



## ACT INTEGRITY COMMISSION - OPERATION KINGFISHER

### OPENING SUBMISIONS

#### COUNSEL ASSISTING THE COMMISSION

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1. This is a public hearing of the ACT Integrity Commission. It is the first public hearing of this Commission. It is the most recent investigative process by this Commission in this matter following an initial referral to it in March 2021, an investigation which later became known as Operation Kingfisher.
2. The public hearing will explore whether public officials in the ACT Education Directorate (the **EDU**) failed to exercise their official functions honestly and/or impartially when making recommendations and decisions regarding capital works procurement for the Campbell Primary School Modernisation Project (the **Project**) between 2019 and 2020. Its particular focus will be upon the actions and decisions of public servants in awarding the Project to a multinational construction company Lendlease Building Pty Ltd (**Lendlease**), in circumstances where its bid appeared inferior, in both cost and otherwise, to a local contractor, Manteena Commercial Pty Ltd (**Manteena**). I will return to a more detailed explanation of the issues shortly.

#### **Jurisdiction**

3. It is important that I outline the Commission's jurisdiction from the outset.
4. On 26 February 2018, the ACT Government committed to establishing an independent Integrity Commission that would be broadly structured on those operating in similarly sized jurisdictions. It did so by the passing of the *Integrity Commission Act 2018* (ACT) (the **Act**) which was notified on 11 December 2018 and came into effect on 1 July 2019.
5. The Act confers the Commission jurisdiction to investigate conduct that is alleged to be corrupt conduct. The Commission itself is a standing independent integrity



body established to investigate corruption in public administration and strengthen public confidence in government integrity in the ACT.

6. Pursuant to s 23 of the Act, the role of the Commission is to:
  - (a) investigate conduct that is alleged to be corrupt;
  - (b) refer suspected instances of criminality or wrongdoing to the appropriate authority for further investigation and action;
  - (c) prevent corruption, including by—
    - (i) researching corrupt practices;
    - (ii) mitigating the risks of corruption;
  - (d) publish information about investigations conducted by the commission, including lessons learned;
  - (e) provide education programs about the operation of this Act and the commission, including providing advice, training and education services to:—
    - (i) the Legislative Assembly and the public sector to increase capacity to prevent corrupt conduct; and
    - (ii) people who are required to report corrupt conduct under the Act; and
    - (iii) the community about the detrimental effects of corruption on public administration and ways in which to assist in preventing corrupt conduct; and
  - (f) foster public confidence in the Legislative Assembly and public sector.
7. 'Corrupt conduct' is defined in s 9 of the Act. Relevantly, it is conduct that could:
  - (i) constitute a criminal offence; or



- (ii) constitute a serious disciplinary offence; or
- (iii) constitute reasonable grounds for dismissing, dispensing with the services of, or otherwise terminating the services of, a public official.

8. The conduct must also be any of the following:

- (i) conduct by a public official that constitutes the exercise of the public official's functions as a public official in a way that is not honest or is not impartial;
- (ii) conduct by a public official or former public official that—
  - A. constitutes a breach of public trust; or
  - B. constitutes the misuse of information or material acquired by the official in the course of performing their official functions, whether or not the misuse is for the benefit of the official or another person;
- (iii) conduct that adversely affects, either directly or indirectly the honest or impartial exercise of functions by a public official or a public sector entity;
- (iv) conduct that—
  - A. adversely affects, either directly or indirectly the exercise of official functions by a public official or public sector entity; and
  - B. would constitute, if proved, an offence against a provision of the Criminal Code, chapter 3 (Theft, fraud, bribery and related offences);
- (v) conduct that involves any of the following:



- A. collusive tendering;
  - B. fraud in relation to applications for licences, permits or other authorities under legislation designed to protect health and safety, protect the environment or facilitate the management and commercial exploitation of resources;
  - C. dishonestly obtaining or assisting in obtaining, or dishonestly benefiting from, the payment or application of public funds for private advantage or the disposition of public assets for private advantage;
  - D. defrauding the public revenue;
  - E. fraudulently obtaining or retaining employment or appointment as a public official;
- (vi) conduct engaged in by a person in relation to conduct mentioned in subparagraphs (i) to (iv) (the **primary conduct**), that would constitute an offence against the *Criminal Code*, part 2.4 (Extensions of criminal responsibility) on the basis that the primary conduct is an offence, whether or not the primary conduct is in fact an offence.'
9. Those definitions are expansive. However, as distinct from other integrity commissions in other jurisdictions, this Commission, and in particular its reporting, is focussed upon on 'serious corrupt conduct' and 'systemic corrupt conduct'.
10. Section 10 of the Act defines 'Serious corrupt conduct' as conduct that 'is likely to threaten public confidence in the integrity of government or public administration' and section 11 defines 'systemic corrupt conduct' as 'instances of corrupt conduct that reveal a pattern of corrupt conduct in one or more public sector entities.'



11. For the purposes of the Act, a ‘public official’ means a person who has public official functions for the Territory or is acting in a public official capacity for the Territory, and relevantly includes a person who is a public servant or any other person who is an employee of a public sector entity. A ‘public sector entity’ is defined to include an ‘*ACT public service entity*’, which is further defined as including ‘the public service’.
12. The ACT Education Directorate is an ACT public service entity. The EDU is specifically identified both as an entity, and as the entity responsible for ‘*Government and non-government schools*’ and ‘*Schools education*’, with the responsible minister being the ‘*Minister for Education and Youth Affairs*’, in the *Administrative Arrangements 2022 (No 1)*, dated 30 March 2022 (Notifiable instrument NI2022-157). Those arrangements were made by the Chief Minister under the *Australian Capital Territory (Self-Government) Act 1988* (Cth) and the *Public Sector Management Act 1994* (ACT).
13. It follows that those employed in the EDU are public officials, being either public servants or employees of the EDU. The responsible minister, at all relevant times Ms Yvette Berry, is also a ‘public official’, having public official functions for the Territory and acting in a public official capacity for the Territory. So too at all relevant times was her chief of staff, Mr Joshua Ceramidas.
14. Pursuant to s140 the Act the Commission may hold an examination in relation to an investigation. Pursuant to s143(1) of the Act such an examination may be held in public or in private. In deciding whether to hold an examination in public or private s143(2) of the Act requires that the Commission must consider whether:
  - (a) it is in the public interest to hold a public examination; and
  - (b) a public examination can be held without unreasonably infringing a person's human rights.
15. Section 143(3) of the Act provides that in deciding whether it is in the public interest to hold a public examination, the Commission may consider the following:



- (a) whether the corrupt conduct is related to an individual and was an isolated incident or systemic in nature;
  - (b) the benefit of exposing to the public, and making it aware of, corrupt conduct; and
  - (c) the seriousness of the matter being investigated.
16. The Act is drafted in such a way so that there is neither a presumption for nor against public examination. That was a deliberate choice by the legislature to ensure a fair balance between the competing considerations in favour of public and private examinations.
17. In order to understand why this investigation is now being held in public, and what I anticipate it will consider, it is necessary to consider the background to the investigation.
18. However, those assisting the Commission do not wish to open this public hearing enamoured with, or resolved upon, any particular view. Pausing here, the role of Counsel and Solicitors assisting the Commission in this regard is distinct from our role in other types of Court proceedings that follow a more conventional adversarial setting. While we sit in what resembles a Court or Tribunal, it is a special type of forum that is not directed towards the binary outcomes which the public may ordinarily understand, such as guilty or not guilty.
19. I am briefed by the Commission and am a member of the Independent Bar both here in the ACT and in NSW. I am assisted by Mr Whitfield, a Principal Lawyer of the Commission. I am not a Prosecutor. I am not an investigator. I am briefed solely to assist you Commissioner during this inquisitorial process.
20. I am to do so as Independent Counsel. My role requires calling witnesses, adducing evidence, liaising with the parties and if necessary, assisting the Commission with matters of law. I am required to make submissions as to what I consider is established by the evidence. That is the limit of my remit. I do not make findings nor do I report to the Legislature. That remit belongs to you Commissioner



and you alone as an independent officer of the Legislative Assembly and the person appointed as Commissioner pursuant to s 25 of the Act.

21. I should also add for the benefit of those who are not familiar with this process, that it is not the Commission's role to attribute blame to any person or persons or to make any finding of guilt. The statutory remit is focussed upon the objects of the Act, which is principally focussed upon corrupt conduct.
22. Since notification of the alleged corrupt conduct, the Commission's investigators commenced their investigations in what became known as Operation Kingfisher. Their powers of investigation are set out in Part 3.5 of the Act and include powers of entry, seizure and search. Here, in exercising those powers, the Commission's investigators, led by Principal Investigator Ms Elizabeth Ashton, have obtained significant amounts of material, including data from mobile devices and computer servers.
23. That information was then collated and assembled for the purpose of exploring with witnesses, in private, their evidence. Persons involved in the private examination process were required to attend the Commission under strict confidentiality orders to preserve the integrity of the investigation. This process is also one of prudence and fairness that ensures a necessary safeguard to the right of a fair trial and the preservation of reputation from what could be irreparable reputational damage.
24. Following those hearings, you Commissioner then decided it was in the public interest to hold a public hearing. To understand why that is so, it is necessary to explore the substance of the investigation in more detail. What follows is what is my present understanding, from the evidence, of the process by which the tender was awarded. Unless noted, it is largely uncontroversial.

## **The Project**

25. As at 2019, procurement activities for the government in the ACT were governed by the *Government Procurement Act 2001* (ACT) (**Procurement Act**). Section 22A of the Procurement Act provided:



- (1) A territory entity must pursue value for money in undertaking any procurement activity.
- (2) Value for money means the best available procurement outcome.
- (3) In pursuing value for money, the entity must have regard to the following:
  - (a) probity and ethical behaviour;
  - (b) management of risk;
  - (c) open and effective competition;
  - (d) optimising whole of life costs;
  - (e) anything else prescribed by regulation.

26. The applicable regulation was the *Government Procurement Regulation 2007*.
27. In or about June 2019, the EDU, with the assistance of Major Projects Canberra (**MPC**), commenced a procurement process for the design and construction of the Project. The Project included the replacement and refurbishment of learning communities at the Campbell School following demolition in 2018. There was to be construction of new learning communities for 450 students including associated amenities, and the refurbishment of the school hall. The estimated value of the Project was \$18.211m (excluding GST). It was significant project, particularly for the local community in Campbell.
28. On 27 June 2019 a procurement plan minute addressed to the Executive Group Manager, Business Services, EDU and signed by him set out the methodology, value, timing, scope and consultation arrangements for the Project (**the Minute**). The Minute envisaged a two stage procurement process, first, an open Request for Expression of Interest (**REOI**) and second, a Request for Tender (**RFT**). The REOI anticipated responses from 'pre-qualified [Design and Construct] Contractors or Consortia to be shortlisted to tender for the project under a D&C contract' with up to three of these entities proceeding to RFT.
29. RFT tenderers would be required to 'submit a lump sum tender with design solution' and could 'propose departures from the Territory's output and reference tender





documentation which will be considered in the context of benefits to the Territory and local community'. Tenders were to be evaluated to 'identify a preferred Tenderer'. Evaluation methodology was expressly addressed at Attachment B to the Minute, which set out the Tender Evaluation Plan. This in turn laid out evaluation criteria, weightings and the requirement for a Local Industry Participation Plan.

30. After a request for expressions of interest, two suppliers were selected to be the subject of a RFT. Those two suppliers were Manteena and Lendlease.
31. Lendlease is a multinational construction company headquartered at Barangaroo in Sydney. It is probably fair to say that it is reasonably well known and reputable.
32. Manteena is a much smaller entity headquartered in Fyshwick. It is perhaps known more in Canberra than around the country and is also reputable. I do not presently anticipate there will be any criticism of either entity during this process.
33. The RFTs were issued on 30 October 2019 and closed on or about 19 December 2019. The tenders were to be assessed by a tender evaluation team (**TET**). The TET consisted of the following people:
  - (a) Ms Kelly Young (MPC) – chairperson;
  - (b) Mr Phil Morton (EDU) – member;
  - (c) Mr Chris Jacobi (EDU) – member; and
  - (d) Mr John Hawkins (MPC) – observer. Mr Hawkins was not required to make any recommendation.
34. The TET's task was to evaluate tenders in accordance with a previously endorsed procurement plan that included applicable procurement guidelines and evaluative criteria.
35. The Minute stated that these individuals had been selected to constitute the TET because they possessed 'expertise and capacity to evaluate the skills, risks and



cost of goods and services presented in the tender submissions and [had] the ability to recommend a suitable Contractor to the Delegate’.

36. The Chair of the TET, Kelly Young, was an architect who had worked for some years in private practice before working for the ACT Public Service. At MPC she was a project manager. Her role as a project manager entailed her working in the procurement space, running requests for expressions of interest and requests for tender, getting contractors into contract and running projects during the design and construction phases. That is, Ms Young was involved in projects from inception to completion. She had the added advantage of having just finished participating in the procurement process for the Margaret Hendry School.
37. Phillip Moreton was an Assistant Director at EDU. In early 2020 he reported to Pal Patek and later, as Assistant Director, he reported to Dylan Blom. Pal Patek also reported to Dylan Blom in early 2020. Mr Moreton was directed to be a member of the TET for the Project by the relevant Executive Branch Manager and delegate for the Project, Mr Green.
38. Chris Jacobi, the third TET member, was a project officer for Major Projects in EDU. Prior to this role Mr Jacobi had been employed as an architect in the private sector for over eight years. His tertiary qualifications included a Master of Architecture.
39. The TET prepared a draft tender evaluation report (**TER**) (undated) which has been received by the Commission. In that draft TER the TET noted that both tenders exceeded the allocated budget for the Project. The draft TER assessed and scored both tenders, awarding the Manteena tender a total score of 79 and a low risk rating, while awarding the Lendlease tender a total score of 52 and a medium risk rating. Relevantly, the Manteena tender was costed approximately 8.5% cheaper than the Lendlease tender.
40. The draft TER made the following recommendation:

“The Tender Evaluation Team (TET) recommends that Manteena Commercial Pty Ltd be nominated as the preferred Tenderer, and that the TET be authorized [sic] to enter into contract negotiations on the following



basis: that Manteena Commercial Pty Ltd identify areas of de-scoping and cost savings, in conjunction with the TET, to bring the project within the target cost of the design and construction component of the project.”

41. Despite this initial view, by the time the TET finalised its TER, the above recommendation had changed significantly. The evidence before the Commission presently suggests that this was at the direction of Mr John Green (whose identity has been protected by order of the Commission), then in the role of Acting Executive Group Manager of the EDU. Mr Green’s motivation for doing so is a matter for exploration before this Commission. Regardless, the direction was that the TET recommend a procurement process known as “Best and Final Offer” (**BAFO**).
42. It will come as no surprise Commissioner that I intend to call Mr Green. Mr Green will be the first witness from whom you will receive public evidence.
43. The members of the TET were dissatisfied with Mr Green’s direction. Nevertheless, they decided to assess whether the BAFO process was one that would be available to them to recommend by seeking probity advice from the ACT Government Solicitor (**GSO**).
44. A brief was sent to the GSO on or about 5 March 2020. The GSO returned its advice on or about 12 March 2020. The advice, which will be before the Commission, and which was heavily caveated, advised that the BAFO process was available.
45. Despite the GSO advice, members of the TET maintained their view that the appropriate recommendation was for the Project to be awarded to Manteena with “de-scoping” (that is negotiation to reduce the scope of works and save cost) to occur during contract negotiation. Evidence before the Commission indicates that such an approach is entirely conventional.
46. Nevertheless, Mr Green maintained his position and direction. On or about 18 March 2020 the TET provided its TER. Despite the assessment scoring of the two



tenders remaining the same (which also had the consequence of the risk rating remaining the same), the TER made the following recommendation:

“The tender evaluation team (TET) recommends that a best and final offer be requested of both Tenderers, based on the items listed in Attachment K, inclusive of potential scope removal and further cost savings identified by the Tenderer to bring the project within the target cost for the design and construction of the Project and thus giving the highest potential to achieve best value for money for the Territory.”

### **The CFMEU**

47. At or about the same time rumours were circulating within the EDU that the Minister for Education (Ms Yvette Berry, the Member for Ginninderra (Labor)) may have been approached by ‘the Unions’ and asked why Manteena was ‘getting all the jobs’. The rumour was that this was why Mr Green was ‘pushing for a BAFO where Manteena should be the obvious preferred tenderer’. That rumour (among others) has and will continue to be a subject of investigation.
48. I expect that the evidence before the Commission will be that the ACT Branch of the Construction, Forestry, Maritime, Mining and Energy (**CFMEU**) did hold a negative view of Manteena. This was conveyed to the Minister and her Chief of Staff at various times whilst the procurement process was underway. To this end I intend to call both Mr Jason O’Mara, the then Secretary of the ACT Branch of the CFMEU, and Mr Zachary Smith, the then Assistant Secretary of the ACT Branch of the CFMEU.
49. By letter dated 17 March 2020 the CFMEU invited Manteena to commence bargaining for an enterprise agreement with its employees with the CFMEU to act as representative. Later, Manteena declined that request.
50. The evidence before the Commission will likely indicate that Mr Green was known to the CFMEU. Mr Green had previously held a role as the Secure Local Jobs Code Registrar, implementing the Secure Local Jobs Code (**SLJC**). For reasons that will become clear, the Union was unhappy with decisions made by Mr Green in that role.



## Secure Local Jobs

51. The SLJC had been implemented in the ACT in about January 2019 pursuant to s 22M of the Procurement Act. Its implementation followed some controversy about the status and operation of the previous industrial procurement supervision mechanism in the ACT, the Memorandum of Understanding on Procurement of Works and Services. How the two regimes operated side by side was also a matter of some confusion.
52. The SLJC was relatively newly implemented at this time, having commenced on 15 January 2019 pursuant to s 22M of the Procurement Act. The SLJC operated by requiring any entity wishing to win Territory funded work hold a secure local jobs certificate.
53. Eligibility for a certificate turned on the entity possessing 'a current report from an approved auditor stating that the entity meets the requirements mentioned in the code' and compliance 'with any requirements prescribed by regulation'. It was the Secure Local Jobs Registrar who was responsible for granting secure local jobs certificates to applicants; the Registrar had discretion to do so if satisfied that the applicant was not 'prohibited from applying for a certificate under section 22T' and if the applicant met the 'requirements mentioned in the code'.
54. Holding a certificate brought with it extensive obligations. In summary, those obligations revolved around compliance with the workplace safety and industrial relations regulations.
55. The position of Secure Local Jobs Registrar was established by s 22V of the Procurement Act. The Registrar's functions under s 22W of that Act were:
  - (a) 'to promote an understanding and acceptance of, and compliance with,' Part 2B of the Government Procurement Act (secure local jobs code);
  - (b) 'to undertake research, and develop educational and other programs, for the purpose of enabling holders of secure local jobs code certificates to comply with the code';



- (c) 'to advise the Minister on any matter relevant to the operation of this part';
- (d) 'to provide secretariat support to the council'; and
- (e) 'any other function given to the registrar under [the Government Procurement Act] or another territory law'.

56. The Registrar was also responsible for dealing with complaints in respect of entities holding a secure local jobs code certificate who had failed to comply with the SLJC. The Registrar was broadly required either to take action in relation to the non-compliance or decline to take action where satisfied the complaint lacked substance, was frivolous, vexatious or not made in good faith, or had otherwise been adequately dealt with.

57. In his role as the SLJC Registrar Mr Green was required to liaise with members of the Secure Local Jobs Code Advisory Council, which included a CFMEU representative, Mr Smith.

58. It is anticipated that evidence before the Commission will further indicate that Mr Smith had a line of communication with Mr Joshua Ceramidas, Ms Berry's Chief of Staff. That of itself is unremarkable. However, what was communicated by whom to whom and when is relevant to the investigation of the veracity of the rumours I referred to earlier. I therefore also intend to call Mr Ceramidas – if possible - and Ms Berry.

59. The TET provided its TER on 18 March 2020. However, for reasons also the subject of investigation, that TER was not accepted by the relevant delegate, Instead, a second TET was assembled on 27 March 2020.

60. The second TET consisted of the following people:

- (a) Sally Wright (MPC) – chairperson;
- (b) Dylan Blom (EDU) – member; and
- (c) Pal Patel (EDU) – member.



61. The second TET was immediately tasked to undertake the same task as the first TET. Its TER was provided on 6 April 2020. It provided its TER in just 10 days; a task that had taken the previous TET some 3 months.
62. By this date the ACT, having endured the bushfires of Christmas 2019, was then starting to navigate the as yet unknown impacts of the COVID-19 pandemic.
63. On 26 March 2020, the Director General of MPC, Mr Duncan Edghill, emailed his counterpart at the EDU, Ms Katy Haire, requesting that a preferred tenderer for the Project be identified with contract negotiations to take place to bring the contract within budget (i.e. the position originally recommended in draft by the original TET). MPC's motivation was simple, get projects started in the ACT to support the local economy. Despite positive overtures from both Mr Green and Ms Haire in response to Mr Edghill's request, it was not to be the case. I nevertheless intend to call Mr Edghill to explain MPC's position.
64. By its TER dated 6 April 2020, the second TET arrived at an assessment evaluation where Manteena was now only fractionally ahead of Lendlease with respective total weighted scores of 69.1 to 68.4. Lendlease's tender risk rating had now been assessed as low.
65. The second TET's TER maintained the recommendation of adopting a BAFO process.
66. Shortly after a BAFO process was commenced. The following BAFO tenders were received:
  - (a) Manteena with a total tender price of \$15,100,000 (excl GST); and
  - (b) Lendlease with a total tender price of \$15,997,366 (excl GST).
67. The Lendlease BAFO submission did not comply with the target budget. The total assessment scores were (out of 100):
  - (a) Manteena - 76.1; and



(b) Lendlease - 67.4.

68. In its BAFO TER dated 5 June 2020 the second TET recommended that the ACT enter into a contract for Phase 1 of the design of the Project with Manteena.
69. Despite that recommendation, on 22 June 2020, Mr Green provided Ms Haire with a memorandum which recommended that Phase 1 of the Project be entered into with Lendlease. On or about 25 June 2020, Ms Haire approved that recommendation, and the Project was awarded to Lendlease. The circumstances leading to this decision are also the subject of the investigation. I intend to call Ms Haire.
70. The events surrounding the award of the Project to Lendlease raise suspicions in respect of whether officials exercised their functions honestly and/or impartially in making recommendations and decisions.
71. The key witnesses are those who performed decision making processes or had the potential to influence them. They are, in no particular order:
- (a) Mr Green;
  - (b) Ms Haire;
  - (c) Ms Berry; and
  - (d) Mr Ceramidas.
72. All of the above persons were public officials for the purposes of the Act. They were all well aware of their obligations as public officials, and in particular in relation to procurement, including their obligations of probity and ethical behaviour: see for example pursuant to the ACT Government Procurement Circular PC21: Probity and Ethical Behaviour and ACT Public Service Code of Ethics; and the *Public Sector Management Act 1994*.
73. A subsequent investigation was conducted by the ACT Auditor General which resulted in the publication of a report which heavily criticised the probity of the





procurement process. The report is in a bundle of material that I intend to seek to tender shortly. That report, through seriously critical of the process which was undertaken, did not describe in detail how the impugned decisions were made nor the roles of all the significant persons in the process. The Commission has obtained evidence that could reasonably support a conclusion that particular individuals actively participated in the process to bring about an outcome despite that which legitimate procedures proposed and that those individuals have sought to conceal that conduct.

### **The Public Interest**

74. There are a number of matters relevant to the public interest in this inquiry that are uncontroversial:
- (a) the Project involved the significant expenditure of public funds;
  - (b) the Project was of significant importance to the local Campbell community; and
  - (c) there is a significant public interest in the exposure of, and prevention of, corrupt conduct.
75. Unless the evidence leads elsewhere, I intend that the public examination will be confined to both a set period of time (2019 to 2020), and a singular relevant project. To that extent, it involves in essence two critical moments, namely the decision to proceed to BAFO, and the decision by Ms Haire to award the Project contract to Lendlease on Mr Green's recommendation.
76. Ultimately, the Manteena bid, if accepted, had the potential to save public funds in the amount of \$897,366 and may have represented a significantly better value for money solution for the Project. In addition to public funds, there is also the potential that the Manteena bid represented a lost opportunity for an improved performance and product form the Project, which was seemingly awarded for a purpose other than being value for money.



77. That is in no way to denigrate the performance of the job by Lendlease. However, it is at least presently clear that Manteena's bid ought to have been preferred.
78. These matters are serious. So too is the potential for findings as to interference in, and abuse of, government procurement processes to achieve outcomes that do not represent the best value for money for the community. The public, and the people of Campbell, place their trust in those who make procurement decisions on their behalf to do so fairly, impartially and in their interest. On the present evidence that trust appears to have been fractured.
79. The central issue in this investigation concerns whether the system for dealing with significant procurements in the Territory, and which applied to the Project, has been undermined by inappropriate conduct at either a political or bureaucratic level (or both). If this occurred, it has substantial significance for the integrity of the system itself, although here we are examining a single procurement. Further, the conduct the focus of examination was not confined to an act or event, nor a single individual but involved communications between the Delegate and the relevant Tender Evaluation Teams, between the Minister's Office and the EDU and the devising of a way at a high level to bring about an outcome.
80. For the purposes of making its findings, the Commission will need to assess the credibility of witnesses and the evidence they give. It must assess that evidence on the civil burden (i.e. what is more probable than not), noting just how serious the above matters are, to arrive at findings of fact. Anyone giving evidence should bear in mind that a person who knowingly gives false or misleading evidence to this Commission, whether in private or in public, is liable to prosecution for an offence punishable by a fine of up to \$8,000 or 12 months' imprisonment or both.
81. Persons of interest have been given leave to be legally represented, as is their right. Those representatives may apply, in accordance with the Act, to cross-examine other witnesses noting of course the Commission's guidelines for doing so (which are available on the Commission's website), and that, for the most part, the principal role of examining and cross-examining witnesses belongs to me. The



witnesses are entitled to watch the evidence of each other and may feel free to attend the Commission for that purpose. They will all be required to provide their evidence in person.

82. In circumstances where this investigation has been ongoing for some time, and the Commission has already obtained a wealth of material by collecting documents and interviewing witnesses, if a person gives false or misleading evidence there is a good chance the Commission will already be possessed of information that demonstrates that demonstrates the falsity of the evidence.
83. Commissioner I now intend to call Mr Green, would it be convenient to do so after a short adjournment.

**C P O'Neill**  
**COUNSEL ASSISTING THE COMMISSION**

**10 August 2023**