority for 21 consecutive months'.

⁵¹ A finding or opinion that misconduct has occurred is not and is not to be taken to be a finding or opinion that a particular person is guilty of or has committed a criminal offence, *Corruption, Crime and Misconduct Act 2003*, s 217A.