

JOINT STANDING COMMITTEE ON THE CORRUPTION AND CRIME COMMISSION

**AN INQUIRY INTO PUBLIC SECTOR PROCUREMENT OF GOODS AND SERVICES AND
ITS VULNERABILITY TO CORRUPT PRACTICE**



**TRANSCRIPT OF EVIDENCE
TAKEN AT PERTH
WEDNESDAY, 7 NOVEMBER 2018**

Members

**Ms M.M. Quirk, MLA (Chair)
Hon Jim Chown, MLC (Deputy Chair)
Mr M. Hughes, MLA
Hon Alison Xamon, MLC**

Hearing commenced at 10.27 am**Ms SHARYN O'NEILL****Public Sector Commissioner, examined:****Ms TAMARA FINDLAY****Assistant Director, Public Sector Commission, examined:****Mr EAMON RYAN****Executive Director, Conduct and Compliance, Public Sector Commission, examined:****Mr LINDSAY WARNER****Acting Executive Director, Public Sector Commission, examined:**

The CHAIR: I am permitting the media to do some filming while we do the preliminaries.

On behalf of the committee, I would like to thank you for agreeing to appear today. I am Margaret Quirk and I am the Chair of the Joint Standing Committee on the Corruption and Crime Commission. On my left is the Deputy Chair, Hon Jim Chown, MLC; to his left is Mr Matthew Hughes, MLA, member for Kalamunda; and on his left is Hon Alison Xamon, MLC. It is important that you understand that any deliberate misleading of this committee may be regarded as a contempt of Parliament. Your evidence is protected by parliamentary privilege; however, the privilege does not apply to anything you might say outside of today's proceedings.

Before we begin our questions, do you have any questions about your attendance here today?

Ms O'Neill: No.

The CHAIR: Would you like to make an opening statement?

Ms O'Neill: No, we are happy just to go to questions, Chair.

The CHAIR: Ms O'Neill, if you could start by outlining for us what your role is as the Public Sector Commissioner?

Ms O'Neill: As Public Sector Commissioner I have now been in the role for 12 weeks. The role of Public Sector Commissioner in accordance with the act is to provide oversight and planning for the current and future efficiency and effectiveness of the public sector, so a leadership role in that sense. We also have responsibilities for setting standards and, under the Corruption and Crime Commission Act we have responsibility for minor misconduct. We also administer a couple of other pieces of legislation around PID and around the lobbyist register.

The CHAIR: If you could refrain from acronyms, it is helpful for Hansard; so, PID?

Ms O'Neill: It is public interest disclosure.

The CHAIR: Thank you very much. Can you outline for us what you consider to be minor misconduct?

Ms O'Neill: Sure. I will just make reference to some information. Minor misconduct is defined in section 3 of the Corruption and Crime Commission Act. It is actually not minor in the general sense that people would understand minor misconduct. To meet the test under that act, and the definition, the alleged misconduct should be so significant that if proved it could reasonably lead to the termination of a public officer.

The CHAIR: What arrangements do you have with the CCC to triage matters from one to the other?

Ms O'Neill: There is a memorandum of understanding between the two agencies. I also meet, as do my staff, with the CCC on a regular basis. There is a document that is provided across the sector, which you may or may not have a copy of, but we can provide one to the committee, called "Notifying misconduct: A guide for Principal Officers of Notifying Authorities". When there is an alleged misconduct, agencies make an initial assessment about whether it is serious misconduct for the purposes of that act or minor misconduct in accordance with the definition I have just spoken about. The allegations that come directly to us, there is a triage assessment made by our officers about whether it initially meets the definition as stated as minor misconduct. If in fact people have sent their allegation to us and it is more likely to be serious misconduct, we have arrangements where we provide that information to the CCC. If it looks like it meets the threshold of minor misconduct, then the triage arrangements that we have in house go through an assessment process and a judgement is made about whether that allegation will be managed internally by the Public Sector Commission or in fact if it will be provided to agencies for them to undertake their investigations in accordance with their own arrangements. Then we maintain an oversight role for a range of those allegations that are provided back to agencies.

The CHAIR: There is a matter which has been made public relating to some IT purchases in the Department of Health. Many millions of dollars were effectively inappropriately spent or wasted. That was categorised as minor misconduct. Monetary value does not necessarily come into it. We are keen to know what depth an inquiry is made before you can conclude that there is most likely not corruption there or a conflict of interest.

Ms O'Neill: Perhaps if I say a little more about minor misconduct, that might be helpful. We are looking really at a consideration of minor misconduct occurring if the public officer engages in conduct that meets a couple of thresholds: adversely affecting the honest and impartial performance of the functions that they are meant to undertake; involving the performance of functions that are not honest and not impartial that involves a breach of trust, that involves misuse of information or material that they have in connection with their role as a public officer; or could constitute a disciplinary offence that would be seen on the grounds for termination.

Perhaps Tamara or Eamon could talk a little more about the process that we undertake once we have an allegation, if that is helpful. I am not sure of the specific case that you are referring to, but at least we could give some light on that process that might come to how we make that decision.

Mr M. HUGHES: Would you have a case that you could bring to mind that would assist the committee understand the concept of minor misconduct?

Ms O'Neill: Yes, obviously without going into the detail —

Mr M. HUGHES: Given that there were 599 minor misconduct matters received, surely there is something there that you could draw on?

Mr Ryan: Drawing on my eight weeks' of experience in this role, I suppose if we take a step back—misconduct is defined in the Corruption, Crime and Misconduct Act as a broad catch-all phrase. Then minor misconduct and serious misconduct are defined even further. Serious misconduct that the CCC would retain jurisdiction over relates to someone who acts corruptly or who corruptly fails to act in accordance with their position or their duties. They corruptly take advantage of their position for their benefit or to the detriment of someone else, or commit an offence that is subject to a penalty of two years in prison. So it is quite a high definition as to what the CCC will deal with as serious misconduct. The rest comes to us, obviously.

The CHAIR: Can I just interrupt there? What we have been struggling with is how much investigation is conducted to see whether corruption exists. Do you understand what the issue is?

Mr Ryan: Yes, but I am wondering if that is a question for the Corruption and Crime Commission rather than us.

The CHAIR: As I understand it, you jointly look at these matters. I am worried that if on its surface it looks like it is kosher and there is no obvious conflict of interest or obvious corruption that it is then farmed out to the Public Sector Commission and in fact there may well have been some underlying corruption.

Ms O'Neill: As the allegation comes in, if it was an allegation of a corrupt nature it would go to the CCC. They would make a determination in their investigations where it would meet the threshold of corruption or not. If they determine that it does not fit into that group of corrupt behaviours—they would have their own processes and they have more powers than we have, obviously—they would make a judgement that, if in their view it would not amount to corruption, then it would come potentially to us as minor misconduct. Whether something is corrupt or not for the definition of serious misconduct, that judgement will be made by the CCC.

The CHAIR: All right. We will go back to sanctions in a minute. My colleagues will have some questions. Can I just ask you: in relation to the Langoulant report, are you involved in ongoing work following up some of the allegations in that report?

Ms O'Neill: I do not believe so. I will just check with my colleagues, having been here a short time. I do not think we have matters in relation to things that were raised in the Langoulant report in terms of misconduct. I do not think we are dealing with any matters.

The CHAIR: Just generally. For example, Mr Langoulant recommended a different structure for procurement and that that should be centralised. Is that being followed up to your knowledge?

Ms O'Neill: I would not be across whether the Department of Finance is doing something different in procurement. We did do some work with them, though, if I can just find that for you, around procurement as I understand it. Our intersection with the Department of Finance is more in the capability building area. The Department of Finance requested advice from us in March of last year around the development of procurement competencies. We provided some templates and worked with them about how best to write competency frameworks. As I understand it, last year there were some documents co-badged with us around sector-wide competency. Finance delivers training to the public sector around procurement. That is not our role; that would be theirs. In addition to that, I think it was in the service priority review that the notion of functional leadership was discussed. We are taking some role in terms of functional leadership. What that means is making a judgement across government if there are particular departments that have expertise in an area that other departments are engaged in as well. Take procurement, for example. That process, that work, might understandably end up saying, "Department of Finance, you've got more skills and expertise and knowledge about procurement than most; we need you to help the rest of the sector around procurement—set some standards, provide some resources and support."

The CHAIR: Is that something the Public Sector Commission initiates—yourself?

[10.40 am]

Ms O'Neill: The idea of the functional leadership came from the service priority review—the public sector reform projects. We have been given the project to coordinate the functional leadership work for the future. We are just scoping that at the moment. Our role would be more to set the high-level framework around why we would need functional leadership and who might take the role in different areas.

The CHAIR: And the structure of the public sector—the most efficient and capable.

Ms O'Neill: Yes, in that context.

The CHAIR: Which then brings me back to Langoulant's recommendations. Can you explain why they are not taken into account in terms of the procurement area?

Ms O'Neill: That is a question really for the Department of Finance, because our involvement, our intersection with that work, is around leadership competencies. As I mentioned, that is why we are doing this particular work. But we do not have responsibility for procurement.

The CHAIR: I appreciate that, but the recommendations are about the structure of the public sector. If that is not within your purview, whose purview is it? Is it a government policy decision? Are you directed to do that? How does it work if there are recommendations floating around as to how procurement work will be disbursed within the public sector?

Ms O'Neill: That would be a government policy decision. We will have a role in supporting the Department of Finance with capability building, but how they structure the delivery of procurement, we could reasonably be consulted in that, but that would not be a decision of the Public Sector Commissioner.

The CHAIR: All right.

Hon JIM CHOWN: Just getting back to the 599 minor misconduct matters received by the commission, commissioner, I am yet to hear a reasonable assertion as to what minor misconduct actually is. Let us talk about money. It all revolves around the cost of things. Do you have a cost ceiling in regard to what is minor misconduct and what is not in regard to procurement?

Ms O'Neill: Under the definition of the act, which is where our work comes from, I do not believe there is a financial ceiling. If there is corruption or misconduct, I guess it is corrupt and misconduct regardless of the quantum. The answer is that there is no financial cap that we would be given to work inside. To assist, if we are not illustrating what minor misconduct is for the committee, perhaps it would help, going back to an earlier question, if we give some examples of minor misconduct if that is helpful.

Hon JIM CHOWN: If you would not mind, but I still have another question. Minor misconduct is an assessment made by the Public Sector Commission before it refers the matters on to another authority, so you do an internal assessment of whether it is serious or minor. Is that correct or not?

Ms O'Neill: Yes. So an allegation comes. The notification can go both ways. Agencies make an assessment. They are required to make an assessment. If, in their view, it meets the threshold of serious misconduct, they will send it to the CCC. If, in their view, under the definition, it would fit inside minor misconduct, it would come to us. If, once we have had a look at it, we think they have sent it to the wrong entity, we liaise and provide that to the CCC.

Hon JIM CHOWN: Okay. So that assessment is done by the Public Sector Commission?

Ms O'Neill: When it comes to us.

Hon JIM CHOWN: What parameters would those assessments be made under? At this stage, you were going to give us examples, but surely if you are going to actually exercise whether it is minor or serious, you must have a working sheet in regard to the parameters which constitute what is minor and what is not.

Ms O'Neill: So, with the assessment process, we are required under section 45 to assess every notification that comes in, obviously. There are a number of key issues that are considered when we are making that assessment to determine what the next actions are. First of all, we have to ascertain, as I said, whether it falls into the PSC's jurisdiction—if not, another appropriate authority. Sometimes the allegations do not fit serious or minor misconduct; they might be a performance

issue. The seniority and position that the public officer holds would be another consideration that we would have; whether the matter has system-level implications within the agency or the broader public sector; whether the public authority has the resources and capability to investigate the matter itself, because the majority of the matters are not investigated by us, as they are investigated by the agencies; whether that public authority has robust quality assurance mechanisms in place; and whether the matter raised is a particular interest in terms of our ongoing prevention and action work. There is no set of 15 black-and-white criteria in terms of misconduct. Aside from the definitions that are provided in the act, in our assessments we consider these issues here, but there is no hard and fast dollar value or time value or a specific value.

Hon JIM CHOWN: I note that of the 599 allegations, 278 were substantiated. Thirty-eight per cent of those people received training, counselling or improvement, and 26.3 per cent had their employment terminated. It does not state here whether any charges were laid against them from a criminal perspective. Why is that?

Ms O'Neill: Because if it is of a criminal nature, it falls into serious misconduct, which is the work of the CCC.

Hon JIM CHOWN: So minor misconduct is not a criminal activity; is that what you are saying?

Ms O'Neill: I will ask Mr Ryan to respond.

Mr Ryan: As I said previously, the definition of "serious misconduct" involving criminal offences is an offence punishable by two years or more in prison. Minor misconduct could be a simple offence, for example, that has only a pecuniary penalty or a penalty of less than two years in prison. If there was an allegation made in respect of that, that would be referred to police, so the Public Sector Commission would not build a brief and be responsible for a prosecution; that would go to police and the police charge would follow.

Hon JIM CHOWN: Who would refer it to the police?

Mr Ryan: The Public Sector Commission would and the Corruption and Crime Commission would.

Hon JIM CHOWN: So once again you would do an internal assessment of whether you would refer it to the police or not. How do you ascertain whether it is criminal or otherwise, because from my perspective it is all criminal?

Mr Ryan: You would take the allegation at face value, so if someone makes an allegation, you look at if it has some bona fides. If you take it at face value, you would ask if this is an offence. If it is a serious offence, it meets the definition of serious misconduct.

Hon JIM CHOWN: We are talking about minor misconduct. We understand what happens from the CCC. We are talking about your role and your responsibilities.

Mr Ryan: If it is minor misconduct and it is potentially an offence, we would potentially refer it to the police, but often agencies have received it and done that already. For example, I can give you a practical experience from the Department of Education. We would get an allegation, look at it and make an assessment: is this potentially a criminal offence, and, if it is, yes, we would send it to police. We would also look and say, "Do we have to notify the CCC or the PSC?" So often when the notification comes to us, we have already been told that it has been referred to police by the agency, and if it has not been, that is something that we could do.

Hon JIM CHOWN: Out of these 599, how many were referred to the police?

Mr Ryan: I do not have that number.

Hon JIM CHOWN: Why not?

Ms O'Neill: We do not have that information with us.

Hon JIM CHOWN: Could you get that to us, please?

Ms O'Neill: Yes.

The CHAIR: Can I just give you an example here —

Ms O'Neill: Sorry, Chair, just to clarify the number that were referred by us to police we would have; we would not have the number that agencies —

Hon JIM CHOWN: That is fine.

[10.50 am]

The CHAIR: Can I just give you an example which has confounded us. I accept that it was well before your time. It was a 2010 contract which was reported by the Auditor General in 2016. It was a health department IT contract. The contract was for \$45 million and had blown out by \$81.4 million, thanks to numerous weaknesses in oversight and controls. There were numerous variations—79 variations—and if its two two-year options to extend were taken up, the value of the contract would likely blow out to \$175 million. There were storage costs associated of \$90 000 per month, and so on. That was gauged to be minor misconduct. The level of incompetence was so mind-blowing that we all find that somewhat extraordinary. I do not know if you can explain why that falls in the category of minor misconduct.

Ms O'Neill: As you have already alluded to, I do not know the detail of that particular case and I am not aware whether it went to the CCC or not. They may have assessed it not to be serious misconduct leading to criminal charges. I am not advised here whether we had any interactions with that report, but if it was assessed —

The CHAIR: That one was referred to the commission as minor misconduct.

Ms O'Neill: It is something that I would have to get more information about, Chair, but just from my experience in Education over a long period, as well as being new in this role, perhaps a judgement was made that, as you said, it was incompetent behaviour rather than the things here that we talked about before about personal gain. I would have to take advice on that; I am not aware of the case. But if it was —

The CHAIR: Bad oversight, failure to —

Ms O'Neill: Poor governance.

The CHAIR: Yes. Failure to separate contract management from the actual acquisition. But persistent bad oversight and 79 variations of the contract, I just find that extraordinary that there is not some level of misconduct there that deserves greater attention.

Ms O'Neill: It is a point that has been discussed, certainly in my experience over quite a bit of time, the interaction of performance and misconduct where something is just very bad work versus deliberate gain for an individual. I would not want to make further comment on that case. I am not aware of the detail of it.

Mr M. HUGHES: As a layperson in this regard, serious misconduct is criminal. That is the threshold, is it not, really—the point of separation?

Ms O'Neill: Some examples of corrupt conduct for that purpose is abuse of the public office, blackmail, bribery, deliberately releasing confidential information, fraud, stealing, forgery. They are the sorts of things; it is about deliberate intent and motivation to gain, usually.

Mr M. HUGHES: So, dereliction of duty and incompetence, which would give rise to situations where non-performance of procedures in relation to procurement are disciplinary matters, even though the size of the loss to the state could be considerable.

Ms O'Neill: Yes, and therefore dealt with under the Public Sector Management Act performance management approach rather than misconduct.

Mr M. HUGHES: Mr Langoulant, in commenting—we are interested in this issue of procurement and the mechanisms that are put in place to ensure that procurement is carried out in a proper way—but where you have got this kind of large fudging in relation to the concept of dereliction of duty or incompetence, the culture of indifference to procedures is something we are interested in, because that in itself is a red flag for then opportunities for the criminally minded to receive a gain for themselves. That creates the means by which this kind of behaviour can occur, and the recent health service debacle is a strong indication of that, is it not? So what does the public sector think about that, and your responsibilities to do something about the culture within those various agencies that are under your purview?

Ms O'Neill: Thanks for that question. When I was the director general of Education, and now the Public Sector Commission, my observation is not that there is a general lax approach to requirements, regulations and rules, but it is fair to say, and the evidence shows, that from time to time, people deliberately choose to, for personal gain, act corruptly or in a manner that we would call misconduct. We have 140 000 employees. I guess that when you look at 600 or 599 minor misconduct matters, while I would rather not have that number—or the commission would not have—the fact is that those allegations were received. So I do not think there is a general sense that people disregard the rules; otherwise, I think we would have many more reports. But that being said, we do have a particular role in prevention education. We have undertaken vast numbers in terms of the work we have done in that space. I might just make reference to, in the financial year from our annual report, over 1 900 participants. While that is quite a good effort, and that is only the effort of the Public Sector Commission, directors general are actually responsible for prevention education in their own right. As I said before, 140 000 people are still lots of people to get to, so I think there is more work to be done in integrity promotion. You are quite right; it is a cultural issue. The culture is set from the top, in my view, and the expectations and the governance and the stringency with which those things are put in place rests not only with the Public Sector Commission as an oversight body, but with the directors general themselves.

The CHAIR: Can I just take up a point? I understood that the Public Sector Commissioner took over the educative role in relation to corruption prevention that was previously performed by the CCC.

Ms O'Neill: Yes.

The CHAIR: It seems to me in your evidence you are saying that is also the responsibility of directors general of agencies, so which is it?

Ms O'Neill: I do not think it is necessarily either/or. We clearly have a responsibility. When I was director general of education we had a significant prevention education program, which Mr Ryan headed up. We had a third of the public sector there, so we took that responsibility seriously. They have a responsibility for good governance to set the tone. The culture has already been mentioned. In my view, they have a responsibility to ensure that people are aware of public interest disclosure, of how to notify, of prevention education in terms of the sorts of things that people should be aware of, their own responsibilities, their own policies and regulations. Directors general have a responsibility to ensure that the appropriate governance is in place, that their staff know what is required of them, including notification.

Mr M. HUGHES: The Public Sector Commission made an observation in itself in its submission to this inquiry regarding culture. You recognise that collaborative and inclusive culture is grounded in excellence and integrity. That is one thing. Langoulant makes the observation that he does not think that at senior levels of government agencies—we are talking about senior public servants now—internal audit is given the attention it deserves. In procurement, it is clearly the case—this is the main purpose of this committee’s inquiry—as significant a matter as procurement is, we are not reviewing it regularly enough. That is why I say that there ought to be independent internal audit reviews on procurement activities of agencies annually. What do you think about that suggestion, that there should be independent, internal audit reviews of procurement activities annually?

Ms O’Neill: I can understand why John Langoulant made those comments. I would not at this point pretend to have in-depth knowledge of every agency’s audit and review processes.

Mr M. HUGHES: Would you agree with his statement, or do you think it is an exaggeration, that at senior levels of government—that is, senior levels of the public service—internal audit is not given the attention it deserves?

[11.00 am]

Ms O’Neill: I understand the spirit of what Mr Langoulant says. I have not done an assessment, and I am not doing an assessment of every agency’s audit and review; nor am I really in a position to make a judgement about each director general and their disposition towards audit and review. I am advised that the State Supply Commission audits procurements required of agencies each 12 months or so, so there are some governance protections in place. I understand the spirit of what John Langoulant was saying about the importance of audit and review as part of your governance framework, but I would not confidently make comment about directors general as a total and their predisposition towards strong capability in this regard.

Hon JIM CHOWN: Commissioner, it is a very good question because our public sector procurement process in this state is principle-based—you have gone through some of those principles—based on expectations of ethical behaviour by public servants. Obviously you have nearly 500 who have breached that ethical behaviour to some degree.

The CHAIR: Six hundred.

Hon JIM CHOWN: Six hundred. It is my belief that unless there is an effective oversight and investigatory process in place, procurement in this state will still be breached on many occasions, whether it is minor or major. All we hear about are the major issues. Six hundred people—we do not know how many were based on procurement here. That is a figure we would like to know as well. That is a large number of breaches and collectively it would probably come to possibly millions of dollars. Without any effective oversight investigatory powers, as Matthew asked about with regard to independent audit processes—a good example is that the Auditor General has just audited eight local governments, and each one of those was found to be wanting in its procurement processes. There are about 140 local governments in Western Australia. Extrapolate out and you could say that every one of them is breaching its own internal processes for procurement. It is alarming. All we hear from you people are words, without any effective ability to investigate from an independent audit process with regard to procurement in this state. Commissioner, that is what leadership is about. You are a senior public servant. I would hope that at some stage in the future we would get something along the lines that I am advocating here.

Ms O’Neill: Perhaps if I can respond, because a range of issues have been raised there. Can I clarify for you—you refer to 600. Of the 599 minor misconduct matters received, 278 of those were

substantiated. If I can just clarify the data, because it is not correct to say that there were 600 people acting inappropriately.

Hon JIM CHOWN: Just to clarify, I said over 500; the Chair corrected me to say 600, so if we want to get down to facts, we will get down to facts, Commissioner.

The CHAIR: Sorry, there were 599 matters received by the commission—I accept that—and 278 were substantiated.

Ms O'Neill: To give you an idea of the sorts of things that make up that number thereabouts, in 2017–18 there were around 104 in relation to these allegations of fraud and corruption; others for theft, gifts, matters relating to credit cards et cetera. So around 104 matters for fraud and corruption. I think I really need to be clear—just to go back to the question, if my response was misunderstood—I am fully in agreement with an audit to ensure that standards are being met. I set very high standards for ourselves in previous roles and in this role. I would not want it to be misunderstood that we totally agree that there are problems here. No-one is shying away from that. It is state money. We take that responsibility really seriously.

In terms of leadership, I am very willing and able to lead in this space. I would not want that to be misunderstood. You made a comment—if I got that wrong, I apologise—about our capacity to investigate. I think we have pretty good capacity to investigate. We have capable people who can make judgements at law whether we need to send something to police and others. So I think we have capability. We have oversight. It is fair to say that more could be done in this space. More could be done in Education—we want to do that—but we have to join up with agencies to be able to do that. There are 140 000 people and the messages to get out there, we need to do that in collaboration with other agencies.

Hon ALISON XAMON: Commissioner, I want to pick up on this issue of culture a little further. One of the things we note, particularly from the investigation that happened in north metro, was that all the procedures were there. The procedures were fine, they were just being ignored. I have a specific question about what is happening with the North Metropolitan Health Service at the moment. I want to know if you have any opinions or what your view is of the current reforms that are being undertaken in health at the moment, following on from what happened in north metro. I would like to start with that.

Ms O'Neill: You might know that Minister Cook asked the Public Sector Commission to provide him with some advice—I have the terms of reference in relation to that—about the work that has been done there; how north metro arrived in terms of its governance; what was happening to it that would enable those activities to be undertaken. We have just started that work for Minister Cook. That will inform us around what has been happening there.

Hon ALISON XAMON: Do you mean culturally in particular?

The CHAIR: Are the terms of reference long? Are you able to read them to us?

Ms O'Neill: I am happy to table the terms of reference. They have not been made public at this point, but I am happy to provide those.

Hon ALISON XAMON: This issue of culture is a complex one, but obviously it is absolutely essential because we have a concern that if we have the procedures in place and the audits are being undertaken and if you are saying that you feel confident that the Public Sector Commission is well resourced to be able to undertake its investigative functions, which I understood is what you were just confirming, we still have an issue. We know this because matters keep coming to light. This issue of culture and what is happening in our public sector means that people obviously feel as though they have carte blanche to ignore all the good work that has been put in place.

One of the things I would like to particularly ask you about is that I noted that the PSC identified that there is a particular risk to culture when there are high times of change—where employees and their roles may be subject to change or restructure. Reflecting on that, I note that the public sector is going through enormous change, both through a culling of senior public servants but more so just through the machinery-of-government changes. I was wondering if you could offer any reflections on any of the risks that might be occurring around issues of culture arising from those changes.

Ms O’Neill: If I can pick out parts of the question, first of all to your statement around culture, I could not agree more. In my new structure, I am establishing a senior position on the executive that will take some leadership, particularly around culture because it is a very complex and broad area and pervades most everything that we do; that is for certain. I just acknowledge the point that you made there.

Tell me again the last thing that you asked.

Hon ALISON XAMON: The issue about the effect of change as a risk factor.

Ms O’Neill: The sorts of risks that I saw during MOG, and as we are transitioning and doing a lot of reform, is change in personnel. In some areas, there has been rapid change in personnel. That is a risk, and it is a risk that directors general have to manage.

[11.10 am]

Hon ALISON XAMON: There is change in directors general as well—all over the place.

Ms O’Neill: And that is a risk that I manage, as their employing authority, as well. But where agencies have good and proper governance processes—for example, auditing—that should transcend some of that staffing change.

Hon ALISON XAMON: Except that we have found that it has not.

Ms O’Neill: On some occasions, it has not. I will not make mention about the detail of north metro except that which is already publically known. Part of that was not about transition; there were some very longstanding people there, but that is a different issue, which is not about people moving. Perhaps it is about familiarity.

Mr M. HUGHES: That is the countervailing point, is it not? You get distortions of culture because people occupy senior positions, or positions of importance along that chain, for significant periods of time and their methods of operation dominate what the policies and procedures say, so they establish workarounds. That is the problem, is it not, really? If we go to the question of integrity, how we can in fact test that is by a robust auditing of procurement processes. That is exactly what Langoulant is talking about. Hence my question: how much importance are you attaching to that view—that observation—by Langoulant?

Hon ALISON XAMON: Perhaps she can answer my question.

Mr M. HUGHES: Sorry; I apologise.

Ms O’Neill: I will come back to that.

We were talking about risk. The point I make is that during those changes, at the higher levels potentially in some areas, when some people are moving, that is a risk that needs to be managed. Whether people coming in and out of those areas understand the policies, procedures, requirements and responsibilities, and whether the governance remains robust with movement in MOG agencies where we have agencies coming together, there is a lot of work being done to bring —

The CHAIR: Machinery of government.

Ms O'Neill: Sorry; machinery of government. To bring together not only processes and policies, but culture. It is very important for directors general to make clear the expectations under law and policy for those people. There are management risks at times of great transition and change, and a lot of work has to be done to not only ensure that policies and procedures—you can see that is policies, procedures, management, acts, practices is one of the terms of reference here—but also around personal integrity, including selection processes and inductions in those areas. A range of human resource practices make very clear the expectations of people's behaviour. They are all risks that exist every day in agencies, but at times of great change, movement, bringing together and different ways of operating, the attention to those needs to be much higher.

Hon ALISON XAMON: We have particular challenges right now. As I have mentioned, the public service is currently in a state of great flux internally. That actually really emphasises then the role that the Public Sector Commission needs to be able to play as an entity that can oversight what is happening.

The CHAIR: And lead.

Hon ALISON XAMON: Picking up on the question that was asked by the Chair, to what degree can we say that the buck stops with the Public Sector Commission as the agency that needs to take responsibility for ensuring that that culture across the entire public sector is sound, or is there an expectation that that continues to be devolved, even as these agencies are in the process of great change?

Ms O'Neill: I think I made mention before that I do not think it is a case of either/or. We cannot escape the fact that directors general are responsible for the good order, management and delivery of outcomes in accordance with their functions; they are responsible for those things.

Hon ALISON XAMON: There is no question about that. Sorry for interrupting, commissioner. If you take the north metropolitan example, is there an expectation that the buck would stop with the director general of Health or that, ultimately, the former commissioner of the Public Sector Commission really should have been playing more of a role? These are the questions for government, so what would be your view?

Ms O'Neill: My view is that the buck stops with the accountable officer. In the case of north metro, and perhaps we are still to find out—I will not use that example but another example. I would say that at the end of the day, the director general has responsibility for what happens in their agency. I have responsibility for leadership, for support and for setting standards as an oversight agency, but I do not get to make the decisions in a department about which contract is selected or not. I do not make those decisions; directors general do. I think that if each were sitting here, they would say the same thing—that they are responsible for the activity in their agency.

Hon ALISON XAMON: Can you give an example of any departments that you think are managing the issues around the culture of risks of corruption, procurement and the like? Who is doing it really well? Are you going to say the education department?

Ms O'Neill: I would like to say the education department.

Hon ALISON XAMON: I had a feeling you were going to say that!

Ms O'Neill: It is a terrific example!

Perhaps I will not joke about that. I will just make some comments about that, taking myself out of it. Just as an example, it was a key priority, or at least an area of emphasis in Education. The person who is sitting to my right was responsible for and sat with the corporate executive members. It was set as a high standard and we worked really hard and assiduously. Education were not the only

people to do that, I am sure, but having been here for 11 or 12 weeks, it is hard for me to make a judgement and give you an example of other agencies that are doing it well.

Hon ALISON XAMON: Have you got any examples of who is doing it poorly that you can share with the committee?

Ms O'Neill: I do not—not to date. I just do not have that information available to me.

Hon ALISON XAMON: I did actually have a question I raised before. Just out of interest, how long have each of you been in your roles? Because it would strike me that the Public Sector Commission itself has undergone enormous change. Could I get an idea, because it would help us, as a committee, to get an idea of the people in front of us who are answering our questions.

Ms O'Neill: It is true that we are undergoing quite a bit of change, and there has been quite a bit of change.

Hon ALISON XAMON: So you have obviously been there for 12 weeks?

Ms O'Neill: I have been there for 11 or 12 weeks—nine or 10 weeks, eight weeks.

Mr Warner: I have been there since the commission's inception and prior to that in its former capacity at Premier and Cabinet.

The CHAIR: Well done, Mr Warner. You deserve a medal!

Ms Findlay: Five years.

Hon ALISON XAMON: Thank you.

The CHAIR: Well done. We have got a submission from the Department of Health, and I just want to read this to you.

“The indication is that the Public Sector Commission has not given clear advice whether an offer of voluntary severance should or should not be considered, or indeed made, to an employee who was under investigation or subject to an unresolved complaint. Given that this may best be decided on a case-by-case basis, from whom can this advice be sought at a time it is needed? One option may be a clear policy developed by the Public Sector Commission.”

Would you consider developing a clear policy on whether an offer of voluntary severance should or should not be considered, or indeed made, to an employee who was under investigation or subject to an allegation of misconduct? Where can agencies get advice about this, and if it is not the Public Sector Commission, who should it be?

Ms O'Neill: We do not have that submission. I will ask Mr Warner to comment.

Mr Warner: Offers of voluntary severance are made under the redeployment and redundancy regulations, which are subsidiary regulation to the Public Sector Management Act. Those regulations prevent offers of voluntary severance being made in circumstances where formal disciplinary processes are in place. If an agency came to the Public Sector Commission —

The CHAIR: That is not what I asked, but go on.

Mr Warner: If an agency came to the Public Sector Commission to be given advice, we would give advice around the operations of the regulations and they would—if there is no formal process that is being instigated to the point where the regulations would prevent an offer—have to make a value judgement about whether or not an offer should be made. The directors general are responsible and accountable for workforce management issues, including redeployment, redundancy and offers of voluntary severance.

[11.20 am]

The CHAIR: Which director general?

Mr Warner: The director general of the employee.

The CHAIR: This office of voluntary redundancy, what agency is that under?

Mr Warner: “Offers” of voluntary redundancy.

The CHAIR: Thank you. What I am suggesting is that there may be circumstances—you are talking about formal disciplinary proceedings—here we have got in the north metro case situations of people under investigation. Who should the agency be able to go to to get some clear advice?

Mr Warner: To the Public Sector Commission.

The CHAIR: Right. So you would agree with that submission?

Mr Warner: I would agree that they could come to us for advice but voluntary severance is what it is: it is an offer made by the employer; they are not compelled to make an offer.

The CHAIR: Yes. On these terms of reference for this governance review, Ms O’Neill, the terms of reference include —

Relevant policies, procedures and management practices around procurement and contract management issues identified in the CCC report ...

Relevant policies, procedures and management practices around risk management and ... risks around procurement and contract management; conflict of interest; gifts, benefits and hospitality; ...

Governance and oversight mechanisms ...

And also information around decisions around the extension of the employment contract of Mr Fullerton; approval of redundancy packages of Mr Fullerton and Mr Ensor.

Ms O’Neill: Chair, if I can just clarify: 4(b) we are not acting on at this point, just for the committee’s information.

The CHAIR: Why not?

Ms O’Neill: We have been in liaison with the SSO.

The CHAIR: State Solicitor’s Office.

Ms O’Neill: State Solicitor’s Office.

The CHAIR: Are you awaiting advice from them or will they be looking at it?

Ms O’Neill: SSO—State Solicitor’s Office—is handling that aspect at the moment.

The CHAIR: All right. And you will consult with the CCC to facilitate, as much as is possible, leverage by KPMG—I do not know what KPMG is, actually; it has been around for so long!—and the Public Sector Commission on the work already undertaken by the CCC—Corruption and Crime Commission—to these terms of reference, and KPMG will prepare a draft report setting out their observations. So they are concurrently doing investigations with the Public Sector Commission?

Ms O’Neill: I have contracted KPMG to do the detailed work for the Public Sector Commission, so the report will come to me. That is not unusual.

The CHAIR: Is that because there is not capacity within the Public Sector Commission?

Ms O’Neill: We are going through, since my arrival, a restructure, and we did want this review not to extend on for a large amount of time and so I made the decision that we would seek some external assistance on this matter.

The CHAIR: When are you required to report back to the minister?

Ms O'Neill: We are not required by a certain time but I have advised, because we are doing this under my own powers under section 24B, we have advised the minister that we would be in a position to come back to him in the first few months of next year.

The CHAIR: And your role as Public Sector Commissioner, the last line of the terms of reference say that you will “separately consider any application to the wider public sector recommendations arising from the report.” So would you see your role, after this analysis and examination, as disseminating principles, directions and guidelines, and further educational training once you have examined this matter?

Ms O'Neill: To go to the point previously around leadership, we have already sent to directors general notification to go through any contracts they had with the people mentioned in this report. When the report for the Minister for Health becomes finalised, yes, what we will do is take from that what are the broader learnings for the rest of the sector and that is why I go back to what I said earlier about taking seriously the responsibility for leadership and learning for the whole sector in this regard. So that will be a big consideration in the information that we provide the whole sector.

Mr M. HUGHES: Would that involve giving directions to DGs?

Ms O'Neill: I have the capacity to provide commissioner’s instructions around —

Mr M. HUGHES: You can instruct departments to institute procedures and to report back to you their findings?

Ms O'Neill: Yes. We have commissioner’s instructions in play at the moment, and also some approved procedures that are similar in nature.

Mr M. HUGHES: The ultimate responsibility then for carrying out those instructions lies with the head of the agency and if there is noncompliance, is that a minor misconduct matter?

Ms O'Neill: We would have to assess each case on its merits.

Hon ALISON XAMON: Getting back to the fact that this committee is doing an inquiry into issues around procurement, I am curious to know your views on Tenders WA and whether you think that it is achieving the outcome that it set out to achieve. Do you have any thoughts on that?

Ms O'Neill: My understanding is that it is there for purposes of transparency and that it provides as such.

Hon ALISON XAMON: Do you think that it provides sufficient transparency?

Ms O'Neill: I am not really sure what the continuum of transparency is. Perhaps there are mechanisms to provide greater transparency, but my understanding of Tenders WA is that it provides an appropriate level of transparency.

Hon ALISON XAMON: Overall with government, are you satisfied that we currently have sufficient transparency around the procurement of government contracts, or do you think there is room for improvement?

Ms O'Neill: I am not sure I have a distinct view, except to say that there is transparency. There is always room for improvement.

Hon ALISON XAMON: Of course there is always room for improvement, and what I am trying to get at is whether you are able to articulate, or perhaps Mr Warner would be able to articulate, what would be those areas of improvement that we could potentially be looking at.

Ms O'Neill: I think, just going back to the terms of reference for north metro, for example, there are some pointers there—clear policies, clear procedures, sound management practices, employees being very clear of their expectations in regard to procurement, whether the delegations that are in place are appropriate, whether people understand the threshold of their decision-making. All of these aspects of procurement ensure that there are ways to improve that, but possibly the people working more specifically on the day-to-day detail of procurement—the Department of Finance—would be in a better position to advise you of areas that they think would be open to greater improvement. We will learn some things from this. We will work with the Department of Finance around that, as I said before, about the functional leadership. We will try to lead greater collaboration across the sector so that we can share expertise.

The CHAIR: The government has committed to having for directors general key performance indicators. It seems to me from our inquiries that there are a lot of inconsistencies or patchy compliance in various agencies. I am wondering what your view would be on having as a key performance indicator some compliance with risk management or procurement guidelines or managing conflicts of interest or secondary employment—all those things that create greater risk of corruption. Do you think there is any merit in that?

[11.30 am]

Ms O'Neill: It is something that, in directors general's performance agreements, greater specificity—if I recall, there is an integrity section or at least there was, if I reflect on my own. It could be a consideration that we exemplify that more in the performance agreement around risk management. A lot of these things would be in audit plans, in risk plans, of agencies, so a requirement to demonstrate that they have adequate risk management and compliance strategies in place is something that could be considered, but we would have to first, I think it would be reasonable, do the mapping to have a look again at where those things were already expressed.

Hon JIM CHOWN: Commissioner, I think you stated previously that you can give directions to heads of department—correct?

Ms O'Neill: Yes—commissioner's instructions.

Hon JIM CHOWN: What instructions have you sent to these particular heads of department, or whatever you want to call them, in regard to the north metro health scandal procurement breaches? I assume you have sent something out throughout the public service. I would like to know exactly what that is and how are you actually policing those instructions to ensure that their processes are tightened up. As I said previously, will you be carrying out any form of independent audit on some of these authorities to ensure that their procurement processes are adequate? I did not quite hear it and I have not read the *Hansard*, so I am making some assumptions here, but I am fairly certain when we had the North Metropolitan Health Service in here, they had only just initiated a firewall between the procurement officer and the payment officer. Now, that is bizarre, commissioner. Quite frankly, at least one of your roles would be to ensure that that fundamental process is in place throughout all agencies.

Ms O'Neill: So, if the question —

Hon JIM CHOWN: I am asking you—do you want me to start again?

Ms O'Neill: No; I am happy to go to the part of that that was a question that I can answer. What did we send out? I did send out a message to directors general about two things which I have already mentioned—that is, to audit or revise or review any use of the contractors that were mentioned in the initial north metro work. So, they were asked to do that. We provided them with an assessment framework that had been developed by the Department of Finance to do that. When we understand

more from the north metro review, as the terms of reference say, we will say more to directors general about learnings from that review that they should take into consideration in their work.

Hon JIM CHOWN: That alarms me, commissioner. As we do know, all these various departments and agencies have different systems for procurement, so what applies to north metro may not apply to, say, Education—something you are fully aware of. Now we have exemptions from MRD DOT that do not even have to be part of the process. You can see where I am going here. How can you extrapolate something out of KPMG's north metro procurement processes and that process may be so different from another agency's that you cannot apply the learnings from it? Do you agree with that statement or not?

Ms O'Neill: Sorry; I was waiting. We are not working in a vacuum here. Agencies are not working in a vacuum, waiting for the Public Sector Commissioner to create new rules around procurement.

Hon JIM CHOWN: We do understand that, commissioner. But, as I said before, part of your role as commissioner is to show some leadership on these matters.

Ms O'Neill: Sure, and, as I have said, I am happy to do so. We have the Financial Management Act, we have Treasurer's Instructions and we have the State Supply Commission, so there is an array of risk management and requirements on agencies to work within. I am not sure that we are necessarily looking at an absence of directions to agencies. A number of those things are legislated or at least have the same status. I do not think people are waiting for me to set a new set of rules around procurement. Rules are there. Some people choose not to follow the rules, as we have seen in this case. I am not for one minute suggesting that what comes out of north metro in its entirety will be immediately applicable in every scenario, but we do know about procurement that there are many principles and points of operation that are required in those pieces of legislation that will be applicable to all agencies. I do believe there is something to learn for all agencies, but of course there will be some uniqueness around north metro. But procurement is procurement, and the legislation and the policies that are set across government are there for that purpose, because there is something common to each of them.

Hon JIM CHOWN: I take your comments with interest, commissioner, especially in regard to the CCC felt obligated to call every head of agency and commissioner into their office to inform them and educate them to some degree on what their responsibilities are, especially under the various procurement processes, and that was the fallout from what has come to light in regard to north metro health. I understand that you have been in the role for seven or eight weeks, but obviously your predecessor was not pursuing similar outcomes as per their role from the Public Sector Commissioner's perspective throughout these agencies; otherwise, the CCC would not have had to take on this role.

Ms O'Neill: I was at the meeting with the CCC. If I understand the content of the briefing, it was around reminding directors general of red flags that occur and the common trends; it was not a lesson on procurement, so it would be good just to make that clear. With respect to what my predecessor did, in my observation since taking this role, he, additionally to me, was very committed to the outcomes of integrity and the matters that we are talking about, but I do not have any information about specific work that he undertook in the area of procurement. That does not mean it did not happen; I am just not aware of it.

The CHAIR: The Corruption and Crime Commissioner commented to us that this instance of the north metro had galvanised all the DGs and they were suddenly interested in all of this stuff. That is a matter of concern in itself. I think that is what my colleague was getting at. Why does it take a case like this to actually get the DGs' attention?

Ms O'Neill: I would not agree that DGs have not been attentive to procurement. In fact, a lot of time and effort of agencies goes into exactly that. Some of the new learnings, I guess, that have come out of the CCC report is my discussion with directors general more informally just around the extent to which people will subvert policies and procedures. So there is always something new to learn. It surely has grabbed their attention yet again, but I would not take that as no attention to lots of attention. I think their awareness is heightened to an even higher extent. If I can just reflect back a bit on the question before about the work of the commission before me. They have done work in this area—reports around ticketing, Healthway—so it is not that they have been absent in this area. PSC has done its own reviews of certain circumstances in accordance with its power under the act, and then subsequent to that run workshops with people, just to make that clear.

Hon JIM CHOWN: Obviously in that process it did not pick up the separation of payment as opposed to procurement in the north metro health service.

Ms O'Neill: Sorry: why did it not?

Hon JIM CHOWN: It obviously did not.

Ms O'Neill: I am not sure. The Department of Finance runs professional learning in procurement.

Hon JIM CHOWN: The question remains: has this process been rectified through other agencies? I mean, it is bizarre.

Ms O'Neill: The Department of Finance is running professional —

Hon JIM CHOWN: You could not run a business like it.

Ms O'Neill: No; I am well aware. The Department of Finance is running professional development in this area. That point that you make is exactly why we want to find the weaknesses that will arise from the review and make sure agencies are clear around what we find in the north metro review that we are doing for Minister Cook. I mean, improvements are made all of the time—every time a new aspect is learnt in procurement or any other management area.

[11.40 am]

Hon JIM CHOWN: But these are all reactive; they are not proactive.

Ms O'Neill: Well, I am not sure that is the case. The Department of Finance, as I understand it, run professional learning. When I was in Education, we would proactively have our people engaged in professional learning, training, trying to gain greater expertise, sharing with other agencies. When we learnt that another agency had, you know, new work in procurement, we would get ourselves involved in that. From my perspective, I do not agree that people just wait for this to happen. I think agencies generally—not specifically, because I do not know each one of them and what they are doing at this point—generally, my view is that agencies are proactive in wanting to have the best corruption detection for procurement and any other reason in place.

The CHAIR: Just on that point, and it is clear I think we are going to need to get you back after the report is released, but can I just ask—there seems to be demarcation. The procurement stuff seems to be done by Finance. Can you just expand on that? That seems to be, to an external person like myself, as if that is a bit of an anomaly.

Ms O'Neill: Chair, it is not unusual. The Public Sector Commission does not hold the expertise in the commission for every government policy or skillset or expertise. That is why this point that the government is pursuing around functional leadership is there. There are people, for example, legal services. Most agencies have some form of legal service. We do not hold or run professional development for legal; someone else would do that. Procurement is largely run by the Department

of Health.¹ Treasury will run sessions around finance. That is not unusual. We largely run professional development around HR management. We would be seen as leaders in that aspect. So it is not that the Public Sector Commission holds all of the expertise in every management aspect across government; other agencies do, too.

The CHAIR: We have requested that you provide to us information concerning matters referred to police.

Ms O'Neill: Yes.

The CHAIR: The other thing I would be grateful if you could give the committee some advice on is the number of training sessions that the Public Sector Commission has had in the last two years involving corruption prevention and mismanagement, and also what is planned for next year.

Ms O'Neill: We can give you the information in relation to what we have provided for last year and this year. This financial year, from our annual report, we delivered to 1 964 people.

The CHAIR: Maybe a few more details in terms of the curriculum. I think that is a bit brief, the notes in there.

Thanks for giving evidence before the committee today. A transcript of this hearing will be forwarded to you for correction of minor errors. Any such corrections must be made and the transcript returned within 10 days from the date of the letter attached to the transcript. If the transcript is not returned within this period, it will be deemed to be correct. New material cannot be added via these corrections and the sense of your evidence cannot be altered. Should you wish to provide additional information or elaborate on particular points, please include supplementary information for the committee's consideration when you return your corrected transcript of evidence. Thank you.

Hearing concluded at 11.44 am

¹ Correspondence from the witness clarifying this part of the transcript can be accessed on the committee webpage.