

**REFERRAL OF A PUBLIC INTEREST DISCLOSURE
TO FIRE & RESCUE NSW
FOR INVESTIGATION AND REPORT BACK
PURSUANT TO SECTION 53 AND 54 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION
ACT 1988**

Complainant: Anonymous
(Public Interest Disclosure)

ICAC Reference: E20/0698

Mode of complaint: Letter

Background information:

The Commission has received information that consultancy business, CMG, was engaged by Fire & Rescue NSW (FRNSW) initially to facilitate a two day strategy session with the FRNSW Executive Leadership Team on 13 & 14 June 2017 to inform preparation of the FRNSW Corporate Plan 2018-2021.

To assist in the initial assessment of the matter, the Commission made enquiries with FRNSW as regards the circumstances of the engagement of CMG. However, although the information provided was helpful, there remained a number of unanswered questions.

Details of corrupt conduct allegations to be investigated:

It is alleged that:

1. Commissioner Paul Baxter FRNSW engaged his personal friend, Mr Stigter (for whom the Commissioner had previously endorsed a book) of CMG, in breach of NSW Government procurement rules and regulations, to carry out consulting services for FRNSW on 13 & 14 June 2017.
2. After the tender for consulting services for expert advice on strategy had closed and was under review for selection, the Commissioner intervened in the procurement process to have Mr Stigter's company awarded the consulting work despite advice that the tender had closed and that to do so was outside of the NSW Government Procurement Guidelines. The Commissioner claimed Mr Stigter was the only service provider who could deliver the strategy, however it is alleged this was never tested or justified.
3. Requests from the Commissioner were specifically kept verbal to avoid there being any formal advice on record preventing the engagement. The Commissioner proceeded to approve the engagement of Mr Stigter without the knowledge of the Procurement Department, again actioned this way to prevent any formal advice on record to prevent the engagement.

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4. Subsequent events throughout the course of the engagement of Mr Stigter's company additionally indicate corrupt conduct involving the Commissioner:
 - Increase in the value of the project scope with no due process followed - the cost had exceeded the \$150k threshold required to go to tender.
 - The excessive daily rate of \$6,000/day plus all expenses, charged by Mr Stigter, for a 'one man operation'.
 - In an attempt to conceal the increase in costs the invoices were processed under separate orders.
 - Absence of an evaluation (no value proposition was ever undertaken and was not submitted to the Procurement Department to evaluate).
 - Seeking retrospective accreditation for government pre-qualification panel to conceal and legitimise the manner in which CMG had come to be engaged.
5. Staff were unable to speak out on these matters, as it was made clear that the Commissioner wanted to continue engaging Mr Stigter and there were to be no questions raised regarding his invoices and they were to be paid. The procurement team were not apprised of the payments or engagement of Mr Stigter and had no visibility of the engagement criteria or the work delivered.
6. The advice given to the Commissioner was that this engagement should be reported to Justice to properly define the scope of what was needed going forward (i.e. ensure no scope creep which was being used as the excuse to keep expanding the service and increasing payments) and then proceed to tender. This was not done and was clearly a financial benefit to the Commissioner's friend, Mr Stigter. The Commissioner sought to know how he can make the engagement appear legitimate in the event it were to be audited.

The Commission directs FRNSW to consider and reflect the following in its investigation:

- Details of consultancy services provided by Mr Stigter/CMG to FRNSW including the date of appointment, cost and current status.
- The process followed in the procurement of CMG and the engagement with other suppliers (including Emergent Futures, Nick Ingram Consulting, The Professional & StraightTalk) for the initial engagement in June 2017, whether there was any deviation from the normal procurement process and if so on what basis.
- Details of the procurement process followed which led to the other four suppliers submitting tenders/proposals.
- The rationale for appointing CMG above other consultants.
- The date when CMG became part of FRNSW's pre-qualification scheme.
- The role of the Commissioner in CMG's initial engagement, whether any conflict of interest was declared and if so how this was managed.
- The nature and extent of any pre-existing association between the Commissioner and Mr Stigter.
- With regard to extensions to the original engagement for work entered into with CMG, details of Strategic Procurement involvement and whether there was any further evaluation of what had been delivered so far.

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- The amount of the contract including the additional costs incurred as a result of the extension(s).
- The Commissioner's role, if any, in the extension of CMG's contract.

Comments:

1. In accordance with section 53 of the *Independent Commission Against Corruption Act 1988* (the ICAC Act), FRNSW has agreed to investigate this matter and provide the Commission with its report on the investigation pursuant to section 54 of the ICAC Act.
2. As the principal officer of FRNSW is implicated in the allegations, the Commission recommends your agency engage an external investigator to conduct this investigation and complete the investigation report on behalf of FRNSW.
3. Please review the attached material and contact the Commission as soon as possible to discuss how long the investigation may take and a due date for the report to be provided to the ICAC.
4. Under section 55 of the ICAC Act, if at any time the Commission is not satisfied that you have duly and properly taken action in connection with this matter, the Commission can inform you of the grounds of our dissatisfaction and give you an opportunity to comment within a specified time. If, after considering any comments we remain unsatisfied, the Commission may submit a report to your Minister setting out any action that had been recommended to you and the grounds of the Commission's dissatisfaction.
5. Please provide the Commission with your investigation plan by **26 February 2021**.
6. The Commission would also appreciate a progress report approximately half-way through the investigation.
7. The Commission has classified this matter as a public interest disclosure. Under the provisions of the *Public Interest Disclosures Act 1994* (the PID Act) it is an offence to take detrimental action against a person who makes such a disclosure. Detrimental action can include intimidation, harassment and adverse treatment in relation to employment. Under the PID Act, this disclosure continues to be protected upon referral.
8. The complainant has not provided any contact details and could not be advised of this referral for investigation.

Information retained by the Commission:

Original complaint and internal working documents.

Attachments:

Section 54 report guidelines: What to include in your report to the ICAC.

Contact Officer: Stephanie Coorey, Senior Assessment Officer
Email: icac@icac.nsw.gov.au

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Please contact the Commission officer nominated above if further information is required.



Stephen Rushton SC
Commissioner

4 February 2021